

# REGULAR COUNCIL MEETING A G E N D A

TOWN OF CHINCOTEAGUE

August 6, 2012 - 7:00 P.M. - Council Chambers - Town Hall

CALL TO ORDER

INVOCATION BY COUNCILMAN T. HOWARD

PLEDGE OF ALLEGIANCE

OPEN FORUM / PUBLIC PARTICIPATION

STAFF UP-DATE

AGENDA ADDITIONS/DELETIONS AND ADOPTION:

- 
1. Consider Adoption of the Minutes
    - Regular Council Meeting of July 2, 2012 (Page 2 of 31)
    - Special Emergency Council Meeting of July 18, 2012 (Page 16 of 31)
  2. Accomack County Board of Supervisors Update (Honorable Wanda Thornton)
  3. Ordinance Committee Report of July 12, 2012 (Councilman Howard) (Page 23 of 31)  
*The following Action was forwarded by the Committee to the Council and may require a motion:*
    - Chapter 22, Article VI. Grass, Weeds and other Foreign Growth on Private Property
    - Chapter 10, Article II Dogs
  4. Cemetery Committee Report of July 17, 2012 (Councilwoman Richardson) (Page 29 of 31)
  5. Mayor & Council Announcements or Comments  
*(Note: Roberts Rules do not allow for discussion under comment period)*

ADJOURN:

**MINUTES OF THE JULY 2, 2012  
CHINCOTEAGUE TOWN COUNCIL MEETING**

**Council Members Present:**

John H. Tarr, Mayor  
Ellen W. Richardson, Vice Mayor  
J. Arthur Leonard, Councilman  
Gene W. Taylor, Councilman  
Tripp Muth, Councilman  
John N. Jester, Jr., Councilman  
Terry Howard, Councilman

**CALL TO ORDER**

Mayor Tarr called the meeting to order at 7:00 p.m.

**INVOCATION**

Councilman Howard offered the invocation.

**PLEDGE OF ALLEGIANCE**

Mayor Tarr led in the Pledge of Allegiance.

**PRESENTATION**

Mayor Tarr welcomed the new council members and asked Mrs. Nancy Conklin if she would come forward. He presented her with a Certificate of Special Recognition for her years of community service.



**CERTIFICATION OF  
SPECIAL RECOGNITION**

**MRS. NANCY CONKLN**

**Term: October 13, 1999 – June 30, 2012**

Public service is one of nobility and dedication.  
You have displayed these attributes  
in the highest tradition during your term as  
Councilwoman of the Town of Chincoteague.

On behalf of a grateful community, I the Mayor,  
along with the members of  
the Chincoteague Town Council,

proudly present to you this recognition  
of meritorious service.

July 2, 2012

---

John H. Tarr, Mayor

Mrs. Conklin thanked everyone and stated that people shouldn't complain about the Town, they should be willing to step up and make a change.

Mayor Tarr also presented Councilman Howard with a United States flag. He read the certification and informed those in attendance that the flag was flown over the United States Capital on May 23<sup>rd</sup>, 2012 at the request of Congressman Rigell for Mr. Terry Howard for his 30 years of service to the Chincoteague Town Council.



**CERTIFICATION OF  
SPECIAL RECOGNITION**

**THE HONORABLE TERRY HOWARD**

**WHEREAS**, the Honorable Terry Howard has served the Town of Chincoteague well for many years in many capacities; and

**WHEREAS**, he has served faithfully as a member of the Chincoteague Town Council since 1982; and

**WHEREAS**, the exemplary conduct and sense of fairness he has demonstrated has furthered the cause of better understanding, and has been an influence for good in the growth and progress of our community;

**NOW, THEREFORE**, I, John H. Tarr, as Mayor and speaking on behalf of the Town Council and all our citizens, do hereby convey to the Honorable Terry Howard our heartfelt appreciation for his 30 years of exemplary service to the Town of Chincoteague.

**DATED** this 2<sup>nd</sup> day of July, 2012.

---

John H. Tarr, Mayor

Councilman Howard thanked Mayor Tarr and explained how he came to be a Councilman. He thanked everyone.

## **OPEN FORUM/PUBLIC PARTICIPATION**

- Mr. Jim White spoke about the Town Code referring to Meals Tax and Transient Occupancy Tax. He reiterated the vote and explanations of the previous meetings. He asked if the 1% tax increase would be eliminated once the beach access issue is resolved.

Mayor Tarr stated that the discussion by Council was that this matter would be reviewed each year during the budget hearings.

- Mr. John Smith of Hallwood asked if there would be any reservations of putting any member of the Town's staff in his book or on the internet.

Mayor Tarr advised he would run it by the Town's attorney.

Councilman Howard thanked Mr. & Mrs. Friar and Councilwoman Richardson for initiating his recognition and the presentation of the flag.

## **STAFF UPDATE**

### **Planning Department**

Town Planner Neville stated that the monthly report has been included in the packet. He added that the Planning Commission, Wastewater Advisory Committee and the Beach Advisory Committee will not be meeting in July. He advised of the next meetings: Planning Commission – August 14<sup>th</sup>, Wastewater Advisory Committee – September 20<sup>th</sup>, Beach Access Committee – they are waiting to hear from the next newsletter. He stated that he has attended a couple of meetings on the Town's behalf. He also stated that on July 11<sup>th</sup> and 12<sup>th</sup> the ANPDC is completing the recreational use mapping project. He also reminded Council of the announcement of the Community Walk-Around Workshop, July 30<sup>th</sup>. He also reported that there will be a planning study with the Navy to share their long range plans with the flight facility.

### **Police Department**

Lieutenant Fisher stated that the monthly report is included in the packet. He asked if there were any questions. He stated that there have been complaints about speeding in the downtown area and on Church Street. He advised that they have been moving the speed trailer that advises and records the speeds, times and dates.

Councilwoman Richardson advised that it works.

### **Public Works**

Public Works Director Spurlock advised that the Public Works monthly report is also in the packet. He reviewed some of the highlights. The Main Street streetscape project has been completed by Conrad Brothers who did an outstanding job not to mention a great company to work with. He looks forward to doing the other side of the street in the fall. He welcomed the new councilmen.

Councilman Jester asked about the lights and flowers.

Public Works Director Spurlock stated that there are a few little things. He stated that the lights and several benches will be installed next week. He added that the lighting will be installed by A&N Electric.

Councilman Jester asked about the planters across the street.

Public Works Director Spurlock advised that he would be contacting the Garden Club.

### **General Government**

Town Manager Ritter reported that under Emergency Management the draft Star Space Tourist Action Response Plan there will be another tabletop exercise on July 17<sup>th</sup>. He advised that General Government Staff is working on the end-of-year closeout along with the VRS payroll changes and insurance. He also advised that staff will be working on the quarterly newsletter for September.

### **AGENDA ADDITIONS/DELETIONS AND ADOPTION**

Councilwoman Richardson, seconded by Councilman Leonard to adopt the agenda. Unanimously approved.

- 1. Consider Adoption of the Minutes**
  - **Regular Council Meeting of June 4, 2012**
  - **Special Council Meeting of June 21, 2012**

Councilman Howard motioned, seconded by Councilman Jester to approve the minutes as presented. Unanimously approved.

- 2. Selection of the Vice Mayor**

Mayor Tarr explained that this is done after every election in May. He entertained a motion for consideration of Vice Mayor.

