

**Virginia:** At the regular meeting of the Council of the Town of Chilhowie held at the Municipal Building, December 13, 2018 at 7:00 p.m.

**Present:** Honorable Gary L. Heninger, Mayor presiding; Councilors Donna S. Blevins, Billy L. Clear, Tamara H. Doane, Emily B. Dungan and F. Brent Foster.

**Absent:** Councilman Alan W. Counts.

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

Mayor Heninger called the meeting to order. A Moment of Silence was held for former member of Council Charlie Doane. Mr. Doane passed away November 21, 2018.

Mr. Bobby Dunn gave the Invocation. The Pledge of Allegiance was recited.

Mrs. Tamara Doane was welcomed to fill the unexpired term of Councilman Charlie Doane until the Special Election is held on March 5, 2019.

**Approval of Minutes:**

Motion by Brent Foster, second by Donna Blevins Council adopts the regular November 8, 2018 and Special Called November 29, 2018 meeting minutes as written. The motion was approved with following recorded vote:

Donna Blevins	Aye	Bill Clear	Aye
Alan Counts	Absent	Tamara Doane	Aye
Emily Dungan	Aye	Brent Foster	Aye

**Citizens Time:**

Jeff Pease, 752 Skyview Drive, appeared before Council to give the Library Progress Report. During the month of November the Library was open 18 days serving 1,317 visitors. The Library was closed two days to observe Veteran's Day and Thanksgiving. Six children's programs were presented with 107 children attending. Issues with the Headstart have been resolved allowing the Library to continue the Headstart Program for the rest of the school year. The month of December has been designated as free fine month by the Library Director Rob Farmer. The ongoing book sales in the gym area are doing well. The Library has been decorated for Christmas with a visit from Santa during the last children's program prior to the holidays. The Friends of the Library held a retirement dinner for Linda Dean. Her retirement date is set for December 20, 2018.

**Old Business:**

- Presentation of Rendition for Farmer’s Market Structure – A Special Called Meeting was called November 29, 2018 to work with the architect for Hurt and Proffitt to develop a Farmer’s Market Structure design. Dennis Amos, Hurt and Proffitt, appeared before Council to present two renditions to Council, Design L and Design Y. After much discussion Council chose Design Y. Hurt and Proffitt will now move forward as quickly as possible and will have a final design and model completed by February 2019.

Motion by Brent Foster, second by Bill Clear Council accepts the drawing for Design Y as the Farmer’s Market Structure. The motion was approved with following recorded vote:

Donna Blevins	Aye	Bill Clear	Aye
Alan Counts	Absent	Tamara Doane	Aye
Emily Dungan	Aye	Brent Foster	Aye

- Update on Downtown Revitalization Project and Presentation of Pay Request Number 12 – Dennis Amos, Hurt and Proffitt, appeared before Council to report the concrete work is completed and the contractor has requested a substantial completion walkthrough to be conducted Tuesday, December 18, 2018. Appalachian Power will also be present for the substantial completion walkthrough and a punch list will be developed during this time. The line work may possibly be scheduled during January 2019 once it is determined how much grant funding is left for the project. The facade project is to be advertised for bids during the month of January 2019. The line work must be completed prior to the facade project.

Motion by Brent Foster, second by Donna Blevins Council approves Pay Request Number 12 in the amount of \$152,374.28 for the Downtown Revitalization Project. The motion was approved with following recorded vote:

Donna Blevins	Aye	Bill Clear	Aye
Alan Counts	Absent	Tamara Doane	Aye
Emily Dungan	Aye	Brent Foster	Aye

- Presentation of Remaining Money in Downtown Grant and Grant Extension Letter – During the progress meeting held in November the amount of money left for the project was estimated. If the estimated amount is true money will be available for Century Link request for the consolidation.

The current asphalt on Main Street is temporary. The Virginia Department of Transportation plans to pave the street in the spring.

