

Virginia: At the regular meeting of the Council of the Town of Chilhowie held at the Municipal Building, January 10, 2019 at 7:00 p.m.

Present: Honorable Gary L. Heninger, Mayor presiding; Councilors Billy L. Clear, Alan Counts, Tamara H. Doane, Emily Dungan and F. Brent Foster.

Absent: Councilwoman Donna Blevins.

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

Mayor Heninger called the meeting to order. Mr. Randy Sturgill gave the Invocation. The Pledge of Allegiance was recited.

Approval of Minutes:

Motion by Brent Foster, second by Alan Counts Council adopts the regular December 13, 2018 meeting minutes as written. The motion was approved with following recorded vote:

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

Citizens Time:

Lynn Pease appeared before Council and stated the Library survived another year. Linda Dean retired December 20, 2018 and will be sorely missed. Heather Carter is now serving as the Librarian and it has been a smooth transition. Ms. Carter intends to have as many children's and adult programs during 2019 as was held in 2018. At this time the Chilhowie Library is experiencing issues with receiving new material from the Marion Library.

Old Business:

- Update on East Lee Highway Sidewalk Project and Presentation of Pay Request Number 14 – Jay Keen, Public Works Director, reported the project is two thirds complete. The Contractor is currently pouring the commercial entrances as well as the curb and guttering. Pay Request Number 14 is in the amount of \$61,852.07 with the Contractor requesting \$61,450.00 for work completed and Mount Rogers Planning District Commission requesting \$402.07 for administrative cost.

The Town has not been reimbursed 80% for pay requests 12 and 13 by the Virginia Department of Transportation due to lack of information provided by the Contractor. The Contractor recently submitted the requested information to the Virginia Department of Transportation. The Town is unable to pay the pay request until reimbursements for pay request 12 and 13 are received from the Virginia Department of Transportation.

Motion by Brent Foster, second by Bill Clear Council approves Pay Request Number 14 once reimbursed by the Virginia Department of Transportation for Pay Request Number 12 and 13. The motion was approved with following recorded vote:

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

- Update on Streetscape Portion of Downtown Revitalization Project and Substantial Completion Achieved – Dennis Amos, Hurt and Proffitt, reported the project is substantially complete. A walk through was completed and a punch list was generated. The final pay request will be presented to Council during the February meeting. Appalachian Electric Power is scheduled to review the installation of five overhead street lights next week. Paving of Main Street is scheduled for spring 2019 and Angela Wolfe; Mount Rogers Planning District Commission will work with the Town to solicit bids.

A request for funding extension is being requested for the facades portion of the project. The facades have been bid twice with no bids submitted. The potential Contractors can be prequalified to do the work and then submit quotes with the lowest quote chosen for the project.

Pay Request Number 13 is in the amount of \$116,452.24. The Contractor is requesting \$114,052.24 for work completed and Mount Rogers Planning District Commission is requesting \$2,400.00 for administrative services.

Motion by Brent Foster, second by Bill Clear Council approves Pay Request Number 13 in the amount of \$116,452.24. The motion was approved with following recorded vote:

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

- Update on Final Tabulations of Quantities on Streetscape Portion of Project and Change Order to Determine Balance for Overhead Utility Consolidation – Dennis Amos, Hurt and Proffitt, reported the known figure for the project is \$681,240. The final number will be presented to Council as well as the cost for the overhead consolidation on Main Street

during the February meeting. At this time there may be a \$60,000 to \$70,000 balance remaining for the project but there will possibly be a \$30,000 to \$40,000 short fall for the line consolidating project the Town would have to pay. More information will be provided during the February Council meeting.

- Presentation of Pay Request Number 21 on Mill Creek Regional Water Treatment Plant and Engineer's Recommendation –

John Clark On page 37 is the pay request of \$14,633.10, on page 36 is the engineer's recommendation. I will go ahead and let Jeff Spickard of The Lane Group present on that.

Jeff Spickard Thank you John, it will be a pretty short presentation. We have reviewed the pay request and determined that due to the time delays the Contractor has exhibited we cannot recommend approval until we reach a better footing on when the substantial completion is going to be. It is our recommendation not to pay this application. I think there is a letter in your packet that we returned back to the Contractor disapproving.