Councilman Jester motioned, seconded by Councilman Taylor to elect Councilman Leonard as the Vice Mayor. Unanimously approved

Mayor Tarr congratulated Vice Mayor Leonard.

- 3. Committee Appointments and Assignments**

Mayor Tarr read the list of Committee appointments and assignments.

**Budget & Personnel Committee:** Chairman, Mayor Tarr, Councilman Muth and Councilman Taylor.

**Ordinance Committee:** Chairman, Councilman Howard, Councilman Taylor and Councilman Muth.

**Meals Tax Committee:** Vice Mayor Leonard

**Harbor Committee:** Chairman, Vice Mayor Leonard, Councilman Jester.

**Recreation & Community Enhancement Committee:** Chairman, Councilman Jester, Councilman Howard and Councilman Taylor.

**Public Works Committee:** Chairperson, Councilwoman Richardson, Mayor Tarr and Vice Mayor Leonard.

**Planning Commission:** Councilman Muth.

**Cemetery Committee:** Chairperson, Councilwoman Richardson, Councilman Howard.

**Public Safety – Police, EMS, EOC:** Chairman, Mayor Tarr, Councilwoman Richardson, Councilman Taylor.

**Liaison Committee:** Chairman, Mayor Tarr, Vice Mayor Leonard and Councilman Jester.

**Chincoteague Recreation & Convention Center Authority:** Councilman Jester.

Councilwoman Richardson motioned, seconded by Councilman Howard to approve the Committee appointments. Unanimously approved.

#### **4. Consider Appointment to the Planning Commission**

Town Manager Ritter advised that Town Planner Neville advertised the vacant seat of Councilman Taylor on the Planning Commission. He asked Town Planner Neville to review the memo.

Town Planner Neville advised that Ms. Nancy Lane and Mr. Mike Dendler have expressed interest to be considered. He added that Ms. Helen Merritt and Mr. Drew Jorgensen expressed interest the last time there was a vacancy. He reported that Mrs. Merritt and Mr. Jorgensen both decided not to be considered at this time.

Mayor Tarr asked if this was properly advertised.

Town Manager Ritter advised it has been advertised and the term is for approximately 6 months.

Mayor Tarr asked if either candidate would like to address Council.

Ms. Lane advised Council of her interest in becoming a Planning Commission member. She would like to help make the Town a better place and is committed and honored.

Mr. Dendler explained his interest in becoming a member also.

Mayor Tarr opened the floor for nominations.

Councilman Howard nominated Mr. Mike Dendler.

Councilman Jester nominated Ms. Nancy Lane.

Mayor Tarr closed the nominations.

Mayor Tarr called for a vote for Mr. Mike Dendler.

Ayes: Howard, Taylor, Leonard, Richardson.

Mayor Tarr congratulated Mr. Dendler.

**5. Public Safety Committee Report of June 5, 2012**

Mayor Tarr advised that the report was included in the packet. He also mentioned the tabletop exercise on July 17<sup>th</sup> at the Community Center. He asked for questions. There were none.

**6. Possibly Consider a No Parking Zone on Church Street from Anderton Avenue to Main Street.**

Town Manager Ritter reported that at the June 21<sup>st</sup> Special Council meeting this matter was discussed. He explained the possibility of a 5 minute loading and unloading zone for the Channel Bass Inn and the Opportunity Shop.

Lieutenant Fisher advised that it would be easier if there was “No Parking”. He feels that if there is a 5 minute loading or unloading zone it would be tying up an officer. He stated that the Police Department feels that No Parking would be better. The Police Department also discussed asking the Opportunity Shop to move their collection boxes to the back of the building for loading and unloading at the Town Parking Lot. He mentioned that the Channel Bass Inn has an entrance along the Town Parking Lot also.

Town Manager Ritter stated that there are three letters included in the packet regarding the safety issue. He added that moving the loading and unloading zones to the Town Parking Lot are just suggestions as the Town doesn’t want to get into their operations. He stated that the Town sees no issue if they would like to do this in the future.

Councilman Jester supports the no parking on Church Street, however, has concerns about moving the loading zones as the workers at the Opportunity Shop are seniors.

Councilman Howard asked if the Opportunity Shop and Channel Bass has been approached about moving the loading and unloading zones. He understands the hazard of parking along Church Street and feels it’s a safety factor. He mentioned the Opportunity Shop and its importance to the community.

Councilman Muth asked about crosswalks.

Town Manager Ritter advised that crosswalks are no problem and there was further discussion about the safety issues and specifics.

Councilman Jester suggested business specific signage for loading zones.

Discussion continued.

Councilwoman Richardson suggested putting the business name on the loading and unloading signs for 1 car at a time.

Mr. Wiedenheft of the Channel Bass Inn doesn't feel one space is sufficient.

Comments were made and Councilman Taylor suggested tabling this matter one more month.

Lieutenant Fisher and Councilman Jester both agreed that this has been put off long enough and July is the month to enforce it because of the major safety issues.

Councilman Muth feels this a safety issue and the no parking would be for the greater good. Councilwoman Richardson motioned, seconded by Councilman Howard to adopt a no parking zone on Church Street from Main Street to Anderton Avenue allowing 5 minute loading/unloading in front of the Opportunity Shop and Channel Bass Inn, including revisiting this matter if there are problems, adding crosswalks for each of the two businesses. Motion carried.

Ayes: Howard, Richardson, Leonard, Jester, Muth

Nays: Taylor

#### **7. Recreation and Community Enhancement Committee Report of June 12, 2012**

Councilman Jester reported that they discussed potential plans at the completion of the Ocean Boulevard extension/trail to extend it to Coach's Lane. He also stated they talked about the trails workshop. He feels they should be working on a physically fit community.

Councilwoman Richardson asked about the Committee's opposition of the Fish & Wildlife using a concrete deck.

There was further discussion.

#### **8. Possible Adoption of a Trial Agreement with ESVBA**

Town Manager Ritter explained that this is referring to the Eastern Shore Broadband Authority and the agreement will allow the Town to go forward with a request for a proposal for a Broad Band provider. He stated the Town will review and approve the proposals and the vendor will be chosen to provide a minimum of a one year service. He stated that the first 6 months they will operate free and clear and after that it will go to 25% of the cost of the service of 25MG. He added that after 9 months it goes to 50% and after a year 100%. Town Manager Ritter recommended that the Town adopts this. He asked that ESVBA at a previous meeting to strike the part where the Town would be the fund pass-through. They agreed to remove this and the Authority would collect the money directly. He advised at the last meeting they passed a proposal for an 8 week pilot project after which the RFP will be finalized for the 1 year trial agreement period.

There was brief discussion as to the liability.

Town Manager Ritter explained that the Eastern Shore of Virginia Broadband Authority cannot give out free service for 6 months and as they pick up customers they will be able to support the service. He also stated that the pilot is separate pilot project for 8 weeks and then they will go out for proposals for the provider of the service.

Discussion continued in length.

Mayor Tarr stated he doesn't have a problem with the pilot program, however, does have concerns with the RFP.

Councilman Howard asked Town Manager Ritter what his recommendation was.

Town Manager Ritter advised that he recommended approving the agreement so they could move forward with the RFP.

Councilman Howard motioned, seconded by Councilman Jester to adopt the trial agreement with ESVBA. Unanimously approved.

### **TRIAL AGREEMENT**

This Agreement is made and entered into as of the date it is signed by both parties (hereinafter referred to as the "Effective Date") by and between Eastern Shore of Virginia Broadband Authority, having offices at 36272 Lecato Road, Belle Haven, VA 23306, (hereinafter referred to as "ESVBA"), and the Town of Chincoteague, having offices at 6150 Community Drive, Chincoteague Island VA, 23336 (hereinafter referred to as "Town").