- Update on Mill Creek Water Treatment Plant Including Substantial Completion Situation and Pay Request Number 20 –

John Clark                      I will turn this over to Jeff Spickard and Jay. If you would please do not use the pay request that is in your packet, reference the one on the table that Marlene provided that we had to add legal fees from our fine

Attorneys, Cassel and Crewe, and also Spilman and Battle, Bond Counsel that changed the \$10,089.32 amount to \$16,967.06. More importantly the situation of substantial completion and the whole project which I am going to let Jay talk about and Jeff.

Jeff Spickard We are finally coming down to the end of this project. This past month the Contractor was able to complete some of the last remaining items such as electrical work and concrete work. The Contractor is undertaking some major piping changes in response to issues we had raised as concerns to the project operations. I have learned today that those piping changes have been completed. The plant has been offline for about a week, since right before the snow storm. It is back in operation today or this evening.

Brent Foster Was it offline due to changing the piping out?

Jeff Spickard Changing of the piping. The treatment plant has to be maintenance washed every forty-eight hours of operations and the piping changes interrupted the maintenance wash capability. So, somewhere along in the weekend I think they chose, basically the Service Authority did, to not try to wait through this weekend storm to just close it down and go on a bypass or interconnect pump; but we are back online at the treatment plant.

The Contractor has made a request in writing for substantial completion. I cannot remember the exact date he chose.

John Clark On page thirty-four.

Jeff Spickard And we refused that date, we did not agree. We issued a letter for outstanding deliveries and such. Primarily it is unverified conditions and regulatory concerns. The Health Department has not finally approved all of the items needed for completion of the project. It is in the Health Department's hands. They have asked for some recalculations of some numbers and we have sent them that information. Verbally we have been told that it is okay so we fully expect the Health Department issues to be resolved as soon as I get a letter back.

There are other issues we are waiting to get verification. I think the Contractor has been working through trying to get those verification by a physical demonstration of the capabilities that we are requiring in the project. He may in fact be substantially complete but until we see all these bells and whistles ring and dinging, going off, we do not know. That is kind of what is holding us up right now. In actuality we will probably going to be finishing up substantially in a very short period of time; when all of that verification will be complete.

With that in mind the pay request for this month includes \$10,089.32 which reflects Application for Payment Number 20 from Frizzle Construction; that leaves a retainage amount in the contract of \$114,855.00. If you look at the number of days we are over by contract we still have not exceeded that retainage amount when you apply the liquidated damage factor to it. So for that reason and the reason that the work has been completed we recommend payment of invoice Number 20. Also included in this disbursement request, as John mentioned, legal fees of \$750 for Attorney fees and \$6,127.74 for Bond Counsel fees bringing the grand total for this disbursement to \$16,967.06. We are recommending payment of that disbursement. With that I will entertain any questions that you may have.

Jay Keen                   The only thing I would like to add is the owners of the Water Treatment Plant which is the Town of Chilhowie and Washington County Service Authority, sat down and made a punch list with the Contractor; the items that we felt that had to be completed before he does the substantial completion. Once this punch list has been completed at that point we will agree upon a date for substantial completion. Would you concur Jeff?

Jeff Spickard             Well he is working through, I have not seen your list.

Jay Keen                   We got a list that the Contractor puts down the date that punch item is completed. The Engineer or the inspector puts the date down also that he seen it completed and then when we go and review it and we will sign off on it. It is a large punch list. I do not have it with me and I meant to bring it, but I do not have it.

John Clark                It is basically within the Council's packet.

Jeff Spickard             But that is the process that we are working through right now. I do not think that there is anything on there that is going to be a long time trying to get complete.

Jay Keen                   Some of the data alerts and stuff...if it is there, we do not know if it is there or if it is not there. But once we know that we will be in a lot better shape.

Jeff Spickard             We will be in a lot better shape.

Jay Keen                   A whole lot better shape.

Emily Dungan            Did the generator issue get fixed?

Jay Keen                   Yes.

Brent Foster                    And how long did it take?

Jay Keen                        Three days.

Emily Dungan                 So there is a backup generator?

Jeff Spickard                 The generator capability is still there. The backup generator was not included in the project but the transfer switch that made the generator operate was.

Donna Blevins                Is the punch list on page thirty-seven John?

John Clark                     I am ninety percent sure that it is, it is a little confusing.

Jay Keen                        The items you see in the green are what we are requiring to be done.

