

Virginia: At the regular meeting of the Council of the Town of Chilhowie held at the Municipal Building, March 13, 2019 at 7:00 p.m.

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

Absent: Councilwoman Emily Dungan

Also Present: Mr. John E.B. Clark, Jr., Town Manager; Mrs. Marlene L. 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 and Special Events Coordinator.

Mayor Heninger called the meeting to order. Mr. Randy Sturgill gave the Invocation.

Approval of Minutes:

Motion by Brent Foster, second by Bill Clear Council adopts the regular February 14, 2019 meeting minutes as written. 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	Aye

Citizens Time:

Jeff Pease, 752 Skyview Drive, appeared before Council to give the Library Report for the month of February 2019. The Library was open nineteen days during the month of February averaging eighty-one patrons per day. During the month of February eight new patrons joined the Library. Nine children's programs were held and during Valentines each child received a book from the Friends of the Library. The Library Board met February 21, 2019 and the Friends of the Library are scheduled to meet March 21, 2019 at 5 p.m.

Brain Martin, Town Manager, Town of Saltville, appeared before the Council to report that on April 1, 2019 the Town of Saltville will celebrate the Town taking over and maintaining the water and sewer department for one year. The Town of Saltville expressed their gratitude for all the assistance from the Town of Chilhowie. Mr. Martin also discussed the issue with Saltville Rescue Squad who is a stand-alone 501C(3) EMS provider. The Saltville Rescue Squad is facing serious financial challenges. Chilhowie EMS is the number two provider to the Saltville area. Mr. Martin inquired if Saltville Rescue Squad disbanded would Chilhowie EMS be serving Saltville's needs?

Old Business:

- Presentation of Bids on Town Hall Roof – The bids for a new roof for the Town Hall was advertised in the Smyth County News, Facebook and www.chilhowie.org. Three bids were received. The lowest bidder was R.L. Williams Contractor in the amount of \$15,675. R.L. Williams Contractor will begin work within the next month.

Motion by Brent Foster, second by Donna Blevins Council accepts the lowest bid for the Town Hall roof by R.L. Williams Contractor in the amount of \$15,675. 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	Aye

- Update on Farmer’s Market, Permission to Bid and Request for Special April Meeting to Evaluate Bids – Dennis Amos, Hurt and Proffitt, reported the Farmer’s Market structure drawings were approved by Rural Development. The Advertisement for bids will be in Sunday, March 17, 2019 newspaper as well as Facebook and www.chilhowie.org. A pre-bid conference is scheduled for March 26, 2019 at 10 a.m. and bid opening is scheduled for April 18, 2019 at 2 p.m. The statement “The Town of Chilhowie has the right to refuse any and all bids” will be included within the bid documents. The bid request is required three different bids; a bid for one unisex bathroom, a bid for two bathrooms and a bid for zero bathrooms. The bathrooms are to be roughed in during the construction phase and the Town will be responsible for the completion of the bathroom(s).

A final approval from Smyth County is required for an Erosion and Sediment Control Plan. Once the Erosion and Sediment Control Plan is obtained site work such as grading can begin. Construction is estimated to be ninety days.

Motion by Donna Blevins, second by Brent Foster Council grants permission to advertise for bids for the Farmer’s Market Structure. 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	Aye

- Presentation of Pay Request Number 1 and Pay Request Number 2 for Services on Farmer’s Market – The Pay Request is for architectural services provided to get the plans ready to submit to Rural Development, which also included the review process with the

County. Pay Request Number 1 is in the amount of \$8,537.50; Pay Request Number 2 is in the amount of \$4,830.

Motion by Brent Foster, second by Donna Blevins Council approves Pay Request Number 1 in the amount of \$8,537.50 and Pay Request Number 2 in the amount of \$4,830. 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	Aye

- Update on Downtown Revitalization Project Façade Bids and Overhead Consolidation – The remaining balance left in the project budget is \$24,630.59. A quote to consolidate the six bottom lines into three strands on Main Street that leaves several lines not consolidated is in the amount of \$74,798.59. Dennis Amos, Hurt and Proffitt, can discuss other expenses the balance can be used for with the Department of Housing and Community Development.