### **RECITALS**

**WHEREAS**, ESVBA desires to provide Town with discounted Internet access to facilitate the availability of affordable internet access to small businesses and residential dwellings (hereinafter referred to as the "Trial"). Such discounted Internet access shall hereinafter be referred to as the "Service".

**WHEREAS**, Town wishes to determine the utility and feasibility of utilizing the Service to meet the broadband needs its businesses and residents ("Users"),

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual promises and covenants set forth herein, ESVBA and Town agree as follows:

#### **1. ESVBA RESPONSIBILITIES**

ESVBA will provide to Town, at the charges specified in Attachment A, dedicated internet service, to a mutually agreed up on location that is on or near the ESVBA network. Title to any equipment and/or software provided by ESVBA for the purposes of this Trial shall remain with the ESVBA. Town will assume any risk of loss or damage to any equipment and/or software used in the Trial.

## 2. TOWN'S RESPONSIBILITIES

- a. Town shall cooperate with ESVBA in all aspects of the Trial as reasonably required by ESVBA. Cooperation shall include: evaluating the Service while the Trial is in progress and informing ESVBA of Town's views concerning the virtues and shortcomings of the Service.
- b. Town shall work independently, or with other parties, to conduct the trial in an organized and professional manner.
- c. If the Town determines that they want to a third party to take responsibility of the Trial and operate the Trial as a commercial entity (Operation), the Town must issue a public RFP and follows the laws of the Commonwealth of Virginia.
- d. Town acknowledges that nothing in this Agreement shall be construed as a commitment by ESVBA to offer the Service to any of the end users of the Trial following the termination of the Trial.
- e. Unless otherwise stated, the Town's selected Service Provider, will also pay ESVBA the Service charges specified in Attachment A for the duration of the Trial.

## 3. EQUIPMENT & INTELLECTUAL PROPERTY

- a. Town agrees that upon expiration or termination of this Agreement, Town will promptly return all hardware, software equipment and associated documentation, which ESVBA as provided, to ESVBA in the same condition as received, reasonable wear and tear excepted, or they must purchase the aforementioned at the ESVBA's purchase price.

## 4. TERM AND TERMINATION

- a. The term of this Agreement shall commence with the date that the Town desires ESVBA's Internet Service to begin, or upon the date which the Town awards an RFP to a Service Provider (In Service Date) and shall expire twelve (12) months thereafter, unless terminated earlier as provided below.
- b. This Agreement shall terminate at the earlier to occur of the following:
  - 1) the expiration date of the Term, or
  - 2) upon thirty (30) days prior written notice by the Town.
  - 3) upon thirty (30) days' prior written notice by either party to the other party if the other party is in default of a material term or condition of this Agreement and has failed to cure such default within the notice period, or
  - 4) immediately upon written notice by either party if:
    - i. the other party has intentionally or in a willful, wanton or reckless manner made any material, false representation or violated the other's trade names, trademarks or service marks;
    - ii. the other party has been placed in conservatorship or receivership, become insolvent or involved in a liquidation or termination of its business, or adjudicated bankrupt, or been involved in an assignment for the benefit of creditors; or
    - iii. mandated by governmental or regulatory authority.
  - iv. Upon expiration or termination of this Agreement neither party shall be relieved of any obligations due at the time of such expiration or termination, nor shall such expiration or termination prejudice any claim of either party accrued on account of any default or breach by the other.

c. The Town shall be able to change the amount of bandwidth (not to exceed 25 Mb/s), or cancel Service, without any penalties during the Term of the Trial. At the conclusion of the Trial, ESVBA will enter in an agreement with the ~~Town~~, or the Town's selected service provider, at ESVBA's standard rates (Appendix B).

## 5. CONFIDENTIALITY

a. Both parties, for their mutual benefit, desire to disclose or have disclosed to the other, certain specifications, designs, plans, drawings, software, data prototypes, or other business and/or technical information (hereinafter collectively referred to as "Information") which is proprietary to the disclosing party or its affiliated companies or suppliers. The receiving party shall hold such Information in confidence, shall reproduce or copy such Information only to the extent necessary for its authorized use, shall restrict disclosure of such Information to its employees who have a need to know, shall advise such employees of the obligations assumed under this section, and shall not disclose such Information to any third party without the prior written approval of the other party and a confidentiality agreement at least as restrictive as this Article 5.

b. These restrictions on the use of disclosure of information shall not apply to any Information:

1) that is independently developed by the receiving party or its affiliated companies or lawfully received free of restriction from another source having the right so to furnish such Information; or

2) that is or becomes publicly available by means other than unauthorized disclosure; or

3) that, at the time of disclosure to the receiving party, was known to such party or its affiliated companies free of restriction as evidenced by documentation in such party's possession; or

4) that the disclosing party agrees in writing is free of restrictions stated in this Agreement.

5) Each party agrees that all of its obligations undertaken in this Section 5 as a receiving party of Information shall survive and continue for two years after any expiration or termination of this Agreement.

## 6. WARRANTIES

a. ESVBA warrants that it will make commercially reasonable efforts to provide continuous service at the contracted levels.

b. EXCEPT FOR THE WARRANTIES STATED IN SECTION 6(a), THE SERVICE IS OFFERED ON AN "AS IS" BASIS. ESVBA MAKES NO WARRANTY, GUARANTEE, OR REPRESENTATION, EXPRESS OR IMPLIED, RELATING TO THE RELIABILITY, EFFECTIVENESS, ACCURACY, COMPLETENESS, PERFORMANCE, OR OPERATION OF THE SERVICE, OR OF THE EQUIPMENT AND SOFTWARE FURNISHED TO TOWN FOR PURPOSES OF THE SERVICE OR THE TRIAL, AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ESVBA DOES NOT GUARANTEE THAT THE SERVICE WILL NOT CAUSE INTERRUPTIONS IN OR INTERFERENCE WITH TOWN'S OR USERS' TELECOMMUNICATIONS OR OTHER SERVICES WHICH INTERCONNECT WITH THE SERVICE.

7. LIMITATION OF LIABILITY

a. THE LIABILITY OF EITHER PARTY TO THE OTHER FOR ANY CLAIM ARISING FROM ANY CAUSE WHATSOEVER (EXCEPTING PERSONAL INJURY AND/OR DEATH) REGARDLESS OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL BE LIMITED TO DIRECT DAMAGES ACTUALLY PROVEN, NOT TO EXCEED AN AGGREGATE OF \$10,000 DURING THE TERM OF THIS AGREEMENT.

b. ESVBA SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF: INABILITY BY TOWN, USERS OR THIRD PARTIES TO USE THE ESVBA SERVICE WHICH IS THE SUBJECT OF THIS AGREEMENT; SERVICE INTERRUPTIONS; INTEROPERABILITY, INTERACTION OR INTERCONNECTION OF THE ESVBA SERVICE WITH APPLICATIONS, SERVICES OR NETWORKS PROVIDED BY TOWN, USERS OR THIRD PARTIES; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF TOWN'S USERS' OR THIRD PARTIES' APPLICATIONS, DATA, PROGRAMS, INFORMATION, NETWORK OR SYSTEMS THROUGH ACCIDENT, FRAUDULENT MEANS OR ANY OTHER METHOD BY ANYONE.

c. NEITHER PARTY SHALL BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, SAVINGS OR REVENUES OF ANY KIND OR INCREASED COST OF OPERATIONS, WHETHER OR NOT IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

d. AS USED IN THIS ARTICLE 7, "ESVBA" AND "TOWN" SHALL BE DEEMED TO INCLUDE EACH PARTY'S PARENTS, SUBSIDIARIES, AND AFFILIATES, AND THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUPPLIERS AND CONTRACTORS OF ALL OF THEM.