We are getting very close on the Contractor's benefit. We were able to identify a list of ten items; we have got this thing narrowed down to the needs that need to be resolved before we can give substantial. Some of those ten items have actually been resolved also.

John Clark That is another Agenda item.

Jeff Spickard I will wait to get into that. It is our recommendation to basically hold off on the request. The plant work is moving along, if anyone has been over to take a look at it, it is progressing well. It is looking better and better each time I make a visit over there. We are down to cosmetic items it seems like now, with a few substantial items but mainly not as many as trying to get the thing to look a little better.

Emily Dungan And it is producing like it should be?

Jeff Spickard It is producing like it should be.

Paul Cassell Does the contract address the timing for payment?

Jeff Spickard The contract says the owner has the right to withhold payment when the Contractor is late. Concerning the days and liquidated damages if we were to pay him we would not be able to recoup or withhold all those damages out of the contract payment. That gets a little stickier on how to get your money back.

Paul Cassell You can choose to accept your Engineer's recommendation that is the reason why you have an engineer.

Motion by Alan Counts, second by Bill Clear Council accepts the recommendation by The Lane Group to not pay Pay Request Number 21 in the amount of \$14,633.10. The motion was approved with following recorded vote:

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

- Submission of Change Order Number 9 Decreasing Contract Amount on Regional Water Treatment Plant Project –

John Clark That decrease amount is on page 42, \$20,300 and the \$20,300 consists of the thing on page 43 that is listed. I will let Jay or Jeff say something about that. Lines \$20,000 minus \$1,000 plus \$1,250 and minus \$550, but this is a Change Order for a net decrease of \$20,300 and I will turn it over to you all.

Jay Keen Go ahead Jeff.

Jeff Spickard The items to elaborate on just a little bit more, are the \$20,000 reflects the deletion of paving from the project. We mentioned this is probably not a good time of the year to try to put some asphalt down. We did not push to try to do it before Thanksgiving with the historical closing date for the asphalt plant availability. The \$1,000 item is for unsuitable material. We have a unit price bid item to remove and replace unsuitable soils under the foundation of the building. We did not end up using all of that money. We had \$1,000 left over and that is basically given back to us in this Change Order.

The \$1,250 represents a sample line that was requested to be installed from a connection point back over to the lavatory and the Contractor has installed that portion of the pipe already. So that work has already been

done. The raw water valve wall in the contract, we had provisions for placing a valve actuator on the concrete vault and the Service Authority and Town Staff elected basically to install the actuator themselves rather than have the Contractor do the installation. The equipment is there on the job site so that was taken out. Some of the concerns were the valve may be damaged, I do not know if there were any other concerns by the Contractor.

It is our recommendation to accept this Change Order reducing the contract by \$20,300. Any questions, I will try to entertain.

Motion by Brent Foster, second by Alan Counts Council accepts Change Order Number 9 decreasing the Contract by \$20,300. The motion was approved with following recorded vote:

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

Jeff Spickard That should be the last Change Order in the project.

- Situation With Request From Frizzell Construction for Substantial Completion on Water Treatment Plant Project and Response –

John Clark On page 51, this is the same thing you had last month, is the request from the Contractor that the project be deemed substantially complete, therefore no penalty after that date, \$580 per day. On page 52 through 59 is the other response from The Lane Group on why this cannot be done. This is what you had last month but what you all do not have is what I mentioned in my report on page 15, the Contractor responded on December 21, 2018 with about sixteen pages that encompasses a string of emails that are real hard to follow. I do not know if I ever got that electronically but if you all would like to see that I will be happy to get a copy or get Bobby to send it to me electronically.

Basically what the email says if I understand it is that many of the items that were on the response list were pertinent to substantial completion. They have a different definition than what the engineer does. Also, very frankly they pointed maybe a finger that the engineer should have taken care of some of this and it was not their responsibility as a contractor. So, any while, Jay and Jeff talked about that but if you do want to see that

response either I will send it to you in paper form or electronically. I do not think that I ever got it electronically.

