

Virginia: At the regular meeting of the Council of the Town of Chilhowie held at the Municipal Building, December 12, 2019 at 7:00 p.m.

Present: Honorable Gary L. Heninger, Mayor presiding; Councilors Donna S. Blevins, Billy L. Clear, Alan W. Counts, and Lewis W. Shortt, Jr.

Absent: Council Members Emily B. Dungan and F. Brent Foster.

Also Present: Mr. John E.B. Clark, Jr., Town Manager; Mrs. Marlene L. Henderson, Clerk/Treasurer, MMC; Messrs. Paul Cassell, Town Attorney; Jay Keen, Director Public Works; Stephen W. Price, Police Chief; C. David Haynes, Fire/EMS Chief; C. Randy Sturgill, Building Official and Ron Cahill, Recreation/Special Events Coordinator.

Mayor Heninger called the meeting to order. Matthew Chapman gave the Invocation. The Pledge of Allegiance was recited.

Approval of Minutes:

Motion by Alan Counts, second by Lewis Shortt Council adopts the regular November 14, 2019 and continued November 19, 2019 meeting minutes. The motion was approved with following recorded vote:

Donna Blevins	Aye	Bill Clear	Aye
Alan Counts	Aye	Emily Dungan	Absent
Lewis Shortt	Aye	Brent Foster	Absent

Citizens Time:

Lynn Pease, 752 Skyview Drive, appeared before Council to report the Friends of the Library plan to purchase and install surveillance cameras within the Chilhowie Library and Old High School gymnasium. The current security system is battery powered and installed by the Maintenance Department of the Marion Library branch. The security system is currently off line due to lack of maintenance.

The Chilhowie Library has several events planned during the month of December. Monday, December 16, 2019 Rick McVey, Barter Theater, will appear at 5:00 p.m. to visit with children and Santa is scheduled to appear at 5:30 p.m. All children that attend will receive a free book.

Heather Carter, Chilhowie Library Director, appeared before Council to express gratitude to the Town for all the support provided to the Chilhowie Library. The Town was extremely helpful recently by repairing a leak that was found in the electrical closet. Ms. Carter thanked the Town for the assistance provided.

Armando Socarros appeared before Council to express his support of the Second Amendment Sanctuary. Mr. Socarros stated that he is a product of gun control and that is why he fled Cuba fifty years ago. He stated he risked his life coming to America but did not want to live under the conditions in Cuba. Mr. Socarros described his childhood in Cuba and expressed his fear of the removal of the Second Amendment.

Resolutions:

- Mrs. Marlene Henderson presented the following:

**A RESOLUTION OF
THE TOWN COUNCIL
DECLARING THE TOWN OF CHLHOWIE
A SECOND AMENDMENT SANCTUARY**

WHEREAS, the Second Amendment of the United States Constitution reads: “A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed:” and,

WHEREAS, Article I, Section 13, of the Constitution of Virginia provides, “that a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state, therefore, the right of the people to keep and bear arms shall not be infringed; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power,” and,

WHEREAS, certain legislation introduced in the 2019 session of the Virginia General Assembly, and certain legislation introduced in the current session of the United States Congress could have the effect of infringing on the rights of law abiding citizens to keep and bear arms, as guaranteed by the Second Amendment of the United States Constitution; and,

WHEREAS, the Town of Chilhowie Town Council is concerned about the passage of any bill containing language which could be interpreted as infringing the rights of the citizens of the Town of Chilhowie to keep and bear arms or could being a slippery slope of restrictions on the Second Amendment rights of the citizens of the Town of Chilhowie; and,

WHEREAS, the Town of Chilhowie Town Council wishes to express its deep commitment to the rights of all citizens of the Town of Chilhowie to keep and bear arms; and,

WHEREAS, the Town of Chilhowie Town Council wishes to express opposition to any law that would unconstitutionally restrict the rights under the Second Amendment of the citizens of the Town of Chilhowie to bear arms: and,

WHEREAS, the Town of Chilhowie Town Council wishes to express its intent to stand as a Sanctuary for Second Amendment rights and to oppose, within the limits of the Constitution of the United States and the Commonwealth of Virginia, any efforts to unconstitutionally restrict such rights, and to use such legal means at its disposal to protect the right of the citizen to keep and bear arms, including through legal action, the power of appropriation of public funds, and the right to petition for redress of grievances.