8. FORCE MAJEURE

Neither party nor its affiliates, subsidiaries, subcontractors, parent corporation or any of its parent's affiliates or subsidiaries shall be liable in any way for delay, failure in performance, loss or damage due to any of the following force majeure conditions: fire, strike, embargo, explosion, power blackout, earthquake, flood, war, labor disputes, civil or military authority, acts of God or the public enemy, inability to secure raw materials, acts or omissions of other carriers or suppliers, or other causes beyond its reasonable control, whether or not similar to the foregoing.

9. ASSIGNMENT

Neither party may assign or transfer or attempt to assign or transfer any part or all of this Agreement, or any of its rights or obligations hereunder, without the prior written consent of the other party. Such consent shall not be unreasonably denied.

10. CHOICE OF LAW

The construction, interpretation and performance of this Agreement shall be governed by the laws of the Commonwealth of Virginia without giving effect to its choice of law rules.

11. ENTIRE AGREEMENT

The terms and conditions of this Agreement shall constitute the entire agreement and understanding of the parties with respect to the subject matter hereof and shall supersede all prior, written or oral agreements, proposals or understandings. This Agreement shall not be modified, altered, changed or amended in any respect, except by a writing signed by an authorized representative of each party.

12. PUBLICITY/TRADEMARKS AND TRADENAMES

Neither party shall use, in any advertising, publicity or User documentation, any of the other party's trade names, logos, trademarks, trade devices, service marks, symbols, codes, specifications, abbreviations or registered marks, or contractions or simulations thereof (hereinafter referred to collectively as "Marks"), without the other party's advance approval in writing. Neither party shall claim ownership or any other rights in the other party's Marks. Upon termination of this Agreement, any and all rights or privileges of either party to use the other's Marks shall expire and each party shall discontinue the use of the other's Marks.

13. SECTION HEADINGS

The section headings in this Agreement are inserted for convenience only and are not intended to affect meaning or interpretation.

ESVBA and Town, acting through their duly authorized representatives, hereby agree to the terms set forth in this Agreement.

**Town of Chincoteague**

By: \_\_\_\_\_  
Name: **Robert G. Ritter Jr.**  
Title: **Town Manager**

Date: **July 2, 2012**

**Eastern Shore of Virginia Broadband Authority**

By: \_\_\_\_\_  
Name: **Nicholas Pascaretti**  
Title: **Executive Director**

Date: \_\_\_\_\_

**ATTACHMENT A-- SERVICE CHARGES**

SVBA will bill Town, or the Town’s selected Service Provider, the charges specified below, which is exclusive of any applicable taxes. Payment of all charges, including applicable taxes, shall be due within 30 days of the invoice date. Town, or the Town’s selected Service Provider, shall pay all local, state and Federal taxes, however designated (excluding taxes on ESVBA's net income), imposed on or based upon the provision or use of the Service.

The charges below are subject to change in the event that the parties mutually agree to change the deliverables or responsibilities of the parties specified in Attachment A.

1. One Time Non-recurring Costs (NRC): \$0.00
2. Monthly Recurring Costs (MRC):

<b>MRC’s Schedule for 25Mb/s</b>				
	<b>Months 1-6</b>	<b>Months 7-9</b>	<b>Months 10-12</b>	<b>Months 13+</b>
<b>Discount</b>	100 %	75 %	50 %	0%
<b>MRC</b>	\$0.00	\$625	\$1,250	\$2,500

NOTE: Town may at any time reduce or increase the amount of Internet service with no penalties. After Month 12, ESVBA’s standard rates will be charged (Appendix B).

**9. Mayor & Council Announcements or Comments**

Councilwoman Richardson mentioned donations to the Cemetery. She advised that they receive approximately \$1,500 per year in donations. She stated that one cutting is approximately \$1,300. She feels the Town needs to find money or utilize staff to maintain the cemeteries on the Island. She commended those who volunteer to help with the cemetery upkeep. She suggested thinking about having the Town take this matter over as the volunteers can’t physically keep up with the overgrowth.

Councilman Howard feels the cemeteries should be kept clean out of respect. He asked if this could be placed on the next meeting agenda with recommendations from Public Works.

Councilman Jester welcomed the new council members.

Councilman Muth passed on an invitation to the Island Library for crafts and story time for children.

Councilman Taylor expressed his concern for kidney dialysis patients. He also suggested placing more life-rings at the waterfront properties.

Councilman Howard commended Mr. Tommy Daisey for his suggestions regarding Transient Occupancy and the possibility of businesses in the community raising money for beach reserve

and reconstruction. He asked if this could be put on the next meeting agenda for discussion. He feels that having a plan with facts and figures in place could be beneficial.

Councilwoman Richardson advised that Supervisor Thornton is currently working on a plan.

Discussion continued.

Town Manager Ritter advised that Mr. Martin Crim asked for a meeting, July 20<sup>th</sup>. He asked Council to keep this date open and he would see if Town Attorney Poulson is available.

Mayor Tarr asked that staff arrange a meeting with Councilman Jester, the YMCA administration, himself and Mrs. Fox to iron out the use of the Island Activity Center.

**Adjourn**

Councilman Howard motioned, seconded by Councilwoman Richardson to adjourn. Unanimously approved.

---

Mayor

---

Town Manager

**MINUTES OF THE JULY 18, 2012**  
***SPECIAL EMERGENCY***  
***CHINCOTEAGUE TOWN COUNCIL MEETING***

**Council Members Present:**

John H. Tarr, Mayor  
Ellen W. Richardson, Vice Mayor  
Tripp Muth, Councilman  
Gene W. Taylor, Councilman  
John N. Jester, Jr., Councilman  
Terry Howard, Councilman

**Council Members Absent:**

J. Arthur Leonard, Councilman

**CALL TO ORDER**

Mayor Tarr called the meeting to order at 4:00 p.m.

**INVOCATION**

Councilman Howard offered the invocation.

**PLEDGE OF ALLEGIANCE**

Mayor Tarr led in the Pledge of Allegiance.

**AGENDA ADDITIONS/DELETIONS AND ADOPTION**

Councilwoman Richardson motioned, seconded by Councilman Jester to adopt the agenda.  
Motion carried.

Ayes: Richardson, Jester, Muth, Taylor, Howard

Nays: None

Absent: Leonard

**1. Discuss Sec. 18-96 Pony Penning Sales Permit**

Mayor Tarr advised that this came about because of a call from Mr. Sam Serio regarding a few of his vendors for the Blueberry Festival. He advised they were late in obtaining their permit for the festival which starts Friday.

Town Manager Ritter advised that there are two issues at hand. An issue was brought up about the established Island businesses that already have a meals tax account with the Town. Those businesses feel that with an existing account within the Town they should be waived from the Meals Tax deposit of \$500.00 for the Pony Penning Sales Event. He also mentioned the requirement of having the application in by the Friday prior to the Friday of Pony Penning week.

