

# WASTEWATER ADVISORY COMMITTEE

## A G E N D A

TOWN OF CHINCOTEAGUE, VIRGINIA

**October 29, 2014 at 9:00 A.M. – Conference Room - Town Hall**

CALL TO ORDER

ROLL CALL

AGENDA ADDITIONS OR ADOPTION

- 
1. Meeting to review option for a Wastewater Authority
  2. Committee Member Comments

ADJOURN

NEXT MEETING(S): AS NEEDED





## MEMORANDUM

Town of Chincoteague, Inc.

Date: October 29, 2014  
To: Wastewater Advisory Committee  
Through: Robert Ritter, Town Manager  
From: Bill Neville, Town Planner  
Subject: Committee strategies for action

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**The WAC will meet to discuss the possible option of a Town Wastewater Authority for the private operation of a Phase One wastewater utility.**

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Committee members completed a draft Wastewater Management Plan (WMP) in June 2013 and presented it to Town Council. At that time, Mayor Tarr requested that the Plan should also be presented to the community for review and comment. The draft Plan was placed on display in the Town Hall and a public open house was advertised and held in October 2013.

The WAC recommendations to Town Council suggest that a ‘private sector’ model, similar to the Sunset Bay Utilities/Main Street service area, could serve as an example for a similar small wastewater service area along Maddox Boulevard. Since any future service area expansions may be limited by availability of privately held discharge permits, it would be reasonable to revise the Committee’s recommendations to include alternate ways to encourage private action and investment, such as:

- Define a preliminary wastewater utility service area along Maddox Boulevard, a scope of work, a cost estimate and a rate schedule with assistance from a private utility company. Advertise a design/build/operate proposal for private financing and operation of a wastewater utility serving businesses with an option for Town ownership in the future.

The Committee met with representatives of Tidewater Utilities at the last meeting who advised that land application of clean treated water was the only viable long term solution and that the next step to pursue a private utility system would be to create a Town Wastewater Authority with representation by both the Town and the utility company.

A sample resolution was provided for the Committee’s consideration and possible incorporation into a revised WMP recommendation.

# Strengths and Weakness of a Wastewater Authority

## Strengths

1. Authority will have 3 members from the Town vs. 2 others
2. Politics will be taken out of the equation
3. Main Commercial corridors with sewer allows existing businesses to expand
4. Environmental benefits to both land and water quality
5. Protection of shell fish harvesting grounds from condemnation
6. Service Area phases may be approved by Council
7. Grants applied through the Town as Co-signer with matching funds provided by private investment through the Authority
8. Council could eliminate Authority if desired
9. Authority would have their own budget for infrastructure and operations, and financed to be self supporting
10. Employees for wastewater division would be hired through the authority and not Town employees
11. Town would participate in setting lower cost hook-up fee for initial connections, and a competitive rate structure
12. Tidewater Utilities and Middlesex Water Co. would have a stake in the game as a partner in the Authority

## Weaknesses

1. New growth and development could occur in the Commercial districts
2. Politics taken away
3. Installation of infrastructure (treatment facility, force mains, pumps, and connections) may require investment by property owners and the Town for land, easements, etc.
4. A minimum number of connections would be needed to attract private investment.
5. Federal grant funds (with strings attached) would be required to help fund a new collection system, a modern treatment facility on Chincoteague Island, a force main to the mainland, and a land application site
6. Federal and State permit authorities may not support the phased approach with voluntary connections proposed by the Town
7. If a septic drainfield system fails, owner could be required to hook into the system by the Health Department

# Strengths and Weakness of a Wastewater Authority

**DRAFT RESOLUTION CREATING  
THE CHINCOTEAGUE WASTEWATER AUTHORITY**

**WHEREAS**, the Town of Chincoteague (“Chincoteague”) desires to obtain and/or establish rights to utilize a wastewater treatment plant to supplement wastewater services to the residents and commercial and industrial establishments in Chincoteague; and

**WHEREAS**, the Town Council of Chincoteague (the “Town Council”) has determined the most efficient and practicable manner to provide such services is to form a wastewater authority, which may be created pursuant to the Virginia Water and Waste Authorities Act (Virginia Code, Chapter 51, Title 15.2, § 15.2-5100 *et seq.*) (“the Act”); and

**WHEREAS**, the Town Council advertised its intention to create a wastewater authority and conducted a public hearing, as required by law, to be held on \_\_\_\_\_, 2014; and

**WHEREAS**, the Town Council hereby adopts this resolution to create the articles of incorporation of this new authority.

**NOW, THEREFORE, BE IT RESOLVED** this \_\_\_\_\_ day of \_\_\_\_\_ 2014, by the Town Council as follows:

Section 1. The Town Council hereby signifies its intention to create a wastewater authority pursuant to the Act, to be known as “Chincoteague Wastewater Authority” (the “Authority”) in order to accomplish the goal of solving Chincoteague’s wastewater needs.

Section 2. The purpose for which the Authority is to be formed is stated in its Articles of Incorporation as hereinafter set forth.

