

**CITY OF BUENA VISTA  
REGULAR COUNCIL MEETING  
AUGUST 3, 2017**

The City Council for the City of Buena Vista met for a Regular Council Meeting on Thursday, August 3, 2017, at 6:00 p.m. in Council Chambers (2039 Sycamore Avenue).

Council Members Present:	Mayor Larry Tolley
Steve Baldrige	Melvin Henson
John Dyer	Tim Petrie
Bill Fitzgerald	

Members Absent: Vice-Mayor Clark

**ADG#1 PLEDGE OF ALLEGIANCE AND PRAYER:**

Mayor Tolley opened the meeting by requesting that everyone stand and repeat the Pledge of Allegiance. Councilman Baldrige delivered the opening prayer.

**ADG#2 APPROVAL OF THE MINUTES FROM THE JULY 20, 2017  
REGULAR COUNCIL MEETING AND EXECUTIVE SESSION:**

Motion was made by Councilman Fitzgerald to approve the minutes from the July 20, 2017 regular Council meeting and Executive Session, seconded by Councilman Baldrige, carried by Council with the exception of Councilman Petrie who abstained.

**ADG#3 RECOGNITION/COMMUNICATION FROM VISITORS:**

Citizens who desire to speak on matters not listed on the agenda below will be heard at this time. Citizens who desire to speak on a specific item listed on the agenda, open for public comment, will be heard when that item is considered.

Mr. Dave Miskie, 120 East 22<sup>nd</sup> Street, was the only person to speak. He said that last spring right after the trees were cut down on Magnolia Avenue he

approached Council and wanted to know if there was going to be replanting of the trees. He said he was told then that the trees would be planted in the fall of 2016. He wanted to know the status of replacing the trees.

Mr. Scudder said that replanting the trees is a City project but it is being administered by VDOT. VDOT will be opening all the bids for replacing the trees and should be ready to replant in the fall of this year.

Mr. Miske stated that the Paxton House will be open for tours on Labor Day.

Mayor Tolley advised the trees are a 2 part deal: the streets are separate from the avenues. Magnolia will be done this fall and the streets will most likely be done next fall.

### **ADG#4 REPORTS:**

#### **MAYOR:**

Mayor Tolley began his report by extending his appreciation for the employees at Glen Maury Park and Public Works that helped with the Beach Music Festival and Car Show. He opined they were very efficient and ready to get done whatever needed to be done. He said they were ready for everything a day ahead. Even though it rained it did not affect the car show. With generous help from the businesses in the area they had pretty much everything paid for so they were able to make a contribution to The Virginia Diabetes Council. He said that after they do all the outstanding bookkeeping on the bills, they will probably be able to make another contribution. Next year will be the 20<sup>th</sup> year and they are thinking about doing something special. He said that Chief Hartman had a great National Night Out until the rain came.

Chief Hartman said they had a great crowd for about an hour and a half until the rain started. He thanked everyone that attended. He said that 4 or 5 golf carts were registered this week. He advised that there are around 35 golf carts registered as of now.

Mayor Tolley said they did have some cruisers from Bedford and Verona. He said they traveled some distance and he thanked Lt. Randy Chittum for coming to the car show and announcing the National Night Out. He also said that he, Mr. Scudder and Tom Roberts attended a meeting with NRCS today.

#### **CITY MANAGER:**

Mr. Scudder advised that the paving projects have begun. They will probably start paving within the next week. We will open the bids for the pump station

project at the park on Monday. He thinks the bids will be lower than originally thought.

### **CITY ATTORNEY:**

Mr. Kearney advised that we are now waiting on the report from the court hearing concerning ACA last week.

### **COMMITTEE REPORTS:**

Councilman Baldrige stated that he and Mr. Scudder attended the court hearing in Lynchburg last week concerning ACA. He thanked our legal counsel for their work and said a lot of information was discussed in a short time.

Councilman Henson wanted to know the status of the fire hydrant on 19<sup>th</sup> and Sycamore that has been out for several months.