Town Manager Ritter stated that there were 3 or 4 businesses that were advised of the Friday deadline and these businesses called saying they were going to come into the office Thursday and still missed the Friday deadline. However, they want to be exempt from the deadline. He added that this requirement has been in place over 15 years. He stated that the only change in that section of the Ordinance was from 7 days to 8 days because 7 days made the deadline on a Saturday and the Town Office isn't opened on Saturdays.

Building and Zoning Administrator Lewis stated that the reason this Ordinance was started was because of the local businesses. He stated that the local businesses were concerned that there were one-day vendors coming into town and taking their business and leaving and Council decided to structure this Ordinance to regulate this. He added that those people that didn't make the deadline were called as a courtesy to make sure they were going to participate in this event and they assured our office they would be in by Friday. He expressed his concern that the other Pony Penning vendors made the effort to make the deadlines. Building and Zoning Administrator Lewis stated that Mr. Serio is making a profit on the Blueberry Festival. He feels that his vendors are no different than anyone else. He stated that if the deadline is changed on the permit it should be for everyone not just Mr. Serio to make his profit.

Councilman Howard asked about exempting those for special events and the significance of obtaining the permit 8 days prior to Pony Penning week.

Building and Zoning Administrator Lewis stated that this is for those people who live away coming into town and selling shirts on the side of the road. He added that this organizes and helps to keep them out of the public right-of-ways. He also stated that the first few years this was in effect they stopped several vendors from doing this. He feels it works.

Building and Zoning Administrator Lewis stated that they do not deny anyone provided they meet the deadline.

Mayor Tarr stated that if the Town is opened they should be able to do business. He doesn't feel there should be a deadline of 8 days.

Town Manager Ritter responded that all the vendors would be coming into the office at one time, when they were setting up to apply and pay.

Councilman Jester stated that this brings business to the community. He would like to consider a blanket "event" permit based on the number of vendors. He also questioned the \$500 meals tax deposit. He suggested a 1 day permit.

Town Manager Ritter stated that there is a "special event" permit in the Town Code. He added that the Community Center does fall under "special events".

Mayor Tarr asked how many vendors were involved in the Blueberry Festival.

Mrs. Chesser advised it is 80 so far.

Mayor Tarr asked how many missed the deadline.

Mrs. Chesser stated there were 3 from the Blueberry Festival and 1 local business not affiliated with the Blueberry Festival.

Councilman Muth stated that they are having this meeting for 4 people.

Mrs. Chesser explained that usually Mr. Serio issues a list of the participating vendors. A couple of days prior to the deadline Mr. Serio would contact her asking who hasn't obtained a permit and was advised at that time and he made calls giving them another opportunity. She also stated that Mr. Serio would pay their permit fee so they would meet the deadline. Mrs. Chesser advised that these particular people have contacted the office earlier in the week and was advised of the deadline. However, on Monday a fax was in the machine which came in after 5:00 p.m. She also stated that she made calls herself to help them. She did not receive the list this year from Mr. Serio, however, he was at the counter at 5:00 p.m. Friday to pay for those who applied but couldn't get their money in on time. The others just didn't get it in on time.

Building and Zoning Administrator Lewis explained of another issue with a "blanket" permit to be careful as there could be a business not permitted by right (for example a tattoo artist). He stated that when they obtain the license or permit the Town knows exactly what they are going to do on this property. He advised that he verifies each vendor on Friday.

There was further discussion and a question was asked if those who missed the deadline participated in the Blueberry Festival in the past.

Mrs. Chesser advised that one of them has and the one not involved in the Blueberry Festival has in the past.

Mayor Tarr stated that the Meals Tax issue is common sense. He also feels that the Pony Penning Sales are more developed now. He asked how the Town decides whether a business needs a Pony Penning Sales Permit or a Business License.

Building and Zoning Administrator Lewis stated this is based on those businesses that are transient in nature setting up in someone's yard verses an established identified business.

Mayor Tarr stated that this is a Blueberry Festival and he doesn't see where this has anything to do with Pony Penning and Pony Penning sales. He understands that years ago when it was established it wasn't this particular weekend.

Building and Zoning Administrator Lewis advised that it is an established vendor coming into Town "during" the Pony Penning event verses a year 'round vendor.

Mrs. Chesser added that without the deadline the vendors would all be in Friday morning as they were setting up including those businesses that may not be permitted. She continued that those businesses have also come into town and rented a room thinking they're going to be able to do this. She also stated that they are issuing a Town Business License which is good for a year.

They discussed a "Special Event" license.

Councilman Taylor stated that the Town wants the event to do well, but doesn't want to crunch the staff.

Councilman Howard asked about those 80 vendors.

Mrs. Chesser advised that 75 are new vendors for the Blueberry Festival and 5 are established Island businesses that are selling food or other items.

Mayor Tarr doesn't feel that this festival is Pony Penning related.

Building and Zoning Administrator Lewis added that the number of vendors is down. He informed Council that there was one of the repeat Pony Penning vendors that usually get their permit but didn't because they were late.

Councilman Howard stated that they need to be business friendly and not regulate people. He feels that because of 3 people who said they were sending their permit and didn't is a recipe for a rush on the Town Office. He reminded of those vendors that abided by the Ordinance and just because 3 people didn't do it they want us to change the Ordinance.

Mayor Tarr feels that staff should be business friendly.

Councilman Howard made further comments and feels the Ordinance may be written a little too tough.

They discussed the Pony Penning Permit Fee of originally \$300 was changed to \$50.

Building and Zoning Administrator Lewis advised that no one in the history of this Ordinance has ever paid the \$300 Pony Penning Permit Fee. He stated that they obtain a Business License and pay the Business License Fee.

Mrs. Chesser advised that as long as she's been doing the Business Licenses no one has ever been late until this year.

Councilman Howard talked about the fees.

Councilman Muth asked if this event was capitalizing on Pony Penning week and feels they should be treated as they were.

Councilman Jester feels this could be solved with a blanket permit with the organizer. He suggested that the organizer should issue a list of vendors and what they're selling. He stated it would be one check and would simplify all of this.

Mayor Tarr asked what the Town has done with the meals tax vendors when they applied for their permit. He understands that they were asked to go to the Ordinance Committee. He asked if the Town collected the Meals Tax deposit from the Island established businesses.

Town Manager Ritter advised that he discussed this matter with Finance Director Hipple and feels it isn't clear in the Ordinance and should be rewritten.

Councilman Muth asked if we collected the deposit from any of the Island businesses participating in the Blueberry Festival.

Town Manager Ritter advised that the Island Creamery paid the deposit.

Councilman Howard stated that the right thing to do is to correct the oversight. He doesn't feel those established Island businesses should have to pay it.

Councilman Jester asked if there were other vendors that have paid the deposit.

Mrs. Chesser advised they have and if there wasn't a deposit those non-Island businesses are never going to pay the Meals Tax and they have no way to collect it.

Councilman Jester agrees there should be a deposit but feels this is high.

Councilman Howard agrees that it isn't fair for those businesses that live here and pay as opposed to those outside businesses making a hustle and not paying.

Mrs. Chesser also stated that in the past, it has taken up to 3 months to collect the Meals Tax from those businesses out of state.

Building and Zoning Administrator Lewis added that with the current deposit the businesses have been prompt in reporting so they receive their money back.

Mayor Tarr asked if staff makes sure those Island businesses were current in their Meals Tax.

Building and Zoning Administrator Lewis advised that they can.