Motion by Brent Foster, second by Lewis Shortt Council authorizes Hurt and Proffitt to contact the Department of Housing and Community Development for other eligible expenses rather than spend the money for cable consolidation. 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	Aye

- Engineer Recommendation on Mill Creek Water Treatment Plant Substantial Completion and Presentation of Pay Request Number 21 –

Bobby Lane

Thank you John, in our opinion we have on February 20th, we did reach the point at Mill Creek where we can recommend substantial completion of the project. I will take just a minute to give you an update on where the project stands. Both units are operating, they are operating in parallel. The filtration units are doing well, meeting all of the requirements of the Virginia Department of Health. The Contractor redid all of the piping that gave us a lot of concern at the cleaning place or tank. It looks very good and the other major item to happen was the maintenance wash and acid wash systems. There is a cleaning process that happens on the membranes and that was taking a considerable amount of time for the operators to do that cleaning process. The specs required that process be automatic and the Contractor has succeeded in automating that system so that now when

there is a need for an acid wash or maintenance wash the operator basically pushes a button and everything is automatic. With that work done we are ready to recommend to the Town that the project is substantially complete as of February 20, 2019.

Now, the process for substantial completion is that the engineer makes an recommendation and then the owner has I believe has seven to ten days to review that recommendation. So there is no action required recommended to Council at this time. I simply did want to tell you that finally we have reached a point where the plant is substantially complete and quite honestly it is doing well.

The second item that I wanted to talk to you about under this Agenda item is Pay Request Number 21. Contractor did submit a pay request which is in Council's packet and that pay request asks for approximately \$107,218.13 in payment. When the work is completed it is our opinion that the pay request is approvable, in other words the Contractor has completed this work. Council is well aware that the project is significantly over time. The project was supposed to be completed June 1, 2018 when in fact it was completed February 20, 2019. So if we use February 20, 2019 as the date for substantial completion the project is 265 days over time. If we use \$580 per calendar day in the agreement then liquidated damages total \$153,700, which is more than the Contractor's pay request.

In reviewing the general conditions of the contract the engineer cannot do a set-off because of liquidated damages. The ability to set-off money from a pay request is the right and responsibility of the owner. Therefore the question for Council and what you do need to decide on tonight is whether or not you do wish to set-off at this time liquidated damages which will offset the Contractor's pay request. That is provided in Article 15; paragraph 15.01 E1, which I hope the Attorney and you all have had a chance to review. So the question for Council is if you impose to set-off and no money is due to the Contractor the Pay Request will be returned to him. That is where we are at this point and time with Pay Request Number 21.

Brent Foster

On the general punch list, have they done most of these?

Bobby Lane Some of them are done, I would say 50%, and that is one thing that is significant for substantial completion. When we reach substantial completion the Contractor has thirty days to finish his punch list. So he has thirty days to get the rest of this work done, if he does not the liquidated damages begin to accrue again. So if John, Jay and Washington County Service Authority agree with our recommendation on substantial completion the Contractor will have thirty days to complete the punch list. I can report to you exactly what he is working on within this punch list and knocking things out every day.

Donna Blevins There is a lot of them. Would you say about half of them has been done?

Bobby Lane Half of them have been done. There are still have half remaining. There is still a lot work to be done. There is a lot of work that still needs to be done on the punch list.

Brent Foster I am going to ask Jay a question if it is okay?

Bobby Lane Sure.

Brent Foster Money wise on the Town, are we even or have we lost money on this? Is the money that we have paid out....

Jay Keen Marlene can probably give you the number; there have been times we have had to buy water from the Service Authority. I think it is going to be over the amount of \$153,700. I was off work yesterday and I have not been able to get with the Service Authority today. I would like to discuss this with our partner. They own 56% and we own 44%.

Brent Foster What is our motion that we need to do tonight?

John Clark I think the motion would be to set-off or deny the Pay Request if the Council wants to do liquidated damage and I certainly think we do. Is that correct Bobby?

