

**MINUTES OF THE JANUARY 3, 2023  
CHINCOTEAGUE TOWN COUNCIL MEETING  
Council Chambers**

**Council Members Present:**

J. Arthur Leonard, Mayor  
Christopher D. Bott, Vice Mayor  
Denise P. Bowden, Councilwoman  
William T. McComb, Jr., Councilman  
Ellen W. Richardson, Councilwoman  
K. Jay Savage, Councilman  
Gene W. Taylor, Councilman

**Council Members Absent:**

**Staff Present:**

Mr. Michael T. Tolbert, Town Manager  
Mr. Robby Fisher, Chief of Police  
Mr. Wes Parks, Public Works Director  
Mr. E. Bryan Rush, Director of Emergency Services

**Call to Order**

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

**Invocation**

Councilman Taylor offered the invocation.

**Pledge of Allegiance**

Mayor Leonard led in the Pledge of Allegiance.

**Public Comment**

Mayor Leonard opened the floor for public comment. There was none.

**Election of Vice Mayor**

Mayor Leonard explained that traditionally the top vote recipient is voted as Vice Mayor. He opened the floor for the nomination of the Vice Mayor.

**Councilman Taylor motioned, seconded by Councilman Savage to reelect Councilman Bott as Vice Mayor. Unanimously approved.**

**District 1 Supervisor Report**

Supervisor Tarr reported that they have been preparing for the upcoming budget. He also advised the Supervisors voted to relieve the taxes for 1 vehicle of each active volunteer fireman in the county. This went into effect January 1<sup>st</sup>. He advised it will be up to the chief of each station to report the active firemen, meeting the criteria, and their vehicle information. This is an incentive to recruit more volunteers. He reported on ARPA funds for marketing advising that the Chincoteague Chamber received \$80,000 of the \$162,000. The Eastern Shore Public Library is anticipated to be completed in April. They are trying to complete the Broadband internet service

to the remaining 16% of the areas that do not have internet as of yet. Supervisor Tarr also stated they are trying to increase housing on the shore and to increase teachers' salaries. They are conducting a revitalization plan in the county and gave a grant to Whitesville to clean up the area. They have a committee overseeing this. He reported on the new 911 system that has been approved and will take up to 2 years for completion.

Councilwoman Bowden asked about the tax relief to the firemen.

Supervisor Tarr explained how it would work. He also commented that this was the best carnival season in 97 years.

Council thanked Supervisor Tarr.

### **Staff Reports**

#### **General Government**

Town Manager Tolbert gave an update on the funding for the new wells, which didn't play out for this year. This will be revisited again in the next State budget with an updated estimate. He reported on the Center rentals and events and the Memorial Park Boat Ramp Project. He reviewed the monthly Financial Report, tax collections and Building and Zoning.

#### **Police Department**

Chief Fisher advised they held a senior luncheon in December, assisted with traffic control during the Christmas Parade. He advised the Toy Ride was a washout but some came anyway in their cars and had a great time. He expressed his appreciation for the community donations of toys. He reported they shopped for the toys on December 14<sup>th</sup>, and on the 19<sup>th</sup> the parents came to collect wish list items for their children. He feels they collected the most this year. They helped 20 families and 43 children, they were still able to donate to the Atlantic Volunteer Fire Department the remaining uncollected toys. He also reported on training for Investigator Barnes.

#### **Public Works Department**

Public Works Director Parks commended the staff for all the service repairs during the Christmas weekend freeze, adding they had about 23 hours working on emergency calls. He reported they poured concrete and installed chess tables at Brianna's Park. He advised that the weather event took a toll on the Christmas decorations, they were able to get them back upright and on. He reported on the purchase of a 2019 backhoe. He advised that in January they will be conducting routine maintenance and removing Christmas decorations along with renovating the Council Chambers/EOC.

Mayor Leonard advised of a couple of roads that needed grading/scraping.

Councilwoman Bowden feels they need to start replacing the Christmas decorations.

#### **Emergency Services**

Director of Emergency Services Rush reported on the calls for the month and year. They ran 1,069 calls in 2022, which was 45 more than in 2021. He gave the stats for the nature and age groups of calls. They are still watching the COVID wave. He reported on the grant that was

awarded for the EOC. The rescheduled Rocket Lab launch is still unknown and ANTARES will have another launch March 7<sup>th</sup>. He reminded everyone that now is the time to prepare in case power is out for an extended amount of time, winds, flooding, etc. He gave a list of items to help better prepare. Director of Emergency Services Rush reviewed the COVID stats for December, the year, and from the beginning.