NOW, THEREFORE, BE IT RESOLVED, by the Town Council of the Town of Chilhowie, to extent permitted by law, here by expresses its intent to uphold the Second Amendment rights of citizens of the Town of Chilhowie and its intent that public funds of the Town not be used to restrict Second Amendment rights or to aid in the unnecessary and unconstitutional restriction of the rights under the Second Amendment of the citizens of the Town of Chilhowie to bear arms; and,

BE IT FURTHER RESOLVED, that the Town Council hereby declares its intent to oppose unconstitutional restrictions on the right to keep and bear arms through such legal means as may be expedient, including without limitation court action, and,

BE IT FURTHER RESOLVED, that the Town Council hereby declares the Town of Chilhowie, Virginia, as a “Second Amendment Sanctuary.”

Approved this 12th day of December, 2019

Adopted:

Gary L. Heninger, Mayor

Attest:

Marlene L. Henderson, Clerk

Motion by Alan Counts, second by Lewis Shortt Council adopts the Resolution declaring the Town of Chilhowie a Second Amendment Sanctuary. The motion was approved with following recorded vote:

Donna Blevins	Aye	Bill Clear	Aye
Alan Counts	Aye	Emily Dungan	Absent
Lewis Shortt	Aye	Brent Foster	Absent

- Regarding Women’s Residential Treatment Facility at Southwest Virginia Mental Institute – Stephen Price, Police Chief, reported the Commonwealth of Virginia is rebuilding a section of the State Hospital to assist with opioid addiction for women and children. This program will be administered by the State Hospital with separate funding from the State.

**TOWN OF CHILHOWIE
RESOLUTION OF SUPPORT**

WHEREAS, The Town of Chilhowie recognizes the need for a residential treatment facility not only for Smyth County citizens but those citizens region wide; and

WHEREAS, there is an existing facility located on the grounds of Southwest Virginia Mental Health (SWVMHI) Marion Virginia, that could be utilized for a Woman’s Residential Treatment Facility to aid in providing services to assist in helping women stay clean and sober; and

WHEREAS, communication has occurred between the Commonwealth of Virginia and interested parties from Smyth County to lease said building, as a budget neutral lease for three (3) years, requesting all repairs and renovations be made by the Commonwealth before entering into such a lease; and with the understanding should be the programs not be successful the building will remain property of SWVMHI; and

WHEREAS, there is great hope with the request and acquisition of the building, SWVMHI can continue to offer more services to those region wide to aid in battling ongoing addictions that have plagued much of our Region; and

NOW, THEREFORE, BE IT RESOLVED, Town of Chilhowie hereby requests and supports consideration for receiving the building from the Commonwealth of Virginia with said terms.

Approved this 12th day of December, 2019

Adopted:

Gary L. Heninger, Mayor

Attest:

Marlene L. Henderson, Clerk

Motion by Donna Blevins, second by Lewis Shortt Council adopts the Resolution as presented. The motion was approved with following recorded vote:

Donna Blevins	Aye	Bill Clear	Aye
Alan Counts	Aye	Emily Dungan	Absent
Lewis Shortt	Aye	Brent Foster	Absent

Old Business:

- Update on Mill Creek Regional Water Treatment Plant –

John Clark As you all know we have reached a milestone some time ago on the plant but there are some other hurdles that have to be met, Owner's Acceptance Test and Liquidated Damages are still pending. So I am going to turn it over to the Engineer, Bobby Lane, Paul Cassell and Jay Keen to discuss this more.

Bobby Lane Thank you John. Thank you Council for the opportunity to update you on Mill Creek. Since our last meeting as you all are aware you did vote to set off Liquidated Damages against the Contractor's pay request. Mr. Cassell and Mr. Clark notified the Contractor of Council's action and the Contractor in accordance with the contract has requested a meeting to discuss that issue and that meeting is now scheduled for next Thursday. During that meeting it will be discussed with the Contractor. If Council will recall at our last meeting we talked about the Owners' Acceptance Test and the fact that the test was ongoing.

Since your last meeting the Contractor has requested a time extension on the Owner's Acceptance Test. After looking at that the owner, Mr. Clark asked that we prepare a Change Order for your consideration, that is Change Order Number 12 and in fact if I can refer you to Change Order Number 12, the sheet behind the cover sheet on Change Order Number 12 is a fact sheet which gives you all some facts that we believe would help kind of clarify what we are talking about here.

John Clark

Bobby, if I may? The fact sheet is in the back of the supplemental package titled Mill Creek Water Treatment Plant Improvements Change Order Number 12 Fact Sheet. That is not in your regular agenda.

Bobby Lane

If you look at the first bullet and this will not take but a minute but I think it is important to run through. The Owner's Acceptance Test in accordance with the specifications was to begin with the issuance of Substantial Completion. Substantial Completion was issued with an effective date of February 20, 2019. Fact of the matter is that the Owner's Acceptance Test did not start until forty-five days after Substantial Completion, because of the reasons we listed for you here in the fact sheet. There were meetings between the Owner, Engineer and Contractor to work out the details of the Owners' Acceptance Test so the Acceptance Test actually did not start until April 5, 2019, which is forty-five days after Substantial Completion.

