

MINUTES OF THE OCTOBER 1ST, 2012
CHINCOTEAGUE TOWN COUNCIL MEETING

Council Members Present:

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

OPEN FORUM/PUBLIC PARTICIPATION

Mayor Tarr opened the floor for public participation.

There was none.

STAFF UPDATE

Planning Department

Town Planner Neville advised that he included the monthly report in the Council packet. He announced that the next Planning Commission joint workshop with the Wastewater Advisory Committee is scheduled for 6:00 p.m., Tuesday, October 9th, 2012. He advised that they will review the zoning implications for a wastewater system for the island. He reported that the National Flood Insurance Program re-certification is good for another year. He also mentioned a meeting scheduled October 12th, 2012 at the Center regarding water quality standards for the Chincoteague Bay.

Police Department

Sgt. Fisher advised that the Police Department's monthly report was also included in the packet and asked for questions or comments. He stated that the Poker Run was a success. He thanked the Community and Council for their assistance. He felt that the weather was a factor cutting the block party a little short.

Councilman Howard commented that Onancock's Harbor Festival was hindered a little because of bad weather also.

Public Works

Public Works Director Spurlock also stated that the monthly report was included in the packet. He reported that there has been approximately 500 feet of sidewalk replacement. He asked if there were any questions.

Councilman Jester commended Town staff, Mr. Donnie Thornton for a great job with the flowers downtown and the fantastic job he is doing.

Public Works Director Spurlock advised that the Misty, duck and chicken sculptures are safe and in the process of being raised to be seen above the bushes.

General Government

Town Manager Ritter stated that the monthly report was also included in the agenda packet. He reported that the Emergency Medical Services responded to 100 calls during September. They have been working on a draft Continuity of Operations Plan (COOP) for review and will forward to the Safety Committee. He stated that the Transportation Enhancement Grant has been awarded to the Town. The Town is waiting for property owner easements to be signed for the east side of Main Street so the project can be put out for bids.

Town Manager Ritter also reported that the 50/50 match grant from the Department of Conservation and Recreation has been awarded. He advised that it is approximately \$100,000 in grant and \$100,000 that the Town would have to provide. He stated that the Town's quarterly newsletter was published in the September 20th edition of the Beacon. He also announced that he will be going to the ICMA Conference in Arizona, October 6th – 10th.

Councilman Jester asked about the matching grant. He wanted to know if the Public Works labor could be factored in the Town's portion.

Town Manager Ritter explained that if the Town receives a grant that is not a Federal Grant they can use labor as part of the matching funds. However, if it is a Federal Grant they could not.

Mayor Tarr asked what the total amount of the DCR Grant was.

Town Manager Ritter advised it was \$100,000 and a match of \$100,000.

Mayor Tarr asked if the matching funds were included in the Town budget to match the DCR Grant.

Town Manager Ritter advised there were not.

Mayor Tarr asked what the matching funds were for the fishing pier.

Town Manager Ritter advised it is 20%.

Mayor Tarr asked if the 20% was included in the Town budget.

Town Manager Ritter advised they were not.

Councilman Jester discussed the next phase of the downtown project. He suggested giving time estimates for the bids, the notices to proceed and the target dates. He also requested the dates for the Safe Routes to Schools.

Town Manager Ritter also stated that they have spent the funds for the capital project. He added that he and the Public Works Director would be presenting some ideas for future capital improvement projects to the next Public Works Committee.

There was discussion of potential capital improvement projects.

AGENDA ADDITIONS/DELETIONS AND ADOPTION

Vice Mayor Leonard motioned, seconded by Councilman Howard to adopt the new agenda which added the minutes of the Special Council Meeting of September 27, 2012 for adoption and item 8 - Advertise to Demolish the Campbell Structure on Eastside Road. Unanimously approved.

1. Consider Adoption of the Minutes

- **Regular Council Meeting of September 4, 2012**
- **Council Joint Workshop with the Beach Access Committee of September 12, 2012**
- **Special Council Meeting of September 27, 2012**

Councilman Howard motioned, seconded by Councilwoman Richardson to adopt the minutes of the Regular Council Meeting of September 4th, 2012, the Joint Council Workshop with the Beach Access Committee of September 12th, 2012 and the Special Council Meeting September 27, 2012. Unanimously approved.