Mr. Scudder said he would discuss the issue with Corey Henson on Friday.

Councilman Henson wanted to know if on 22<sup>nd</sup> Street the new sidewalks would be on both sides of the street or only one side.

Mr. Scudder said that the new sidewalk would only be on one side of 22<sup>nd</sup> Street. He said we have been working this past week to fix some of the sidewalks.

Councilman Henson advised that Guns and Hoses will be coming to Buena Vista on September 15<sup>th</sup> at Camden Field.

### **CONSIDER APPOINTMENTS TO VARIOUS BOARDS, COMMISSIONS, AND COMMITTEES:**

#### **APT #1 PLANNING COMMISSION:**

Mr. Wayne Flint's term will expire on August 31, 2017. Mr. Flint is not willing to serve again. This is a four year term and the second time it has appeared on the agenda. **ADVERTISED THE NEWS GAZETTE JULY 5, 2017**

This item will be carried over to the next scheduled Council meeting.

## **OLD BUSINESS:**

### **OB #1 DISCUSS CREEK INFRASTRUCTURE; TOM ROBERTS TO PRESENT REPORT FROM THE ARMY CORP OF ENGINEERS AND THE USDA:**

Mr. Tom Roberts reported the following:

Recently there have been some questions about the level of maintenance on streams throughout the City. This memo seeks to clarify the ownership of all the streams, who is responsible for maintaining them, and what maintenance is required or expected.

The Buena Vista watershed today is complex. The City has six primary streams totaling approximately 13 miles in length. They snake through many different properties and neighborhoods. Four of the streams have had flood hazard mitigation stream channel modifications in the last 20 years, but these projects were performed by multiple federal agencies with funding from multiple sources.

#### **Ownership**

Every foot of stream length in the City falls into one of three basic ownership categories:

1. Privately owned with no easements.
  - a. This applies to most of the stream mileage in the City. Where streams snake through residents' backyards and no modification projects have been performed, they are fully privately owned.
2. Privately owned with City easements.
  - a. This applies to streams that run through private property where stream modification projects have taken place. Regardless of which project modified the stream or the agency performing the work, in almost all cases perpetual easements were acquired by the City to allow maintenance, repair, replacement, etc. As an example, for the channelization of Indian Gap Run, the City owns a 40-foot wide easement along the section that was put in concrete. These easements are recorded in the deed books and carry with the property.

3. City owned.
  - a. This applies to streams that cross public rights-of-way like roads and alleys, and it applies to City-owned parcels such as Laurel Park or Reservoir Hollow.

### **Maintenance**

Every foot of stream length in the City falls into three basic categories of maintenance rights and obligations, which are somewhat dependent on ownership.

1. Property Owner's Discretion/No Restrictions
  - a. This applies to sections of streams that are either privately or publicly owned and have not had any modification projects, in other words streams that are still in their "natural" state. The property owner (individual or the City) is not bound to a particular level of maintenance. For streams on City-owned public right-of-way, there may be requirements to clear vegetation or debris around bridges, culverts, sidewalks, etc. from the transportation infrastructure side.
2. Stream Modification Project Operations & Maintenance Agreement
  - a. This applies to sections of streams that were modified in one of the numerous projects, regardless of ownership (private or City). These sections generally have concrete walls or stone gabion basket banks or similar obvious improvements added. In general, each project, regardless of what agency performed the work, provides guidance on operations and maintenance of the project. For example, O&M guidance may say that vegetation larger than 1 inch should be cut from the banks at least annually. These O&M agreements are specific to each project, and may be legally binding in some fashion.
3. Easement Only/No Project O&M
  - a. This applies to sections of streams that were modified, but for which there was no Operations & Maintenance agreement. The property owner is primarily responsible for maintenance, but there may be some language in the easement that the City will maintain the project in good repair. The easement language is likely to be looser and not specific, and give much more discretion to the City as to what level of maintenance is necessary for the flood control feature to be in "good repair."