Bottom line is that because of this late start of the Owners' Acceptance Test we believe that the Contractor's request for forty-five days extension in time is valid and we are recommending that with Change Order Number 12. Now, in order for that Change Order to be approvable we believe that the Contractor needs to furnish extended Performance Bonds to extend through that forty-five day test period so that the Town has the protection of the Performance Bonds that were issued when the Contractor signed.

The Contractor has ordered those Bonds and has been told by the Bonding Company that they will be provided next week. Once they are here Mr. Cassell will need to review those and approve them and they will need to be reviewed and approved by Rural Development. So what we are recommending to Council tonight with Change Order Number 12 is that you approve it pending the provision of Bonds that can be approved by the Town's Legal Counsel, Mr. Cassell, and Rural Development. You would authorize Mr. Clark to sign that Change Order once those Bonds have

been reviewed and approved. So that is our request and hopefully that is not too confusing. Paul or Mr. Cassell may wish to verify that somewhat also.

Mill Creek WTP Improvements
Change Order #12
Fact Sheet

- Section 19050 of the Specifications state that “The Owner, with periodic assistance provided by the Manufacturer’s representative, the Contractor, and the Engineer, will conduct a full scale, acceptance test demonstration of the MWFS once construction is Substantially Complete and both filtration units have been placed in full service. The Engineer and Owner will be responsible for evaluating the test. The test period shall be for 90 days from the date of Substantial Completion of the Project, and the Manufacturer’s Bond provided pursuant to Paragraph 1.7 above and the Special Contractor’s Performance Bond provided pursuant to Paragraph 1.8D above shall remain in effect for the 13 months after Substantial Completion.”
- The Substantial Completion Certificate was issued by the Engineer on March 14, 2019 with an effective date of February 20, 2019.
- The Contractor requested an extension of the 13-month time frame by letter dated November 20, 2019.
- The Owner believes that an extension of 45 days is reasonable since the signed Certificate of Substantial Completion was received from the Contractor on March 26, 2019, followed by the Contractor, Manufacturer, Engineer and Owner working together to establish failure and communication protocols which resulted in the actual start of the Owners Acceptance Test on April 5, 2019 45 days after Substantial Completion.
- With this addition of 45 days, the last date for a plant unscheduled shutdown will be February 5, 2020.
- A new or properly revised Manufacturer’s Bond and Special Contractor’s Performance Bond, which has been duly reviewed and approved by the Owner’s legal counsel, will be required as part of this Change Order.
- USDA Rural Development will also review and approve this Change Order and Bonds before it is final.

Paul Cassell

So your motion would only authorize the Change Order contingent upon them providing the Bonds that Mr. Lane has provided and contingent upon approval of those Bonds by my review, Mr. Clark’s review and the review of Rural Development. So should any of those not approve it for whatever reason it would not be approved because it is contingent upon that. I think that is the key thing to keep it in place that is what is being recommended

to ensure that the Bonds continue to be in place and all those types of things is what Mr. Lane is recommending and I do support that recommendation.

Alan Counts May I ask just one question? You may have said this and I just missed it but does this Change Order in anyway affect the Liquidated Damages Set Off?

Bobby Lane No sir, it is a no cost Change Order.

Alan Counts I thought so, but I wanted to make sure.

Bobby Lane Yes sir, that is a good question.

John Clark To further elaborate if I may, the way it stood right now December 22, 2019, 90 days after that anytime if fails it is over. Now we extended that time to April, help me out Bobby.

Bobby Lane February 5, 2020.

John Clark February 5th to May 5th, anytime it fails after that then it is over pretty much.

Paul Cassell You are adding forty-five from December 22, is that what it is?

Bobby Lane What this works out to be is the last date for a plant unscheduled shutdown if you approve the forty-five days will be February 5, 2020. That is the last day the plant could fail.

John Clark That time period goes from February to May right? The ninety days.

Bobby Lane The ninety days, right.

John Clark If you look on page 29 the Contractor requested ninety and this Change Order is for forty-five as Bobby stated.