2. Wastewater Advisory Committee Activity Report

Mr. Papadopoulos, chairman of the Wastewater Advisory Committee, reported that the Committee has met 11 times since July 12, 2011. They collected information presented by: The Atlantic Group, Blue Water Development Corp, the Health Department, DEQ, several wastewater treatment system manufacturers and engineers and research material by Town staff on wastewater systems in communities similar to Chincoteague.

Mr. Papadopoulos also reported on the Committee's activities: they performed a survey of business owners to identify issues and support for the Regional Water Study scenario. He advised that the preliminary analysis indicated that the responses are almost 100% positive and in support of a wastewater treatment system. He reported that the Committee reviewed research collected by the Town staff of similar communities with associated costs regarding their solutions to wastewater treatment. They are in the process of developing a decision matrix to define 2 to 3 options of wastewater treatment systems for a presentation to Council.

Mr. Papadopoulos reported on the progress of Blue Water extended sewer lines from their private wastewater treatment plant along Main Street. Don's Seafood Restaurant has been connected. Bill's Seafood Restaurant, the Chincoteague Fire House and the Town public restrooms are pending connection. The planned activities include the review of zoning issues in the proposed Phase 1 service area by the Planning Commission. He announced a work session with the Planning Commission for October 9th, 2012 at 6:00 p.m. He explained that the purpose is to develop common sense criteria for effective land use planning by zoning and not by sewer availability and capacity.

Mr. Papadopoulos also stated that they will continue discussions with the Atlantic Group. They plan to visit Cape Charles Wastewater Treatment Plant. The Committee recommended that Council approve of the Draft, October 2012 Newsletter by the Wastewater Advisory Committee. They also requested that Council provide them with any corrective course ideas as to how the Committee is going so that the goals can be effectively completed by June of 2013.

3. Public Works Committee Report of September 5, 2012

- **Street Sweeper Rehabilitation Proposal**

Councilwoman Richardson reviewed the report and stated that there is a quote for renovations to the street sweeper. She stated that the Town has given \$4,035.96 in water billing adjustments.

Councilman Howard asked about the adjustments.

Public Works Director Spurlock stated that he believes it is up a little from last year.

Public Works Director Spurlock advised that there is a proposal from Atlantic Machinery. He stated that the street sweeper is a 2005 model and the chassis is in good shape but the back is in poor repair. He reviewed the quote of \$57,000 to rebuild the sweeping mechanism and body. He advised that this would put it back to the original design and possibly gives the Town another 6 or 7 years. He stated that the funds would come from the VDOT Roads Maintenance Program. He also advised that a new street sweeper would cost approximately \$180,000. He added that they will have a spray liner installed also.

There was brief discussion.

Councilman Jester motioned, seconded by Councilman Howard to adopt quote #2 for the rehabilitation of the street sweeper's body and sweeping mechanism, in the amount of \$57,822. Unanimously approved.

4. Fall 2012 Paving Bids, Project Name: Contract 01-PAV-12

Public Works Director Spurlock advised Council that the project is to rehab the paving on Willow Street from Church Street to Howard Drive and the overlay on Circle Drive. He stated there was one bid from Branscom.

Councilwoman Richardson motioned, seconded by Vice Mayor Leonard to approve the recommendation for the Fall 2012 Paving Bids, Project: Contract 01-PAV-12 to go to Branscom not to exceed the amount of \$259,055. Unanimously approved.

5. Janitorial Services Bids, Project Name: Contract #JS-100112

Public Works Director Spurlock Council also advised Council of the recent bid for the custodial services for the Town. He advised that Alliant Services was the sole bidder and was 5% over the 3-year contract from 2009.

Councilman Howard motioned, seconded by Councilman Jester to approve the Janitorial Services Bid, Contract #JS-100112 to Alliant Services in the total yearly amount of \$14,288. Unanimously approved.