Section 3. The Articles of Incorporation of the Authority shall be as follows:

**ARTICLES OF INCORPORATION  
FOR  
CHINCOTEAGUE WASTEWATER AUTHORITY**

1. The name of the authority shall be the Chincoteague Wastewater Authority (the “Authority”).

2. The address of the Authority’s principal office shall be 6150 Community Drive, Chincoteague, Virginia 23336.

3. The initial registered office of the Authority is located at \_\_\_\_\_, and its post office address is \_\_\_\_\_. The name of its initial registered agent is \_\_\_\_\_, who is an attorney licensed in Virginia, and whose business address is the same as the address of the initial registered office of the Corporation.

4. The participating locality is as follows:

Town of Chincoteague, VA

5. The Board of Directors of the Authority (the “Authority Board”) shall consist of five (5) members, which members shall be determined as follows:

- The Public Works Director for the Town of Chincoteague, by position;
- The Town manager for the Town of Chincoteague, by position;
- The President of Tidewater Utilities, Inc., VA, by position;
- The President of Middlesex Water Co., or his proxy, by position;
- One member appointed by the Town Council of Chincoteague, who possesses technical expertise in the field of wastewater management, for a term of four (4) years and until his or her successor has been duly appointed and qualified

The term of the members determined by position shall be coterminous with his or her term and/or employment in that position and shall expire upon their ceasing to hold such position and/or employment. Vacancies on the Authority Board shall be filled pursuant to the same conditions and methods as set forth above. If the vacancy was that of an appointed position, the new appointee will serve for the unexpired term. Initial terms shall commence upon the issuance of a certificate by the State Corporation Commission.

The Authority Board shall exercise the powers of the Authority, and members of the Authority Board shall be appointed, serve, and be governed by the provisions of the Virginia Water and Sewer Authorities Act, Code of Virginia § 15.2-5100, et seq. All members of the Board of Directors shall have full voting rights and privileges.

The names and addresses of the initial members of the Authority Board are as follows:

<u>Name of Member</u>	<u>Address</u>
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6. The purposes for which the Authority was created are: the ownership, acquisition, financing, construction, operation, and maintenance of water systems, sewer systems, systems for the collection, treatment, and disposal of sewage, and for the purpose of exercising the powers conferred by the Virginia Water and Sewer Authorities Act, Code of Virginia § 15.2-5100, *et seq.*, in relation to the foregoing.

7. It is hereby declared to be impracticable to determine preliminary capital costs, specific projects to be undertaken by the Authority, and preliminary estimates of initial rates for services of such projects.

8. The term of the Authority shall be 50 years or such longer term as may be allowed by law or as may be extended in accordance with the law.



IN WITNESS WHEREOF, the Town Council of the Town of Chincoteague has caused these Articles of Incorporation to be executed by Councilman/Councilwoman \_\_\_\_\_, and their respective seals to be affixed, this \_\_\_\_ day of \_\_\_\_\_, 2014.

TOWN OF  
CHINCOTEAGUE

By:

\_\_\_\_\_  
Councilman/Councilwoman  
Town Council

(SEAL)  
ATTEST:

\_\_\_\_\_  
Clerk, Town Council

Section 4. The first members of the Authority Board shall be those persons specified in the Articles of Incorporation filed with the State Corporation Commission (“S.C.C.”) and shall expire as specified in the Articles of Incorporation.

Section 5. Councilman/Councilwoman \_\_\_\_\_ of the Town Council is hereby authorized and directed to execute the Articles of Incorporation in substantially the form set forth above, to cause the executed Articles of Incorporation to be filed with the S.C.C. on or after the date of the public hearing required by Section 6 hereof, together with proof of publication of the notice of such public hearing and to do all things necessary for the creation of the Authority.

Section 6. A public hearing was held by the Town Council as otherwise set forth herein. Notice of the public hearing, including a copy of the Town Council’s resolution or a descriptive summary thereof, was published at least one time, 30 days prior to the date of the public hearing, in \_\_\_\_\_, a newspaper having general circulation in Chincoteague, substantially as follows:

**Notice of Public Hearing**  
**TOWN OF CHINCOTEAGUE TOWN COUNCIL**

The Town Council will hold a special public hearing on the following items at 7:00 p.m. on \_\_\_\_\_, 2014, located at \_\_\_\_\_:

**Public Hearing:** On a resolution to be considered for adoption by the Town Council signifying its intention to create a wastewater authority, pursuant to Virginia Code § 15.2-5100 *et seq.* The purpose of the resolution is to create the Chincoteague Wastewater Authority, a wastewater authority to acquire, own, lease, purchase, finance, construct, reconstruct, operate, and maintain facilities for operating a wastewater and sewer treatment system to service the Town of Chincoteague.

More information and a copy of the proposed resolution are available for review in the Town Office, located at 6150 Community Drive, Chincoteague, Virginia 23336, Monday through Friday, 8:00 a.m. to 5:00 p.m., and the phone number is 757-336-6519.

Any parties wishing to be heard are requested to attend the public hearing.

It is Chincoteague's intent to comply with the requirements of the Americans with Disabilities Act. Should you need special accommodations, please contact the Town Office at the number listed above prior to \_\_\_\_\_, 2014.