Councilman Taylor motioned, seconded by Councilman Jester to add to the end of Sec. 18-96 Pony Penning Sales Section (c) (2) "Town established businesses that sell prepared food are exempt from the \$500.00 deposit as long as they currently report such activity on a monthly account." Motion carried.

Ayes: Jester, Taylor, Muth, Richardson,

Nays: Howard

Absent: Leonard

Councilman Taylor doesn't feel there is anyone who wants to exempt those 3 vendors. He also doesn't feel that anyone there wants additional work on the staff. He would like to see an event fee at a lower price for those who come in early. He would like to revisit this matter and doesn't want this removal of the deadline to overload staff.

Councilman Howard stated that it won't be an easy question to answer if Council makes an exception for these few businesses.

Mayor Tarr feels staff will have to get a list of the vendors to review eligibility.

Councilman Muth feels that if 80 vendors can get them on time then those 3 should be able to.

Discussion continued.

Mrs. Chesser advised that there were 3 Blueberry Festival vendors that missed the deadline and 1 Island Business that missed the deadline.

Mayor Tarr recommended removing the verbiage “8 days prior”, reviewing this matter before next Pony Penning.

Council concurred.

Councilman Taylor motioned, seconded by Councilman Howard to remove from Sec. 18-96 Pony Penning Sales Section (b) “town and must be secured eight days prior to the Saturday preceding Pony Penning”. And not include the proposed addition “Other Special Events that require multiple vendors are exempt from eight day rule during Pony Penning, but the vendors are required to obtain such permit before the event.” Motion carried.

Ayes: Taylor, Jester, Muth, Richardson.

Nays: Howard

Absent: Leonard

### **Sec. 18-96 Pony Penning Sales**

- (a) *Generally.* *Pony Penning sales* is herein defined in this ordinance to mean and include all general sales within the town, that are open to the public during the event.
- (b) *Permit.* A permit is required for conducting Pony penning sales ~~town and must be secured eight days prior to the Saturday preceding Pony Penning.~~ The permit shall be displayed at the sale location for the entire length of the sale. Yard sales are prohibited during the event. *Other Special Events that require multiple vendors are exempt from the eight day rule during Pony Penning, but the vendors are required to obtain such permit before the event.*
- (c) *Permit fee.* The permit fee shall be \$50.00.
  - (1) Anyone with a valid town business license is exempted from the permit fee.
  - (2) Anyone selling prepared food as defined in the town’s meals tax ordinance must submit a deposit to the town manager in an amount of \$500.00 prior to receiving such permit, which amount shall be applied to any tax due as a result of such sales. Report of actual sales must be submitted within 30 days from the end of the event. Failure to report actual sales by the due date will forfeit the deposit. The remaining balance of the deposit, if any, shall be refunded to the permittee upon computation of the actual tax due and payable as determined by such sales. *Town established businesses that sell prepared food are exempt from the \$500.00 deposit as long as they currently report such activity on a monthly account.*
- (d) *Duration of sale; hours of operation; frequency.* Sales conducted under this section are restricted to a maximum period beginning no sooner than the Saturday preceding Pony Penning and ending on the Saturday immediately following Pony Penning. Any sale exceeding this time period or otherwise not in compliance with this section will

not be considered a business and must comply with all applicable zoning and business licensing requirements.

Councilman Howard advised that he couldn't agree to change this ordinance, especially since those who missed the deadline were told. He stated that it isn't fair to those who abide by the rules.

Mayor Tarr feels that if this was an honest mistake and the customer couldn't get in to make the deadline there should be some leeway up to a certain date. He agreed that staff went out of their way to get those people in with their paperwork. He believes this should be worked out.

**Adjourn**

Councilman Howard motioned, seconded by Councilman Jester to adjourn. Motion carried.

Ayes: Richardson, Jester, Muth, Taylor, Howard

Nays: None

Absent: Leonard

---

Mayor

---

Town Manager

**ORDINANCE COMMITTEE  
TOWN OF CHINCOTEAGUE  
July 12, 2012  
Meeting Minutes**

**Present**

Councilman Terry Howard, Chairman  
Councilman Tripp Muth  
Councilman Gene Taylor

**Staff**

Robert G. Ritter, Jr., Town Manager  
Kenny Lewis, Building & Zoning Administrator

**Call to Order**

Chairman Howard called the meeting to order at 5:00 p.m.

**Open Forum/Public Participation**

There was no public comment.

**Agenda Adoption**

Councilman Taylor motioned, seconded by Councilman Muth to adopt the agenda

**1. Chapter 22, Article VI. Grass, Weeds and Other Foreign Growth on Private Property.**

Town Manager Ritter explained that Town Attorney Poulson has created a new article as each article has its own violations. He advised the major changes such as the definitions. He continued to explain each section. He reviewed the alternative to Sec. 22-161. He suggested going with the alternative and going with the depth of 5' as this was left blank for the Committee to decide.

There was discussion and comments.

Chairman Howard doesn't think it's fair to enforce a weed ordinance on an undeveloped property, wetlands or wooded areas.

There were further comments, questions and suggestions as to how to handle the violations and what constitutes undeveloped or unimproved lots. They also discussed the growth depth distance.

Town Manager Ritter advised that it would be a "boiler-plate" type of letter sent to the property owners.

Chairman Howard asked if there have been complaints from adjacent property owners about the overgrowth of an undeveloped property. He asked the Committee if they want an ordinance that controls property.

Town Manager Ritter made some suggestions.

Councilman Muth suggested leaving undeveloped property out until there are complaints and then revisit the ordinance.

Developed versus undeveloped property was discussed in length.

Councilman Muth asked about the process of a complaint.

Town Manager Ritter advised when the complaint comes in, Building and Zoning Administrator Lewis will inspect the property and if necessary will send a letter to the owner. He again explained the definitions of developed and undeveloped property.

They further discussed the violation, penalties, removal of overgrowth along with the fines.

Chairman Howard asked if the Committee feels it is necessary for the Town to have this ordinance to control this. He feels that overgrowth from an undeveloped property onto adjacent properties is an issue.

Town Manager Ritter stated that according to the proposed ordinance they would have to cut back up to 5' of their own undeveloped property or the Town will at the owner's expense. He suggested approving to move forward using the alternative Sec. 22-161 with the suggested changes.

They again discussed the penalty and the state law.

Councilman Muth motioned, seconded by Chairman Howard to approve and send to Council Chapter 22 Environment Article VI Grass, Weeds and Other Foreign Growth on Private Property using the alternative SEC. 22-161 with the verbiage changes. Motion carried.

Ayes: Howard, Muth

Nays: Taylor

## **CHAPTER 22 ENVIRONMENT**

### **ARTICLE VI. GRASS, WEEDS AND OTHER FOREIGN GROWTH ON PRIVATE PROPERTY**

#### **SEC. 22-158 Definitions**

For purposes of this Article VI, the following words and terms shall have the meaning respectively ascribed to them by this section:

(A) Owner:

Any person or entity holding record title to any lot or parcel of land within the Town, including fiduciaries holding title to or having the legal care, custody, control or management of any such lot or parcel.

(B) Grass, weeds and other foreign growth:

Uncontrolled growth or vegetation of every kind standing or growing on any lot or parcel other than trees, ornamental shrubbery, flowers vegetable gardens or grasses or bushes classified as wetlands under any local, state or federal law.

(C) Undeveloped property:

Any lot or parcel of land located within the Town that either (a) does not contain a structure or other improvements or (b) is not served by the Town public water system or (c) does not have an installed sewage disposal system approved by the Eastern Shore Health District.