Donna Blevins                Okay. The Contractor has this list?

Jay Keen                        Yes.

Motion by Brent Foster, second by Donna Blevins Council approves Pay Request Number 20 in the amount of \$16,967.06 for the Mill Creek Water Treatment Plant Project. The motion was approved with following recorded vote:

Donna Blevins	Aye	Bill Clear	Aye
Alan Counts	Absent	Tamara Doane	Aye
Emily Dungan	Aye	Brent Foster	Aye

- Presentation of Engineering Amendment 6A –

John Clark                     We talked about this about two months ago and Rural Development looked at it again. I mentioned it in my report on page eighteen and it is on page fifty and fifty-one of the agenda packet under additional engineering. I will turn it over to Jeff and Jay.

Jeff Spickard                 This represents a change, an amendment to the previous presented, a changed increase to our engineering contract. It has to do directly with the Contractor's failure to complete the project in the allotted time based on the days that have been granted by extension of change orders and based on the amount of time that he is late. We see a need of 268 days of contract time management that the engineer had to provide for this project. As result we incurred quite a bit of substantial cost to keep going during this time frame. That is the amount basically for engineering and construction administration, we are requesting an increase of \$41,103.00 and resident project representative inspection we are requesting an increase of \$74,800.00 to our original contract amount.

It is an ongoing process. I do not anticipate that we will be asking for any additional increases although we have already went by the December 1<sup>st</sup> date that was listed in the amendment. Hopefully there will not be that much more of an increase in the contract. We are even as we speak now we already exceeded the date that we used to calculate these figures.

Brent Foster That 268 days, is that right now, and is that the same number we are going to calculate the liquidated damages from?

Jeff Spickard Not all of those days...you have granted 118 days out of the 268 days as increase to the contract.

Brent Foster Okay.

Jeff Spickard Right now my estimation of how many days he is late is 177 days based on the contract as amended with contract time increases. The contractor has requested additional time and he completed change orders under protest if you can remember? We did not allow him to increase his contract time and he is probably going to push back and ask for time when that issue finally gets raised and tries to get resolved.

John Clark I have talked to Robbie and he has agreed to it. Robbie is with the Washington County Service Authority. There is additional money for additional engineering in the budget. We probably should supply that every month but have not. But there is money in there for additional engineering. Money that we might not have to spend if the contractor would have been done on time; but the other side of that is the contract came in \$300,000 under budget. Is that right?

Jeff Spickard Approximately.

Brent Foster So this is not “extra money” there is money there for this?

John Clark Marlene, you have a better hold on those numbers than I do.

Marlene Henderson There is.

Brent Foster Okay.

Motion by Brent Foster, second by Donna Blevins Council accepts Amendment 6A changing the Engineering Contract. The motion was approved with following recorded vote:

Donna Blevins	Aye	Bill Clear	Aye
Alan Counts	Absent	Tamara Doane	Aye
Emily Dungan	Aye	Brent Foster	Aye

John Clark Mayor if I may state, we have worked with Paul on this and staff and this is costing everybody money. Liquidated damages, there will be some assessment of liquidated damages. They are not going to walk away without paying some liquidated damages. It could end up in a Court proceeding but by this letter that I will not take credit for, but Jeff, Jay and Washington County put together, we have laid out what needs to be done before we declare substantial. Then when that date is declared you go back to June 1<sup>st</sup> and start adding up \$560 per day. To be frank that is not going to cover our cost with the water we have had to buy nor Washington County. Paul, Town Attorney, said in his opinion we cannot charge both liquidated damages and actually damages.

Trent Crewe You have to take one or the other.

John Clark Exactly, thank you.

Marlene Henderson Your pay request on page 43 does show the percentage of the project being 97% complete but the number of days he has used is 140% of what the contract was.

John Clark Again if you put that in the picture the contract was \$300,000 under budget. You will have to have a team of accountants to figure all this out.

Trent Crewe It gets complicated.