There was discussion about the new variant and symptoms.

### **Committee Reports:**

#### **Public Works Committee**

Councilwoman Richardson advised they met on December 6<sup>th</sup>. They reviewed the Cropper Street Project, the Spring Paving Project, and South Main Street Draining and Paving. She stated that Public Works Director Parks reworked the figures on the Cropper Street Project. She further explained the funding of this project.

There was brief discussion about the delay in materials for the Cropper Street Project, and notification to customers of the project.

#### **Adoption of the Minutes of the December 5<sup>th</sup>, 2022, Council Meeting**

**Councilman McComb motioned, seconded by Councilwoman Bowden to adopt the minutes of the December 5<sup>th</sup>, 2022, Council meeting as presented. Unanimously approved.**

#### **Announcement of the 2022 Christmas Decoration Winners**

Mayor Leonard reported there were 2 categories for the judging of the Christmas decorated homes.

##### **Most Festive:**

1st Place: Mr. & Mrs. Bill Birch  
7079 Bunting Road  
2<sup>nd</sup> Place: Mr. & Mrs. Jackie Cherrix  
6520 Church Street

##### **Traditional:**

1<sup>st</sup> Place: Mr. & Mrs. Delmas Mears  
4389 Chicken City Road  
2<sup>nd</sup> Place: Ms. Jean Jester & Mr. David Taylor  
4147 Ridge Road

#### **Consider Reappointment of Committee and Commission Members**

Mayor Leonard advised that Mr. Danny Bowden's term on the Harbor Committee has expired as of December 31, 2022.

**Councilman McComb motioned seconded by Councilwoman Bowden to reappoint Mr. Bowden to the Harbor Committee for another 2-year term. Unanimously approved.**

Mayor Leonard also advised that Mr. Michael McGee's term on the Board of Zoning Appeals expired December 31<sup>st</sup>, 2022, as well. The members of the BZA are appointed by the Circuit Court for a term of 5 years.

**Councilman Savage motioned, seconded by Councilwoman Bowden to recommend that Mr. McGee serve another term on the BZA. Unanimously approved.**

### **Consider Revised Bamboo Ordinance**

Town Manager Tolbert reviewed the changes to the Town's Bamboo Ordinance advising that they removed a section that was difficult to understand and added penalties and verbiage from the State's Bamboo Ordinance. The Ordinance Committee reviewed the proposed ordinance and accepted the changes.

**Councilman Savage motioned, seconded by Councilwoman Bowden to approve the proposed Bamboo Ordinance as presented. Unanimously approved.**

#### **Sec. 66-56. Nuisance declared.**

It is the finding of the Town of Chincoteague that the planting of growing of running bamboo, and certain other species, has been and will continue to be destructive to the natural environment and destructive to properties adjoining and neighboring those properties where running bamboo has been planted or permitted to grow; and because of these effects, the planting or growing of running bamboo and other invasive species threatens the value and physical integrity of both public and private property in the Town of Chincoteague. Therefore, in order to protect and preserve said environment and property values, it is the intent of the Town of Chincoteague to regulate the planting or growing of running bamboo and other invasive species with the Town of Chincoteague.

#### **Sec. 66-57. Definitions.**

Running bamboo means the plant genera Phyllostachys. Other invasive species are further defined in the list compiled by the Virginia Department of Conservation and Recreation (DCR): <https://www.dcr.virginia.gov/natural-heritage/invsppdflist>