By Order of the Town Council

Section 7. The Town Council has determined it is not practicable to provide preliminary estimates of capital costs, proposals for specific projects to be undertaken by the Authority, or preliminary estimates of initial wholesale service rates for such wastewater services at the current time.

A Copy, teste:

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Clerk, Town Council  
Town of Chincoteague, Virginia

## William Neville

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**From:** Ray Ebaugh [Rebaugh@middlesexwater.com]  
**Sent:** Monday, October 13, 2014 3:57 PM  
**To:** Robert Ritter; William Neville  
**Cc:** Jerry Esposito  
**Subject:** Forming an Authority  
**Attachments:** Town of Chincoteague Wastewater authority10 13 14 TUI revised.doc; Wastewater Authority.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Rob and Bill, attached for your review, please find a draft of an agreement to form an Authority and Virginia Code that discusses forming an Authority. Below is a statement from a local Virginia Attorney that researched the ability to form an Authority and who also wrote the agreement. I thought that may be helpful to hear his interpretation of the code. The statement is as follows:

"You had requested that I provide information regarding the ability of a town to create wastewater authority. The creation and powers of "wastewater authorities" is set out in Title 15.2 Chapter 51 of the Virginia Code. 15.2 Va. Code Section 5100, et seq

Section 15.2-5102(A) provides: The governing body of a **locality may by ordinance or resolution**, or the governing bodies of two or more localities may by concurrent ordinances or resolutions or by agreement, **create a water authority, a sewer authority**, a sewage disposal authority, a stormwater control authority, a refuse collection and disposal authority, or any combination or parts thereof. The plain language of the enabling statute clearly contemplates that a locality may act alone in creating an authority. Note that "locality" is defined in Section 15.2-102 and includes a county, city, or town. I am attaching both cited code sections with the applicable provisions highlighted."

Please let me know if you have any follow up questions. Once you have a chance to review the information, please let Jerry and I know what you believe the next steps will be. As always, it's a pleasure to work with you. Have a good day.

**Ray Ebaugh**

Director of Planning & Development | **Tidewater Utilities, Inc.**  
"A Provider of Water, Wastewater and Related Products and Services"  
Ph: 302.747.1312 | Fax: 302.734.9295  
[rebaugh@tuiwater.com](mailto:rebaugh@tuiwater.com)  
<http://www.tuiwater.com>

§ 15.2-102. Definitions.

As used in this title unless such construction would be inconsistent with the context or manifest intent of the statute:

"Board of supervisors" means the governing body of a county.

"City" means any independent incorporated community which became a city as provided by law before noon on the first day of July, nineteen hundred seventy-one, or which has within defined boundaries a population of 5,000 or more and which has become a city as provided by law.

"Constitutional officer" means an officer provided for pursuant to Article VII, § 4 of the Constitution.

"Council" means the governing body of a city or town.

"Councilman" or "member of the council" means a member of the governing body of a city or town.

"County" means any existing county or such unit hereafter created.

"Governing body" means the board of supervisors of a county, council of a city, or council of a town, as the context may require.

"Locality" or "local government" shall be construed to mean a county, city, or town as the context may require.

"Municipality," "incorporated communities," "municipal corporation," and words or terms of similar import shall be construed to relate only to cities and towns.

"Supervisor" means a member of the board of supervisors of a county.

"Town" means any existing town or an incorporated community within one or more counties which became a town before noon, July one, nineteen hundred seventy-one, as provided by law or which has within defined boundaries a population of 1,000 or more and which has become a town as provided by law.

"Voter" means a qualified voter as defined in § [24.2-101](#).

§ 15.2-5102. One or more localities may create authority.

A. The governing body of a locality may by ordinance or resolution, or the governing bodies of two or more localities may by concurrent ordinances or resolutions or by agreement, create a water authority, a sewer authority, a sewage disposal authority, a stormwater control authority, a refuse collection and disposal authority, or any combination or parts thereof. The name of the authority shall contain the word "authority." The authority shall be a public body politic and corporate and a political subdivision of the Commonwealth. The ordinance, resolution or agreement creating the authority shall not be adopted or approved until a public hearing has been held on the question of its adoption or approval, and after approval at a referendum if one has been ordered pursuant to this chapter.

B. Any authority, or any subsidiary thereof, organized pursuant to this section to operate a refuse collection and disposal system that, pursuant to statute, is specifically authorized to include in the system (i) facilities for processing solid waste as a fuel and (ii) facilities for generating steam and electricity for sale, shall not be subject to regulation under the Utilities Facilities Act (§ [56-265.1](#) et seq.), provided that sales of electricity generated at such facilities are made only to a federal agency whose primary responsibility is national defense and the energy is delivered directly from the generator to the customer's facilities or to a public utility.

(Code 1950, § 15-764.3; 1950, p. 1315; 1962, c. 623, § 15.1-1241; 1972, c. 370; 1973, c. 478; 1993, c. 850; 1995, c. [402](#); 1996, c. [897](#); 1997, cc. [527](#), [573](#), [587](#); 1999, cc. [896](#), [925](#); 2011, c. [199](#).)