(D) Vacant developed property:

Any lot or parcel of land located within the Town that either (a) contains a structure or other improvements or (b) is served by the Town public water system or (c) has an installed sewage disposal system approved by the Eastern Shore Health District and on which lot or parcel no person or entity has either resided, conducted any business or other activity or physically occupied such lot or parcel at any time within the 45 day period immediately preceding any Notice by the Zoning Administrator/Code Compliance officer as provided for by SEC. 122-163 hereof.

(E) Occupied property:

Any lot or parcel of land located within the Town that either (a) contains a structure or other improvements or (b) is served by the Town public water system or (c) has an installed sewage disposal system approved by the Eastern Shore Health District and on which lot or parcel any person or entity has resided, conducted any business or activity or physically occupied such for any period within the 45 days immediately preceding any Notice by the Zoning Administrator or Code Enforcement Officer pursuant to SEC. 22-193 hereof.

(F) Same set of operative facts:

Means the situation or facts existing either before or after an owner has been given a Notice to Cut by the Zoning Administrator/Code Compliance Officer. The "operative facts" shall change only after either the owner has cut such grass, weeds or other foreign growth in compliance after such Notice, or the Town has so cut.

(G) Violation:

A violation occurs when any such owner fails to cut such grass, weeds or other foreign growth from their lot or parcel so as to prevent it from attaining the applicable prohibited height. A Notice to Cut by the Zoning Administrator/Code Compliance Officer shall not be required to constitute a violation by such owner.

#### SEC. 22-159 DUTY OF OWNER TO CUT AND/OR MAINTAIN ANY VACANT DEVELOPED PROPERTY

Any owner, as herein defined, shall cut the grass, weeds and other foreign growth on any vacant developed property, as defined herein, located within the Town when the height of such grass, weeds or other foreign growth exceeds six inches (6") to a height not to exceed three inches (3").

**SEC. 22-160 DUTY OF OWNER TO CUT AND/OR MAINTAIN ANY OCCUPIED PROPERTY**

Any owner, as herein defined, shall cut the grass, weeds and other foreign growth on any occupied property, as defined herein, located within the Town when the height of such grass, weeds or other foreign growth exceeds six inches (6") to a height not to exceed three inches (3").

**SEC. 22-161 DUTY OF OWNER TO CUST AND/OR MAINTAIN ANY UNDEVELOPED PROPERTY**

Any owner, as herein defined shall cut the grass, weeds and other foreign growth on an undeveloped property for a depth of five feet (5') from the boundary of any adjacent developed property any street, roadway or when the height of such grass, weeds or other foreign growth exceeds ten inches (10") to a height not to exceed three inches (3").

**SEC. 22-162 PENALTIES FOR VIOLATION(S)**

Any owner who violates any provision of this Article by no cutting the grass, weeds or other foreign growth on any lot or parcel as provided for herein shall be subject to a civil penalty of Fifty Dollars (\$50.00) for the first violation, or a violation arising from the same set of operative facts. The penalty for subsequent violations not arising from the same set of operative facts within twelve (12) months of the first violation shall be Two Hundred Dollars (\$200.00). Each business day during which the same violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative facts result in civil penalties that exceed a total of Three Thousand Dollars (\$3,000.00) in a twelve (12) month period.

Violation of any provision of this Article shall be a Class 3 misdemeanor in the event three (3) civil penalties have been imposed on the same defendant for the same or similar violations, not arising from the same set of operative facts, within a twenty-four (24) month period. The punishment for a Class 3 Misdemeanor shall be a fine not to exceed Five Hundred Dollars (\$500.00). Classifying such subsequent violations as criminal offenses shall preclude the imposition of civil penalties from the same violation.

**SEC. 22-163 NOTICE TO CUT**

When there exists upon any vacant developed property, occupied property, or undeveloped property as defined herein within the Town grass, weeds, or other foreign growth, as prohibited herein, the Zoning Administrator/Code Compliance Officer shall immediately notify the owner of such lot or parcel to cut such grass, weeds, or other foreign growth to a height not to exceed three inches (3"). Such notification shall be by certified mail to the address of such owner as appearing on the real estate tax records of the Town of Chincoteague. Such owner shall cut such grass, weeds, or other foreign growth as required to a height not to exceed three inches (3") within ten (10) days of the posting of such Notice or the Town may take the action provided under Sec. 22-164.

**SEC. 22-164 CUTTING BY THE TOWN**

If such grass, weeds, other foreign growth has not been cut as required under the provisions hereof within ten (10) days from the posting of such Notice to Cut by the Zoning

Administrator/Code Compliance Officer, the Zoning Administrator/Code Compliance Officer shall cause such grass, weeds or other foreign growth to be cut to the required height by the employees or agents of the Town, or any contractor at the cost of such owner.

Where grass, weeds, or other foreign growth have not been cut by the owner within ten (10) days from the date of the Notice to Cut by the Zoning Administrator/Code Compliance Officer pursuant to the provisions of this section, and it is necessary for the Town to cut as provided herein, the cost of such cutting shall be billed to the owner of the property. If such bill is not paid within fifteen (25) days, it shall be added to the Town real estate tax bill on such property and shall be a lien on such property to the same extent and effect as real estate taxes.

The Town may waive such lien(s) in order to facilitate the sale of the property. Such lien(s) may be waived only as to a purchaser who is unrelated by blood or marriage to the owner and/or who has no business association with the owner. All such lien(s) shall remain a personal obligation of the owner of the property at the time the liens were imposed even if waived.

#### SEC. 22-165 AUTHORITY

This Article VI is adopted pursuant to the provisions of §15.2-901, §15.2-1102, and §15.2-1115 of the Code of Virginia of 1950 as amended.

#### SED. 22-166 EFFECTIVE DATE

The provision hereof shall be effective upon adoption by the governing body of the Town of Chincoteague.

### **2. Discuss Chapter 10, Animals, Article II Dogs**

Town Manager Ritter advised that there was a situation that a dog was attempting to attack some people and then the officer who was called to the scene. He explained Sec. 10-28. Prohibited acts; penalty.

There was discussion about verbiage in section 10-28 (a).

Councilman Taylor motioned, seconded by Councilman Muth to forward to Council with direction from Town Attorney Poulson. Unanimously approved.

## **ARTICLE II. DOGS**

### **Sec. 10-26- Definitions**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Dog means every dog, regardless of sex or age.*

*Owner means any person having a right of property in a dog and who keeps or harbors a dog or has it in his care or who acts as its custodian and any person who permits a dog to remain, on or about any premises occupied by him.*

*Run at large or running at large* means to roam, run or self-hunt off the property of its owner or custodian and not under its owner's or custodian's immediate control.  
(Code 1977, §4-6; Ord. of 4-2-1979, §4.6)

**State law reference** – Animal control officers, Code of Virginia, §3.1-796.104.

**Sec. 10-28. Prohibited acts; penalty.**

- (a) It shall be unlawful for ~~any the owner of any dog to allow such~~ dog to run at large at any time within the town limits, even though the dog is both lawfully licensed and vaccinated.
- (b) It shall be unlawful for the owner of any dog to allow, cause or permit such dog to enter any public building, office or store during the time that such business establishment is open for public business, unless the dog is on a leash or otherwise under the immediate control of such owner.
- (c) Any person violating the section, upon conviction, shall be guilty of a class 4 misdemeanor for each violation.