#### **Sec. 66-58. Duty to contain running bamboo and other invasive species**

- ~~A. Except as provided in subsection C of this section, A landowner on whose property running bamboo or invasive species grows shall not allow the running bamboo or invasive species to spread from his property to any adjoining property not owned by the landowner or within ten feet of a public right of way or a public roadway.~~
- ~~B. A landowner on whose property running bamboo or invasive species grows shall install or implement an appropriate containment measure effective at preventing such running bamboo or invasive species from spreading from his property onto an adjoining property not owned by the landowner or within ten feet of a public right of way or public roadway.~~
- ~~C. A landowner on whose property running bamboo or invasive species has spread from an adjoining property shall not be required to install or implement a containment measure to prevent the spread of this running bamboo if he:
  - ~~1. Did not plant the running bamboo or invasive species or cause the running bamboo or invasive species to be planted or grown on his property;~~
  - ~~2. Has provided satisfactory proof to the Town of Chincoteague that, within a reasonable period of time after (i) discovering the spread of the plant onto his property from an adjoining property or (ii) purchasing property on which the plant had spread from an adjoining property, he advised the owner of the adjoining property of his objection to the spread of the running bamboo or invasive species; and~~~~

~~3. Has initiated steps for the removal of the running bamboo or invasive species from his property, including remedies at law.~~

**Sec. 66-59. Containment measures.**

- A. An appropriate containment measure is any measure that prevents the plant from spreading to adjoining property or within ten feet of public right of way or public roadway.
- B. A barrier used as a containment measure shall be:
  - 1. Impenetrable to the plant or its root system; and
  - 2. Installed at a sufficient depth within the property where the running bamboo or invasive species is planted or growing to prevent the growth of the running bamboo or invasive species on or the encroachment of the running bamboo or invasive species upon adjoining property or within ten feet of a public right of way or public roadway.
- C. A trench used as a containment measure shall be a sufficient depth within the property where the plant is planted or growing to prevent the growth of the plant on or the encroachment of the plant upon adjoining property or within ten feet of a public right of way or public roadway.

**Sec. 66-60. Penalties.**

~~Any person who fails or refuses to comply with this article shall be deemed guilty of a class 4 misdemeanor.~~

- A. A violation of a running bamboo ordinance authorized by this section shall be subject to a civil penalty, not to exceed \$50 for the first violation or violations arising from the same set of operative facts. The civil penalty for subsequent violations not arising from the same set of operative facts within 12 months of the first violation shall not exceed \$200. 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 set of operative facts result in civil penalties that exceed a total of \$3,000 in a 12-month period.
- B. No violation of a running bamboo ordinance arising from the same set of operative facts shall be subject to a civil penalty under both (i) an ordinance adopted pursuant to this section and (ii) an ordinance adopted pursuant to § 15.2-901 of the code of Virginia.

**Review of the FY24 Trolley Budget and Grant Submission**

Town Manager Tolbert reviewed the FY24 Trolley Budget and Grant. He advised that once approved he can complete the grant application.