6. Ordinance Committee Report of September 6, 2012

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

Councilman Howard advised Council that the Ordinance Committee reviewed the ordinance: Chapter 22, Article VI. Grass, Weeds and Other Foreign Growth on Private Property. He stated that they discussed the maximum height restrictions.

Town Manager Ritter reviewed the changes in Section 22-159 and Section 22-160, striking out “prior to the adoption of this Ordinance”.

Town Attorney Poulson stated that his concern was that it seems to create a nightmare of enforcement issues. He stated that putting “prior to the adoption of this ordinance” will create more of a problem and change the word from “the” to “that”. He stated that the way it is drawn now that occupied property located twenty-five feet or more rearward of any structure on that property and not being used with the structure(s) on that property will be cut to 5”.

Town Attorney Poulson also reviewed Section 22-161. He was explaining that any owner of an undeveloped property has to cut back 5 feet from the boundary of any adjacent developed property. He feels that it should state “occupied” or “vacant” developed property. He also recommended adding “easement and right-of-way” after “...property, any street, roadway or ...”

Town Attorney Poulson under Section 22-163, Notice to Cut, recommended changing from five inches (5”) to ten inches (10”).

Councilman Howard explained that the Committee felt that the ten inches (10”) and five inches (5”) would be sufficient.

Town Manager Ritter stated that at the Ordinance Committee meeting they felt that the “occupied” developed properties would be enforced and the “undeveloped” and “vacant” developed would be on a complaint basis for enforcement. He also suggested only allowing adjacent property owners to be the complainants.

Vice Mayor Leonard feels that one person will take it upon themselves to ride around the island and report all those who aren’t in compliance. He feels this is an enforcement nightmare.

Town Manager Ritter also added that someone living in Richardson's Landing can't complain about someone on Beebe Road. He also added that this was for "undeveloped" property.

Discussion continued about pitting one neighbor against another and enforcement.

Councilman Jester added that there will be complaints.

Councilman Muth asked Building and Zoning Administrator Lewis if he was comfortable with enforcing the Ordinance the way it is written.

Building and Zoning Administrator Lewis advised that he was comfortable with the changes.

Town Manager Ritter added that it can come back to the Ordinance Committee if there are problems.

Councilman Jester feels that the Notice to Cut should include the intent.

Building and Zoning Administrator Lewis added that the letters for Accumulation on Property gets into the winds, floods and why the Town doesn't want accumulation on properties. He stated that they will put this type of information in those letters also.

Councilman Howard asked about the minimum and maximum weed/grass height requirements.

Building and Zoning Administrator Lewis added that he will pull the information from the Nuisance Ordinance.

Councilman Howard expressed his concerns and suggested that if there are any problems that come up, the Ordinance Committee could address it and make their recommendations to Council.

Mayor Tarr stated that the drive-by enforcement isn't addressed and asked if this would be a policy of the Town. He wanted to make sure that it was clearly stated in the minutes of the intent for enforcement.

Councilman Muth asked where they place the discretion.

Town Attorney Poulson feels that they are getting into problems if they add discretion.

There was further discussion.

Councilman Taylor asked if the Town could maintain their own property with the current staff.

Public Works Director Spurlock advised he believes so.

Councilman Taylor then asked if there would be enough staff to take care of the Town's property and the other properties that are in violation.

Public Works Director Spurlock added that they have the same problem with maintaining the cemeteries.

Councilman Taylor feels that the government should set the example.

Councilman Howard stated that he has never heard a complaint about the Town's properties. He also stated that he doesn't feel that people are going to complain about the cemeteries.

Councilman Howard motioned, seconded by Councilman Jester to adopt Chapter 22, Article VI. Grass, Weeds and other Foreign Growth on Private Property with the changes as outlined from Town Attorney Poulson. Motion Carried.