Bobby Lane Well I think the motion would be to in accordance with the contract documents, again I give way to the Attorney here, I think the motion would be to set-off the liquidated damages now from any pay request from the Contractor. Which means this pay request goes to zero. Mr. Cassell has some comments on that. I can just read to you from the general

conditions. It says, in addition to any reductions in payments set-off recommended by the owner, no excuse me, recommended by the engineer, the owner is entitled to impose a set-off against payment based on any of the following and one of the things is listed is liquidated damages.

Lewis Shortt

Why has he been so behind?

Bobby Lane

It is in our opinion that the work was not pursued in enough aggressive manner to get it done. We have several records on file that basically advised the Contractor that we did not believe he had a full work force working on the project and encouraging him to increase supervision and increase work force. I think that is the big reason that he did not finish on time. That is my opinion.

Bill Clear

If he has finished 50% of this punch list then he is not finished yet is he?

Bobby Lane

He is not finished. But again it is important to understand the contract provides for substantial completion which means everything is basically working and he reaches substantial completion and then final completion. The contract says when he reaches substantial completion his liquidated damages stop and he has thirty days to reach final completion.

Brent Foster

The engineering firm agrees that substantial completion was met on February 20, 2019 and the contractor was advised of that?

Bobby Lane

He has been verbally advised of that.

Brent Foster

Okay.

Paul Cassell

Substantial completion cannot be declared on the engineer's information alone.

Brent Foster

Okay, so we have to agree to that?

Paul Cassell

And the Service Authority.

Brent Foster

Okay.

Paul Cassell

Really substantial completion has not been declared yet because under the contract all three have to concur.

Brent Foster Okay, so he has thirty days from whenever we all agree.

Paul Cassell Yes.

Brent Foster Well I make the motion that we agree with Lane Engineering on substantial completion.

Bobby Lane I would not do that.

Paul Cassell No you need your...the substantial completion is a combination of both the input you receive from your engineer and your technical staff that are operating the plant and also our partners in the Service Authority. That is what he was telling you, he needs to talk to the Service Authority about it.

Brent Foster Oh, okay.

Paul Cassell So all you are dealing with tonight is this pay request. So do you want to withdrawal that motion then?

Brent Foster Yes, I will withdrawal the motion.

Donna Blevins Can he finish the punch list in thirty days?

Bobby Lane It is possible, but he is going to have to work real hard to do that.

Donna Blevins It will not happen will it?

Bobby Lane I would like to tell you Mrs. Blevins that I am optimistic but I would not. I think it will be really really close and he will have to work really hard to do it.

Mayor Heninger Are they over there working now?

Bobby Lane No.

Mayor Heninger It is hard to get it done if they are not over there working.

Bobby Lane It is.

Jay Keen They have not been there in some time.

Bobby Lane In the contractor’s defense somewhat, part of the work that has to be done is outside work and it is just too wet to do that. However, he does have significant work to do inside which he is not working on.

Brent Foster So we need a motion to off-set or set aside...what is the word I am looking for?

Bobby Lane Within the contract it is set off or set aside. You are basically saying if Council decides to do this you are basically saying that the liquidated damages which have accrued to date even using February 20th as a good date, liquidated damages exceeds the amount of the Contractor’s pay request. Therefore, if you set those aside there is no payment. Again as Mr. Cassell that is not a recommendation or that is not something the engineer can do, that is something the owner can do.

Motion by Brent Foster, second by Donna Blevins Council set-off the Pay Request Number 21 against liquidated damages. 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	Aye

- Presentation of Change Order Number 10 on Mill Creek Water Treatment Plant –

Bobby Lane As John said Change Order Number 10 is in your packet and basically Council sometime back asked that there not be any more Change Orders. This Change Order purchases some chlorination equipment that Washington County Service Authority has requested. Basically it is saying we need this chlorination equipment and we would like to buy it with project funds and the only way to do that is add it to the contract. So, the Change Order is for \$14,735.89. We are recommending it and the Contractor has accepted it, however he puts a little note on there about the fact that we did not provide any additional time as part of this contract. So I guess you could say he has accepted it under protest. We would recommend Mayor that Council accepts Change Order Number 10.

Alan Counts Do you feel the wording in that has any bearing on any time needed for delivery?

Bobby Lane I do not think so, I do not believe so, no sir.