## Trolley Detailed Budget

ACCOUNT	REVENUE	FY24 Proposal	FY 23	FY 22 Actual
704501.0100	TROLLEY GRANTS (Operations)	\$68,913	\$65,918	\$66,937
704501.0110	PROGRAM INCOME	\$4,000	\$4,000	\$1,724
704501.0200	RTAP REIMBURSEMENTS	\$0	\$0	\$0
704501.0300	MISC. NONPROGRAM INCOME	\$0	\$0	\$0
704501.8900	TRANSFER FROM GEN. FUND	\$28,148	\$26,924	\$23,784
	SUB TOTAL	\$101,061	\$96,842	\$92,445
	<b>CAPITAL GRANTS</b>			
704501.0100	- Federal Capital Grant (New Trolley)	\$132,400	\$0	\$0
704501.0100	- State Capital Grant (New Trolley)	\$26,480	\$0	\$0
704501.0100	- Transfer from Trolley Capital Account (New Trolley)	\$0	\$0	\$0
	<b>EXPENDITURES</b>			
	<b>SALARIES</b>			
703010.0100	SALARIES	\$49,980	\$49,180	\$28,796
	SUB TOTAL	\$49,980	\$49,180	\$28,796
	<b>BENEFITS</b>			
703010.2001	SOCIAL SECURITY	\$3,831	\$3,762	\$2,199
	SUB TOTAL	\$3,831	\$3,762	\$2,199
	<b>OPERATIONAL EXPENSES</b>			
703030.3401	INSURANCE & BONDING	\$3,400	\$3,400	\$3,152
703030.4400	COMMUNICATION SERVICES	\$500	\$800	\$331
703030.4401	PRINTING & REPRODUCTION	\$3,000	\$2,600	\$2,959
703030.4402	ADVERTISING & PROMOTION	\$1,200	\$1,000	\$1,153
703030.4403	EDUCATION & TRAINING	\$1,000	\$1,200	\$80
703030.4404	CLEANING SUPPLIES	\$300	\$400	\$0
703030.4406	SUPPLIES & MATERIALS	\$500	\$500	\$149
703030.4407	MEMBERSHIPS & DUES	\$250	\$250	\$250
703030.4408	TRAVEL & MEALS	\$1,000	\$500	\$1,000
703030.4701	FUEL & LUBRICANTS	\$8,000	\$7,000	\$4,747
703030.4702	TIRES & TUBES	\$3,000	\$1,200	\$600
703030.4703	UNIFORMS	\$1,000	\$1,400	\$200
703030.4704	PARTS	\$750	\$750	\$768
703030.5201	DRUG TESTING/BACKGROUND CHECKS	\$750	\$1,400	\$565
703030.6100	RTAP EXPENSES	\$0	\$0	\$0
703030.7302	REPAIRS/MAINT	\$6,500	\$6,500	\$6,980
703030.8505	RENT TO GENERAL FUND	\$16,000	\$15,000	\$15,000
	SUB TOTAL	\$47,150	\$43,900	\$37,934
	<b>Total Operating</b>	<b>\$100,961</b>	<b>\$96,842</b>	<b>\$68,929</b>
	<b>CAPITAL EXPENSE</b>			
703090.9001	NEW TROLLEY	\$148,626		\$0
	TRANSFER TO TROLLEY CAPITAL ACCT.	\$10,254		
703090.91	CAPITAL EXPENSE	\$0		\$0
	<b>Total Capital</b>	<b>\$158,880</b>	<b>\$0</b>	<b>\$0</b>
	<b>Total Trolley Budget</b>	<b>\$259,841</b>	<b>\$96,842</b>	<b>\$68,929</b>

## Trolley Salaries

	Employee	Hourly Rate	FY23 Hours	FY 23 Proposed Salaries	Equivqlent Annual Salary	FICA
TROLLEY	TROLLEY DRIVER	\$15.00	300	\$4,500.00	\$ 31,200.00	\$344.25
	TROLLEY DRIVER	\$15.00	300	\$4,500.00	\$ 31,200.00	\$344.25
	TROLLEY DRIVER	\$15.00	300	\$4,500.00	\$ 31,200.00	\$344.25
	TROLLEY DRIVER	\$15.00	300	\$4,500.00	\$ 31,200.00	\$344.25
	TROLLEY DRIVER	\$15.00	300	\$4,500.00	\$ 31,200.00	\$344.25
	TROLLEY DRIVER	\$15.00	300	\$4,500.00	\$ 31,200.00	\$344.25
	TROLLEY DRIVER	\$15.00	300	\$4,500.00	\$ 31,200.00	\$344.25
	TROLLEY DRIVER	\$15.00	300	\$4,500.00	\$ 31,200.00	\$344.25
	TROLLEY DIRECTOR	\$680.00	26	\$17,680.00	\$17,680.00	\$1,352.52
		<b>Total Salaries Trolley</b>			<b>\$49,180.00</b>	
	Bonus			\$800.00		\$61.20
	<b>Total Salaries and Bonus</b>			<b>\$49,980.00</b>		<b>\$3,823.47</b>

## Trolley Grants

FY 22	FY 23	FY24	
\$33,602.50	\$46,421.14	\$48,530.50	Fed Grant
\$14,113.05	\$19,496.88	\$20,382.81	State (DRPT) Grant
\$19,489.45	\$26,924.26	\$28,147.69	Town Match
\$47,715.55	\$65,918.01	\$68,913.31	Federal & State Grant Combined
\$67,205.00	\$92,842.27	\$97,061.00	Total Non-Fare Revenue
\$71,205.00	\$96,842.27	\$101,061.00	Total Revenue
\$165,500.00			New Trolley Cost
\$132,400.00			Fed Grant @ 80%
\$26,480.00			State Grant @ 16%
\$6,620.00			Town Match @ 4%

**Councilman McComb motioned, seconded by Councilwoman Bowden to approve the FY24 Trolley Budget and Grant Submission. Unanimously approved.**

### Resolution to Accept Donation

Town Manager Tolbert gave a review explaining how the donation of the sewage treatment plant began, with countless hours of research, inspections, meetings, drafts, reviews, negotiations, and finally completing the transaction on December 30, 2022.