Ayes: Richardson, Jester, Muth, Howard

Nays: Leonard, 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 or unmanaged vegetation of every kind standing or growing on any lot or parcel other than trees, ornamental shrubbery or vegetation, 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. 22-163

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. 22-163 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 to 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 ten inches (10”) to a height cut not to exceed five inches (5”). Notwithstanding the preceding provisions, that part of any such property located twenty five feet, or more, rearward of any structure on said property and not actively used in conjunction with the structure(s) on said property shall be cut in accordance with the provisions of §22-161.

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 ten inches (10”) to a height cut not to exceed five inches (5”). Notwithstanding the preceding provisions, that part of any such property located twenty five feet, or more, rearward of any structure on said property and not actively used in conjunction with the structure(s) on said property shall be cut in accordance with the provisions of §22-161.

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

Any owner, as herein defined, shall cut the grass, weeds, and other foreign growth on any Occupied property or Vacant Developed property for a width or depth of 5 feet from the boundary of any adjacent developed property any street, roadway, easement or right-a-way when

the height of such grass, weeds or other foreign growth exceeds ten inches (10") to a height cut not to exceed five inches (5").

SEC. 22-162 PENALTIES FOR VIOLATION(S)

Any owner who violates any provision of this Article by not 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 offences shall preclude the imposition of civil penalties for 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 exceeds ten inches (10") to a height cut not to exceed five inches (5"). 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 exceeds ten inches (10") to a height cut not to exceed five inches (5") 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 (15) 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.

SEC. 22-166 EFFECTIVE DATE

The provisions hereof shall be effective upon adoption by the governing body of the Town of Chincoteague. Adopted October 1, 2012

Vice Mayor Leonard stated that he cannot create more government and feels the general public will more confused as Council is on this.

Councilman Taylor agreed that government shouldn't be creating more laws.

7. Recreational and Community Enhancement Committee Report of September 5, 2012

Councilman Jester stated that Town Planner Neville has completed a comprehensive list of the Town's Parks. The Committee will be reviewing them and make recommendations. He commended the Garden Club for the Cleveland Street garden. He mentioned the bike trail right-of-way from the Dollar General to Chicken City Road to keep the bike traffic off Maddox Blvd. He wants to know if staff would address the property owners to get permission to continue on through Coach's Lane and coming out to Maddox Blvd.

8. Advertise to Demolish the Campbell Structure on Eastside Road

Building and Zoning Administrator Lewis advised that he mailed a letter to Mr. & Mrs. Campbell in January 2012. He advised another letter was sent April 4th, 2012 at which time the owner advised he would begin demolition. He spoke to Mr. Campbell again August 2, 2012 and is having problems getting someone to do it. Building and Zoning Administrator Lewis advised that a public notice was already put in the paper for two weeks declaring the structure as unsafe. He stated that the flower shop on Church Street was given the notices also and they demolished the building. He asked Council for permission to put an ad in the paper for bids for demolition. He then read the notice.

Town Manager Ritter asked if Robert and Joan Campbell own the property.

Building and Zoning Administrator Lewis advised that every notice was sent to Joan and Robert Campbell as that is what is on the tax records.

Vice Mayor Leonard motioned, seconded by Councilman Jester to approve the advertisement for bids for the demolition of a structure on the Campbell property on Eastside Road. Unanimously approved.

9. Mayor and Council Announcements or Comments

Councilwoman Richardson complimented Vice Mayor Leonard for doing a splendid job during the Bridge Celebration.

Vice Mayor Leonard commended the Kiwanis Club on a great job in planning the Bridge Celebration.

Councilman Jester agreed with Councilwoman Richardson and Vice Mayor Leonard that it was a very nice ceremony.

Councilman Taylor thanked staff for working behind the scenes and doing a great job.

Councilman Howard commended Councilman Taylor for being bold and brave enough to say what he feels.

Building and Zoning Administrator Lewis also advised of the upcoming demolition of the McGee home on Bunting Road. He advised that the Building Department was inspected by ISO and the inspection went well.

Councilman Jester commented on the unsafe structures in Accomack County.

Mayor Tarr commended Building and Zoning Administrator Lewis for trying to make the Town look better.

There was discussion about unsafe structures and what the requirements are to maintain that structure or have it demolished.

Adjourn

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

Mayor

Town Manager