(Code 1977, §4-5)

**State law reference** – Dogs confined or restrained, Code of Virginia §§3.1-796.93, 3.1-796.95

**3. Committee Member Comments**

Councilman Taylor explained that his way of thinking is different and doesn't want to come across negative. He understands that everyone isn't going to have the funds to take care of their property and feels that the government shouldn't take care of everything for everyone.

Town Manager added that if there are any ordinances that need reviewing let him know and it will be placed on the next agenda.

Councilman Muth stated that ownership is responsibility.

Chairman Howard stated that there was good discussion and the items will be referred to Council with the advice of the Town's Attorney.

Town Manager Ritter advised that the next meeting will be September 13, 2012

**Adjourn.**

Councilman Taylor motioned, seconded by Councilman Muth to adjourn. Unanimously approved.

**MINUTES OF THE JULY 17, 2012  
Cemetery Committee**

**Members Present**

Ellen Richardson, Chairwoman  
Terry Howard, Councilman  
Gary Turnquist

**Others Present**

Robert Ritter, Town Manager  
William Neville, Town Planner  
Judy Howard  
Avery Conklin

**Call to Order**

Chairwoman Richardson called the meeting to order at 5:05 p.m.

**Agenda Adoption**

Mr. Turnquist motioned, seconded by Councilman T. Howard to adopt the agenda. Unanimously approved.

**1. Review Draft Planning Report**

Town Planner Neville described the status of an overall draft planning report that will be ready for the next meeting. Several additional photographs are needed.

- Cemetery Maps  
A set of 25 maps were handed out to each Committee member. The information has been updated from the last meeting and is based on the revised 2008 edition of From Tears to Memories – The Cemeteries of Chincoteague by James Wayne Carpenter, Sr. Mr. Turnquist noted that the number of gravesites will need to be updated from time to time as people are buried or additional research is completed.
- Priorities for Maintenance  
A prioritized list of the cemeteries was included on page 6 of the meeting packet which identifies those currently under maintenance by the Committee's efforts, and which needs to be adopted or added to the maintenance program.
- Budget Needs  
A summary of the donations and expenses for the cemetery fund was included on page 2 of the meeting packet. It is clear that the donations have generally kept pace with expenses until this last year. Expenses were down in 2010 due to a drought. The fund had reached a balance of only \$10 before a \$500 donation was made from the Town of Chincoteague. Additional fundraising for around \$4,000 is needed in order to complete any annual maintenance this year.

Mr. Howard suggested researching other larger cemeteries in the County (Downing, Taylor) to find out who maintains them and whether they would bid on work in Chincoteague. Mr. Turnquist asked if Town public works staff could complete the work and whether those costs may be less than bidding the work out. He also indicated that the Methodist Men may not be able to maintain Red Mens Cemetery in the future because it requires more work than they can complete. They would like to adopt a smaller cemetery that can be handled by 3 or 4 volunteers.

Following discussion of finding additional groups or individuals to adopt and maintain the smaller cemeteries, it was agreed that the next step was to continue the tradition of asking for donations to support the care of the larger cemeteries. If there are not enough volunteers or donations, then the Town will consider asking the Public Works Department to assist. Mr. Neville suggested that each of the cemetery maps include a detailed description/instruction of the annual maintenance or repairs needed.

- Town Charter/Town Code  
Copies of the applicable sections of the Town Charter and Town Code, along with a publication from Virginia Department of Historic Resources were included in the meeting packet for general reference.

## **2. Discuss Cemetery Maintenance Fund Raising**

Chairwoman Richardson identified nine (9) cemeteries that individuals are taking care of (Holly Ridge, Thornton, Chandler, Andrews/Daisey, Hill, Carter, Reynolds, Christ Union Baptist, Clark), four (4) cemeteries that are taken care of by church groups (Odd Fellows, Beulah, Risley, Redmens), four (4) cemeteries that are being taken care of by donations (Greenwood, Bunting, Mechanics, Daisey), and five (5) that no one is maintaining unless the Committee organizes a special clean up (Aydelotte/Boothe, Taylor/Birch, Reed, Jones, Birch).

Mr. Ritter expressed a concern that the cemetery fund and/or the use of Town staff should not be applied to gravesites that are for sale (in Daisey next to Mechanics) without owner making a commitment to perpetual care. The committee members discussed the number of gravesites that are owned by family members and will continue to be used in the future.

The Committee confirmed that the seven Priority 1 cemeteries should be reviewed by the Director of Public Works to identify the potential cost for mowing and clean up 3 times a year (before Memorial Day, before July 4<sup>th</sup>, and before Veterans Day). Other changes to the priority list were proposed such as moving Red Mens cemetery to the Priority 2 list for maintenance as a large cemetery, and finding new sponsors for the smaller cemeteries.

- Donation Letter  
Mr. Neville indicated that the donation request letter would be a way to also let people know which cemeteries were being cared for and which were up for adoption. This would allow people to donate either time or money. Chairwoman Richardson said that in the past, the people or organizations that adopted a cemetery had their name on the sign.

Mr. Turnquist suggested that the letter should ask for a donation and list the cemeteries that are maintained by the dedicated fund. Mr. Ritter asked who should receive the letter that Mayor Tarr would like to send out. Chairwoman Richardson stated that the letter should be written to thank those who have already contributed or maintained a cemetery.

Staff agreed to combine several versions of the donation letter and show it to the committee members before it is sent. Mr. Ritter suggested that the cemeteries should be listed that are maintained by the fund donations, and a list of those in need of adoption will be identified for volunteer work.

- Report of prior donations and maintenance costs  
A summary from 2005 to present was included in the staff report on page 2 of the meeting packet.

### **3. Committee Member Comments**

There was discussion about placing the letter in the newspaper or working up an article that could include a before and after picture of how donations have helped to clean up and maintain the Island cemeteries. Mr. Turnquist thought that the story should separate out what was accomplished by volunteer work, and what was accomplished by donations used to hire someone to maintain the cemeteries. This could be done after the carnival is over.

Chairwoman Richardson identified Booth and Holly Ridge cemeteries as ones needing additional work to clean up and repair stones that have been knocked down. Mr. Turnquist added that the letter should be directed to the Board of Trustees for any of the community churches that were listed as prior donors. It was agreed that there are a lot of competing needs for a limited amount of charitable donations. Mr. Turnquist made an appeal for the Town Council to find a long term stable solution to fund what is needed, possible by addition a small charge to the water bill so that the cost to community is more evenly distributed.

All agreed that the work of the Committee was supported by the Town Charter. Mr. Neville pointed out that the Charter refers to cooperation with any nonprofit corporation in the improvement and care of burial places, and that perhaps this is the way to pursue Mr. Ward's proposal for a cemetery authority. This would be a long term project that could be explored by the committee after the short term need for maintenance is met for this year.

Mr. Turnquist recommended that the cemetery committee should be expanded by two additional people with a rotation of members in order to bring in new people and groups after 12 years in its current form. Mr. Howard explained the importance of maintaining the community cemeteries and the need to remind visitors and new residents that these sites do not have perpetual care without their help. The need for repair of a headstone at Red Mens cemetery was discussed.

Mr. Ritter suggested that bylaws and mission statement could be prepared for the next meeting in October. The committee could make a recommendation to Town Council at that time. The letter and an article for the newspaper will be sent out in the next few weeks.

### **Adjourn:**

Councilman Terry Howard motioned, seconded by Mr. Turnquist to adjourn the meeting. Unanimously approved.