Mayor Heninger Jay.

Jay Keen Bobby, I might be wrong. I thought it was to purchase the equipment and the Town and Service Authority will put that in. Is that correct?

Bobby Lane It is. Yes sir. It is just for equipment.

Jay Keen For equipment purchase only.

Bobby Lane Yes sir.

Jay Keen It is nothing to do with the Contractor, the Town of Chilhowie and the Service Authority will install this equipment.

Bobby Lane Well, the only thing that has to do with the Contractor is we are asking the Contractor to buy the equipment for us and the Town and Service Authority will install it. So if we are asking him to buy it for us that is why we were going to pay him is we are asking him to buy it for us.

Jay Keen That was without any mark up, right Bobby?

Bobby Lane No.

Paul Cassell It looks like there is a 5%.

Bobby Lane 5% for overhead and profit and 2% for bond and insurance, which is pretty typical.

Motion by Donna Blevins, second by Brent Foster Council approves Change Order Number 10 without any additional time. 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	Aye

- Situation with Engineering Amendment 6A on Additional Engineering/Project Inspection

John Clark Council did approve this back in December and I thought the Service Authority also approved it but there was not a date. The cause is the

length of the project going over the increase the work the engineer has legitimately done has increase their work by about \$41,000 and an increase in inspection of about \$74,000 due to the time line which it should have been done in June 2018 and it is being declared now. We agreed with it but Rural Development is now asking for this not to be approved now due to liquidated damages should be used to pay this amount. That is great but I do not think that it will barely cover our cost so I would ask Council to revisit this sometime in the future. I believe Rural Development said about \$500,000 is still left in the project that could be revisited in the future.

Bobby Lane

And that is fine with us. I guess the only thing I would say to Council is we have been working as you all have. We have been working on the project for nine months longer than our contract provided for. So we obviously feel that we are due some compensation for that, but we have no objections to discussing that further with the Town and Washington County Service Authority and then coming back to Council to look at it again. But you know, I think sometimes it is the thing that owners really need to focus on is that the engineer regardless of whether it is us or another engineer is especially prohibited from having anything to do with the Contractor's means and methods during construction. So all though we can fuss and fume and write letters and threaten, we cannot do anything to actually make the Contractor speed up. So we have tried and it did not work, but we can talk about it later.

Brent Foster

Do we need to continue this?

Paul Cassell

If you continue it it will remain on the docket, but if you table it then it goes off the Agenda until you put it back on.

Motion by Brent Foster, second by Donna Blevins Council tables the Engineering Amendment 6A. 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	Aye

- Presentation of Pay Request Number 16 for East Lee Highway Sidewalk Project and Update on Project – Substantial completion has been met. A walk through of the project was conducted February 6, 2019. The Virginia Department of Transportation is very pleased with the project. The eastern end of the project is composed of rip rap while the

western end is composed of grass. It was suggested to remove the rip rap on the eastern end and replace it with grass. The Public Works Department can remove the rip rap and store it to be used elsewhere at a later date. There is money left in the budget for this change.

The apron located at the intersection of Highway 11 and Aker Avenue is under review for the bump within the roadway due to storm water drainage issues. A good remedy has not been found to correct this except to place a sign stating “Bump.”

Motion by Alan Counts, second by Brent Foster Council authorizes to proceed with the change from rip rap to grass for the eastern end of the project, the Virginia Department of Transportation has approved the change. 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	Aye

Pay Request Number 16 is in the amount of \$32,484.09, but does not include the Change Order.

Motion by Donna Blevins, second by Alan Counts Council approves Pay Request Number 16 for the East Lee Highway Sidewalk Project in the amount of \$32,484.09. 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	Aye

- Virginia Department of Transportation Resolution for No Parking on Sidewalk Signs – An email has been submitted requesting a Resolution or Ordinance concerning the No Parking on Sidewalk signs being installed. No response has been received as of yet, but Mr. Clark will reach out to Ms. Brown of the Virginia Department of Transportation.