Mayor Leonard stated that they have had a lot of meetings on this. They didn't see all the work that went into this, countless hours, dealing with attorneys and engineers, and other entities. He thanked Town Manager Tolbert for carrying this.

**Councilwoman Bowden motioned, seconded by Councilman McComb to accept the donation of the sewage treatment plant. Unanimously approved.**

**RESOLUTION  
AUTHORIZING AND RATIFYING THE ACCEPTANCE OF REAL ESTATE  
DONATION  
FOR TAX MAP # 30A3-A-6A (WASTEWATER TREATMENT PLANT)  
FROM CHINCOTEAGUE SUNSETS, L.L.C. AND RELATED TRANSACTIONS  
Date: January 3, 2023**

**WHEREAS**, Chincoteague Sunsets, L.L.C. (the "Landowner"), desires to donate to the Town of Chincoteague (the "Town") a parcel of improved land containing approximately 0.13 acres, identified as Tax Map Number 30A3-A-6A, on which is located a wastewater treatment plant (collectively the "Existing Plant"), as further described in the Deed of Gift attached hereto as **Exhibit A** and incorporated herein ("Deed of Gift") and the Real Property Donation Agreement attached hereto as **Exhibit B** and incorporated herein ("Donation Agreement");

**WHEREAS**, the donation of the Existing Plant is the first in a series of transactions pursuant to which the Town will acquire the Existing Plant and other land, easements, and property interests in or related to the Sunset Bay South Condominium (together with the Existing Plant, collectively the "Acquired Property"), located within the Town, for the purpose of providing wastewater treatment service to the condominium and other users located within the Town;

**WHEREAS**, the foregoing transactions are described in the Agreement between and among the Town, Sunset Bay South Condominium Association, Inc., Sunset Bay, LLC, Sunset Bay Utilities, Inc., and Chincoteague Sunsets, L.L.C., a copy of which is attached hereto as **Exhibit C** and incorporated herein (the "Master Agreement");



**WHEREAS**, as provided in the Master Agreement, the Town intends to convey the Acquired Property to Hampton Roads Sanitation District (“HRSD”) so that HRSD will assume operation and control of the Existing Plant and potentially construct a new treatment plant, all pursuant to a Sewer Treatment Plant Sewer Transfer and Service Agreement, a draft of which is attached hereto as **Exhibit D** and incorporated herein (the “HRSD Transfer Agreement” and, together with other agreements, documents, certificates, affidavits, and instruments related thereto, collectively (collectively the “HRSD Documents”));

**WHEREAS**, as provided in the Master Agreement, upon receipt of the Existing Plant the Town will lease the Existing Plant to Sunset Bay Utilities, Inc. (“SBU”), which operates the Existing Plant, so that SBU may continue to operate the Existing Plant until the transfer to HRSD can be completed or until December 29, 2023, whichever occurs first;

**WHEREAS**, the terms of such lease and operation arrangement are set forth in a Lease and Operation Agreement between the Town and SBU, a copy of which is attached hereto as **Exhibit E** and incorporated herein (the “Lease and Operation Agreement”);

**WHEREAS**, the Town Council has determined that (i) the acceptance of the Existing Plant, (ii) the acquisition of the other Acquired Property, and (iii) the implementation of the transactions described in the Master Agreement, the Lease and Operation Agreement, and the HRSD Documents would benefit the inhabitants of the Town by improving wastewater treatment service within the Town;

**WHEREAS**, Va. Code Ann. §§ 15.2-1800 and 15.2-1803, as amended, require that a qualified attorney-at-law selected by the Town Council approve the form of the deed conveying property to the Town; and

**WHEREAS**, the Town Council selects Michael L. Sterling, Esq. of the law firm Woods Rogers Vandeventer Black PLC, a qualified attorney-at-law, to perform said act on behalf of the Town, and Mr. Sterling has agreed to perform such act.