- Presentation of Pay Request Number 13 on East Lee Sidewalk Project and Update – The Pay Request is in the amount of \$68,653.04 with Boring Contractors requesting \$67,830.00 and the engineer Thompson and Litton requesting \$823.04. During the past month all of the drainage structures and drainage pipe have been completed. Due to bad weather sawing of the pavement began today. Once the pavement is sawed they will begin with the curb and guttering section of the project.

The replacement sidewalk that was removed by mistake during the demolition of Superior Mills has been replaced at the Contractor's expense.

Motion by Brent Foster, second by Bill Clear Council approves Pay Request Number 13 in the amount of \$68,653.04 for the East Lee Highway Sidewalk Project. The motion was approved with following recorded vote:

Donna Blevins	Aye	Bill Clear	Aye
Alan Counts	Absent	Tamara Doane	Aye
Emily Dungan	Aye	Brent Foster	Aye

- Update on Work at Recreation Park by U.S. Fish and Wildlife and Town - The stream bank stabilization started at the trestle in the park and working toward the west. The work is 50% complete. There have been a few complaints that the walking trail is

somewhat nasty and muddy. Once the project is done the walking trail will be addressed by placing new stone.

- Graduation of Police Officer Hunter Reedy From Southwest Virginia Police Academy – Officer Reedy completed a twenty-two week basic law enforcement course for the Commonwealth of Virginia and graduated November 22, 2018 finishing third academically in his class. Officer Reedy has completed all of the field training and is now a fully certified Virginia Law Enforcement Officer.

**New Business:**

- Update on Route 11 and 107 Virginia Department of Transportation Project – Jay Keen, Public Works Director, presented to Council the Virginia Department of Transportation drawings for the Route 11 and 107 Project. The Virginia Department of Transportation has requested comments from the Town Council. After a review of the drawings Council suggested leaving Beattie Avenue open and to include two crosswalks within the project area.

Motion by Donna Blevins, second by Brent Foster Council directs Town Manager to write a letter to the Virginia Department of Transportation suggesting Beattie Avenue be left open and include two crosswalks within the project area. The motion was approved with following recorded vote:

Donna Blevins	Aye	Bill Clear	Aye
Alan Counts	Absent	Tamara Doane	Aye
Emily Dungan	Aye	Brent Foster	Aye

**Any Other Council Business:**

John Clark, Town Manager, thanked Council and staff for a remarkable year and wished everyone a Merry Christmas and a Happy New Year.

David Haynes, Fire Chief, reported the new ambulance is in but not in service at this time. The ambulance is awaiting the installation of radios. The ambulance is going back to Roanoke for service and the radios should be installed during that time.

Chief Haynes reported that each year the Fire Department includes in the budget the purchase of turnout gear. He has been recently notified that the turnout gear price will increase on January 1, 2019. Chief Haynes requested permission to place the order for the turnout gear budgeted for on December 30, 2018 to avoid the cost increase. The turnaround time to receive the gear is twelve to fourteen weeks. The cost of the requested turnout gear is \$19,000.00.



Motion by Brent Foster, second by Donna Blevins Council approves the purchase of turnout gear prior to January 1, 2019. The motion was approved with the following recorded vote:

Donna Blevins	Aye	Bill Clear	Aye
Alan Counts	Absent	Tamara Doane	Aye
Emily Dungan	Aye	Brent Foster	Aye

Jay Keen, Public Works Director, stated the purchase of the truck and snow removal equipment is very much appreciated. He has received numerous comments from citizens thanking the Town for their snow removal efforts.

Ron Cahill, Recreation Director, reported he is exploring the idea of hosting a Health Fair at the Old High School late January or early February.

Trent Crewe, Town Attorney, expressed his appreciation for allowing them to work with the Town. Mr. Crewe has been in contact with Smyth County concerning the revised Deed for Warrior Park. The Deed is still not available at this time. He wished the Town a Merry Christmas and Happy New Year.

Motion by Brent Foster, second by Bill Clear Council adjourns this meeting at 8:14 p.m. The motion was approved with the following recorded vote:

Donna Blevins	Aye	Bill Clear	Aye
Alan Counts	Absent	Tamara Doane	Aye
Emily Dungan	Aye	Brent Foster	Aye

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Gary L. Heninger

Mayor

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Marlene L. Henderson, MMC

Clerk