Motion by Donna Blevins, second by Bill Clear Council authorizes Town Manager to sign Change Order Number 12 contingent upon the Bonds being received, reviewed and approved by Town Manager, Town Attorney and Rural Development. The motion was approved with following recorded vote:

Donna Blevins	Aye	Bill Clear	Aye
Alan Counts	Aye	Emily Dungan	Absent
Lewis Shortt	Aye	Brent Foster	Absent

Bobby Lane Mayor, there is one other item if I could. Change Order Number 11 which I think is in the supplemental packet, there is a Change Order that quite honestly kind of fell through the cracks and did not get approved by Council. I thought I would present it to you. It is a deduct from the contract amount of \$3,306.66 and it deals with the fact that the Contractor is furnishing or has furnished some chlorination equipment and the cost of the chlorination equipment decreased by \$3,306.66. This Change Order provided credit for the Town in that amount. So this is a decrease cost Change Order and I would recommend that Council grants approval of this Change Order.

Motion by Alan Counts, second by Donna Blevins Council accepts Change Order Number 11. The motion was approved with following recorded vote:

Donna Blevins	Aye	Bill Clear	Aye
Alan Counts	Aye	Emily Dungan	Absent
Lewis Shortt	Aye	Brent Foster	Absent

- Update on Downtown Revitalization Facades Project – The project has been formally bid twice with no bidders. It was bid a third time for qualified bidders through Mount Rogers Planning District Commission. Wallberg Construction provided a bid. Due to the Department of Housing and Community Development regulations the Contractor is allowed \$15,000 per facade. The property must match that in cash during construction or in receipts for facade work down on their own over a two year period. A Downtown Revitalization Committee Management meeting will be held in January. Hopefully progress on the north side of Highway 11 will be noticed late winter or early spring.
- Response From Tourism Center on Landscape Request – Mr. Ron Thomason, Director of Tourism, approached the Town requesting \$2,550 for landscaping around the front porch and behind the LOVE sign. During the September 2019 Council meeting Council requested all four localities participate in the cost. The Tourism Board met in October and denied Council’s request. Mr. Thomason informed the Town of the Tourism Board’s request denial and submitted the agreement between the Town and Tourism

Authority that states the Town agrees to assume the upkeep of the exterior of the house and grounds.

Motion by Alan Counts, second by Donna Blevins Council refers this matter to the Buildings and Grounds Committee. The motion was approved with following recorded vote:

Donna Blevins	Aye	Bill Clear	Aye
Alan Counts	Aye	Emily Dungan	Absent
Lewis Shortt	Aye	Brent Foster	Absent

- Report on Farmers Market Decorations – Mrs. Donna Blevins reported the decorations looks beautiful. Mr. Ron Cahill, Recreation/Special Events Coordinator, reported there was an idea of placing Church and Civic Organizations Christmas Trees in the Farmers Market but the completion of the Market delayed the idea.
- Report on County Census Meeting – Mr. Ron Cahill, Recreation/Special Events Coordinator, reported he attended the SmythCOUNTS Census Committee meeting and canceling the Job Fair that was originally scheduled for December 3, 2019 was a mistake. The Census Bureau had expected twice the amount of people that applied for the Census Numerator positions. SmythCOUNTS Census Committee is slowly moving forward with the 2020 Census program.

New Business:

- Update on County Broadband Study – Mr. Randy Sturgill, Building Official, attended the meeting and reported surveys need to be completed from citizens living in the outlying areas. At this time the County Broadband Study is gathering information.
- Update on General Board of Appeals – Mr. David Haynes, Fire/EMS Chief, reported Mr. Doug Bachuss and Mr. David Blevins have been appointed to the General Board of Appeals. Chief Haynes is currently working toward scheduling an Annual Organizational meeting.
- Update on Christmas Bazaar and Christmas Parade – Mr. Ron Cahill, Recreation/Special Events Coordinator, reported both the Parade and Bazaar were successful. The Bazaar consisted of twenty-one vendors. Mr. Cahill plans to work with the other localities next year to better schedule the parade so they are all not on the same day or time.

Department Reports:

Mayor Heninger suggested Council to grant the Town employees Monday, December 23, 2019 as additional time off for the Christmas Holiday.

Motion by Lewis Shortt, second by Donna Blevins Council grants Town Employees Monday, December 23, 2019 as additional time off for the Christmas Holiday. The motion was approved with following recorded vote:

Donna Blevins	Aye	Bill Clear	Aye
Alan Counts	Aye	Emily Dungan	Absent
Lewis Shortt	Aye	Brent Foster	Absent

Motion by Lewis Shortt, second by Alan Counts Council adjourns at 8:00 p.m. The motion was approved with following recorded vote:

Donna Blevins	Aye	Bill Clear	Aye
Alan Counts	Aye	Emily Dungan	Absent
Lewis Shortt	Aye	Brent Foster	Absent

Gary L. Heninger

Mayor

Marlene L. Henderson, MMC

Clerk