Jeff Spickard

We can get you those copies certainly John. I do not think that will be a problem.

John Clark

He also blames some things on the system going from Pall to Memcore.

Jeff Spickard

With those said, yesterday, I think it was yesterday, we had a progress meeting on the project where all these items were discussed, out on the table. It was a good meeting, I think it was about two and a half or three hour meeting, it was pretty extensive. We got in and looked at all of the nuts and bolts and where the I's are dotted and T's are crossed. We are coming down to a medium, hopefully a happy medium for all parties involved. We have not got there yet, but we are well on our way to reaching a final agreement on what is substantially complete on the project. The project is producing water and the Contractor states that once you achieve producing water and selling water that he feels you are substantially complete. We have a different interpretation of that and basically that is the problem right there. It has to deal with the, it is hard to explain, but all the little intercedes that we included in the project; we are not sure if they are all functioning or if they are all in there. Some of it has to do with the software, some of it has to do with how the system operated and we are in the process of trying to go back and verify that all of those features are included.

Some of them are going to require basically a physical manipulation to see if the alarm system works for whatever condition, if the water gets too dirty. We can change the single to try to create or simulate that condition, we do not really want to dump a load of mud in the water and see how it reacts. That is kind of where we are at and that is where we are going and I am certainly hopeful over the next few weeks we will be able to get this thing closer to being resolved. Then that will leave us the \$64,000 question on how do we split up the pile of remaining funds. That may be a more difficult task to try to solve and that certainly will not be solved over the next few weeks. That is going to take some sitting down and I am sure Attorneys will be involved including the Attorneys representing the Contractor. That is basically where we stand.

- Update on Farmer's Market Building Design – Dennis Amos, Hurt and Proffitt, provided the working drawings to Council. Hurt and Proffitt requested comments be made as soon as possible in order to submit to Rural Development as well as Smyth County for the erosion and sediment review process. The matter was referred to the Wellness and Parks Committee for review.
- Update on Work at Recreation Park by U.S. Fish and Wildlife and Town – Jay Keen, Public Works Director, reported the project is 80% complete. At this time they are not working on the project due to weather. Once the weather breaks the project should be complete within one week.

New Business:

- Hiring of Mr. Austin Millsaps as Uncertified Officer – Steve Price, Police Chief, introduced Austin Millsaps who was hired into the Police Department as an uncertified officer January 7, 2019. Mr. Millsaps will begin the Police Academy Monday, January 14, 2019.
- Presentation of Fourth Quarter Highway Safety Initiative – Steve Price, Police Chief, presented the quarterly summary for the Highway Safety Initiative. Other duties performed by the Police Department are additional benefits to the area such as assisting surrounding agencies.

Department Reports:

Randy Sturgill, Building Official, reported the motel renovations are almost complete.

Steve Price, Police Chief, reported the family of Ms. Poe who was tragically killed in the accident on Riverside Road thanked the Police Department as well as the Fire and EMS Department within Ms. Poe's obituary. Officer Ben Perry was first on the scene.

Ron Cahill, Recreation Director and Special Events Coordinator, reported he is currently working on a small health fair scheduled for February 22, 2019.

John Clark reported Ron Cahill will be overseeing the Town's Facebook page in the near future. Mr. Cahill has also submitted information to the Virginia Municipal League Magazine announcing the passing of Councilman Charlie Doane and the appointment of Tamara Doane to fill the unexpired term until the Special Election is held in March 2019.

Paul Cassell, Town Attorney, has been in contact with Jeff Campbell concerning the revised deed for Warrior Park allowing the Farmer's Market structure. Mr. Campbell stated he has assigned the deed to an associate but will revisit the matter and get it to the Town as soon as possible.

Cathy Smith, citizen, reported January 28, 2019 is Virginia Education Lobby Day and the teachers plan to wear red and march on the Capital for better teachers' pay.

Motion by Alan Counts, second by Bill Clear Council adjourns this meeting at 7:45 p.m. The motion was approved with following recorded vote:

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

Gary L. Heninger Mayor

Marlene L. Henderson, MMC Clerk