Motion by Donna Blevins, second by Brent Foster Council continues this matter. 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	Aye

New Business:

- Report on Health Fair – Ron Cahill, Special Events and Recreation Coordinator, reported the Health Fair had several vendors but only eight participants. The weather was cold and rainy the day of the fair and he plans to schedule another Health Fair late summer or fall.
- Report on AEP Transformer Transit – AEP is transporting four transformers from Seven Mile Ford area to Broadford in Saltville. The Town assisted with the transit just to be on site in case a water line was broken during the transit. The transit went very smooth and the traffic was handled very well. Each Saturday during March a transformer will be moved until all four transformers have been relocated.
- Invitation to Mount Rogers PDC Dinner April 4 – Mount Rogers Planning District Commission is hosting the Annual Commission meeting on April 4, 2019 at the Holston Hills Community Golf Course. Social hour begins at 5 p.m. with dinner being served at 6 p.m.
- Notice of Installation of State Championship Sign – A State Championship Sign has been installed at the Town Hall. The sign recognizes the 1970 State Champion Football Team as well as the 2014 State Champion Girls Basketball Team. The sign is designed to easily add additional State Championship teams in the future.
- Permission to Bid 2018-2019 Paving – The requested areas for paving is Terrace Avenue, Pendleton Avenue and the parking lot of Loaves and Fishes Food Pantry. A current price is unavailable at this time due to the asphalt plant being closed during this time of year. There is currently \$28,000 in the budget for paving.

Motion by Brent Foster, second by Lewis Shortt Council approves to advertise for bids. 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	Aye

- Permission to Submit Rescue Squad Grant for Ambulance – It is the EMS Departments intent to apply for a Rescue Squad Grant for an ambulance. The application needs to be submitted now but notifications will be made in July 2019, therefore this would be within the 2019-2020 Budget. The grant is 50/50 with the total cost for a new ambulance being \$244,870. The Town’s required match would be \$122,435.

Motion by Brent Foster, second by Donna Blevins Council grants permission to submit application for the Rescue Squad Grant for an ambulance. 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	Aye

- Update on Saltville EMS – Saltville EMS is facing serious financial issues and can possibly be closing within the near future. If Saltville EMS was to close all calls would automatically roll over to Chilhowie Fire/EMS. Chilhowie Fire/EMS requested information regarding the level of service required. Saltville EMS went before the Smyth County Board of Supervisors requesting \$25,000 to continue operations for additional month. The Smyth County Board of Supervisors denied the request. Smyth County has issued a Request for Proposals to obtain an idea of operating cost. A discussion ensued.

All agencies involved require a clearer understanding such as the expectation of level of service. An Intergovernmental Municipal Agreement from Smyth County discussing the terms, funding and cost was requested.

- Permission of Repair Police Car – A marked 2014 Dodge Charger police vehicle with 70,000 miles has been at the Ford Dealership in Marion, Virginia, for approximately one month. The Dealership stated the vehicle requires a new motor at the cost of \$9,414.29. The estimated value of the Dodge Charger is \$9,000.

Motion by Brent Foster, second by Donna Blevins Council refers the matter to the Fire and Police 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	Aye

Department Reports:

John Clark, Town Manager, reported Building Official Randy Sturgill will be serving as the Building Inspector during the Façade Project.

Randy Sturgill, Building Official, reported Motel 6 renovations are now complete and the motel is open and receiving business.

Ron Cahill, Recreation Director/Special Events Coordinator, reported the annual Easter Egg Hunt is scheduled for April 13, 2019 at 9:30 a.m. at the Little League Fields.

Any Other Council Business:

Mayor Heninger stated the Community has lost two fine young men within the past year, Will Walker and Lucas Dowell. Council had previously approved dedicating the upcoming Farmer's Market Structure to Will Walker. Mayor Heninger suggested dedicating what is currently known as Warrior Park to Lucas Dowell by renaming the park the Lucas D. Dowell Memorial Park.

Motion by Lewis Shortt, second by Brent Foster Council renames Warrior Park to Lucas D. Dowell Memorial Park. 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	Aye

Motion by Brent Foster, second by Alan Counts Council adjourns this meeting at 9:17 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	Aye

Gary L. Heninger

Mayor

Marlene L. Henderson, MMC

Clerk