**IT IS NOW, THEREFORE, RESOLVED** that, in response to the Landowner's written request for the proposed donation of the Existing Plant to the Town and furtherance of the foregoing recitals, the Town Council hereby:

1. Selects and authorizes Michael L. Sterling, Esq. of the law firm Woods Rogers Vandeventer Black PLC, a qualified attorney-at-law, to approve the form of the Deed of Gift and to execute the Deed of Gift for such purpose;
2. Authorizes the Mayor, J. Arthur Leonard, to accept the Existing Plant on behalf of the Town and to execute the Deed of Gift and the Donation Agreement for such purpose;
3. Authorizes the Town Manager, Michael T. Tolbert, to execute the Lease and Operation Agreement on behalf of the Town;
4. Authorizes the Town Manager to execute the Master Agreement on behalf of the Town;
5. Authorizes the Town Manager and the Mayor, either of whom may act, to negotiate, finalize, and execute the HRSD Transfer Agreement on terms substantially consistent with the Master Agreement and the recitals and resolutions set forth above;
6. Authorizes the Town Manager and the Mayor, either of whom may act, to prepare, negotiate, finalize, and execute the other HRSD Documents and such other agreements, documents, certificates, affidavits, and instruments on behalf of the Town as they may deem necessary or proper in furtherance of the transactions described in the Master

Agreement and the recitals and resolutions set forth above, on terms substantially consistent therewith; and

7. Ratifies the actions taken previously by the Town Manager and the Mayor in furtherance of the recitals and resolutions set forth above, including without limitation execution of the Deed of Gift, the Donation Agreement, the Master Agreement, and the Lease and Operation Agreement.

[REMAINDER OF PAGE LEFT BLANK. SIGNATURE PAGE FOLLOWS.]

DRAFT

**SIGNATURE PAGE TO**  
**RESOLUTION AUTHORIZING AND RATIFYING THE ACCEPTANCE OF REAL**  
**ESTATE DONATION FOR TAX MAP # 30A3-A-6A (WASTEWATER TREATMENT**  
**PLANT)**  
**FROM CHINCOTEAGUE SUNSETS, L.L.C. AND RELATED TRANSACTIONS**

Adopted January 3, 2023

Date

-----

J. Arthur Leonard, Town Mayor

Attest -----

Michael T. Tolbert, Town Manager

**EXHIBIT A**  
**Deed of Gift**  
[See attached.]

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**EXHIBIT B**  
**Real Property Donation Agreement**  
[See attached.]

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**EXHIBIT C**  
**Master Agreement**  
[See attached.]

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**EXHIBIT D**  
**HRSD Transfer Agreement**  
[See attached.]

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**EXHIBIT E**  
**Lease and Operation Agreement**  
[See attached.]

4857-2599-1239, v. 1

**Mayor and Council Comments**

Councilman Savage commented that time, patience and perseverance will accomplish all things. He expressed his appreciation for all the hard work Town Manager Tolbert has done on this. He also thanked the Chincoteague citizens for their support and electing him to Council.

Councilman Taylor stated that 2022 is in the books and he enjoys working with everyone. He added that they get things done. He commented on Brianna's Park and added that when it comes to the kids they need to step up.

Vice Mayor Bott formally recognized Mrs. Joyce Wessells who recently passed away. He advised she worked for him for quite a while and was an incredible and very impressive lady. He also commended Town Manager Tolbert for his hard work on the sewage treatment plant negotiations, he added that it was quite impressive.

Councilwoman Bowden stated that Mrs. Joyce Wessells was the nicest and sweetest person. She always made you feel loved. She expressed her heartfelt sympathy to her family. She also thanked Town Manager Tolbert for all his hard work. She hoped everyone had a good Christmas and New Year. She wanted to get the new year started off right and get it done for the Town.

Councilwoman Richardson thanked the Chincoteague people for voting for her for another 4-year term. She stated that it is a pleasure to serve. She advised that she has been working on sewage for a long time. She thanked Town Manager Tolbert for his work on the sewage treatment plant and it wouldn't have been done without his perseverance and knowledge. She thanked all involved.

Mayor Leonard Stated that they're all present and together and will see what 2023 has in store. He thanked the Town employees for keeping the lights on and water flowing over Christmas. He concluded with "Roll Tide".

### **Adjourn**

**Councilwoman Bowden motioned, seconded by Councilman McComb, and others to adjourn. Unanimously approved.**

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J. Arthur Leonard, Mayor

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Michael T. Tolbert, Town Manager