As a rule of thumb, if a section of stream is more or less in its "natural" state and is not located on City-owned land, then it is the responsibility of the property owner to maintain to the level he or she deems appropriate.

More research is necessary to assemble and review the Operation & Maintenance Agreements for the various projects, and on what sections the City owns easements.

As a point of reference, Harrisonburg, Virginia Public Works has a policy of avoiding maintenance or alterations in and around streams and ditches on private property. They clear vegetation or obstructions immediately upstream or downstream of City-owned/maintained culverts or storm drain pipes, and may request permission from a property owner to perform limited work on their property directly related to keeping the culvert/pipe clear. Harrisonburg also notes that they do not have any regulations on vegetation in floodways or floodplain.

Finally, there may be risk of liability if the City performs maintenance or alterations of streams on private property without a legal agreement or easement.

Councilman Petrie wanted to know if there are other regulations concerning land disturbance than what the State and Federal governments have. He said we are not requiring anyone to maintain the creeks. The property owner can maintain the creek as they see appropriate. He wanted to know if the City has any control measures for privately owned property.

Mr. Roberts replied that the City has no control measures for privately owned property.

Councilman Petrie advised that a lot of fish were killed in Tinker Creek in Roanoke. He said if the water is flowing enough, there could be a lot of fish killed in the Maury River. He said we are saying to the property owners that they can maintain the creeks as they see fit. He opined if we do not have any control on what happens on private property then we are risking some sort of incident that happened at Tinker Creek. He said the City should look into making sure the creeks are maintained.

Mr. Scudder said it seemed like the incident at Tinker Creek was a serious situation that he feels was caused by people violating rules.

Councilman Dyer asked Mr. Roberts about the City's Code requiring residents to maintain their yards and houses. He wanted to know if the requirements of the property owners to maintain their yards and houses included the creeks.

Mr. Roberts said the code would also apply to creeks. He opined that would be a matter of interpretation.

Mr. Scudder said it would not apply to a natural area.

Mr. Roberts stated that trash or debris could be a different situation.

Councilman Dyer wanted to know if there is any question about privately owned streams. He wanted to know if the City is responsible for privately owned streams.

Mr. Scudder said that the most definite one is Chalk Mine Run.

Mr. Roberts stated that he had Chalk Mine Run in his hands now. He said he does not know what we have for Indian Gap Run or Peddler Gap Run.

Mayor Tolley said that Peddler Gap Run was done on an emergency basis that went through the Community Block Grant.

Mr. Roberts advised that he needs to do more research and get straight on what all these projects were. He advised he has more work to do.

Mayor Tolley stated that Peddler Gap Run is on 10<sup>th</sup> Street and Indian Gap comes down by Kenny's. He said it was decided when all the studies were done that nothing could be done to Noah's Run.

Councilman Henson advised that Indian Gap is the one that did most of the damage to the City during past floods.

Mayor Tolley opined we do have a lot of work to be done. He said that Council is charged to be stewards of the community and to make sure we have flood protection and ligation of what we are charged to be stewards of and we have to know it. We have to take steps to put ourselves in a position to respond when we have to. We also need to put ourselves in a position when money is available that we try our best to get it.

Councilman Henson advised that he has been involved with life-saving for about 2/3's of his life. He has some problems with visibility and sight distance in the City. He wanted to know who is going to enforce the problems and make sure they get corrected. The concrete walls on Indian Gap have cracks in them. He wanted to know who is responsible to fix them.

Mr. Roberts said that the maintenance agreement for Indian Gap Run has to be located.

Councilman Henson opined that some of the roads need to be cleaned up so you can see the creeks. He also said on the weed vegetation anything within 50 feet of an occupied dwelling must be cut.

Mr. Kearney said you can expand what needs to be maintained.

Mr. Scudder stated that one of the things that has severely impacted this situation over time is we have around 20 less employees in Public Works than we had in 1995. Another factor is we rarely get prison crews anymore. When we have man power we work in priority areas. He said it would be nice if we

could spray some of the creeks but due to State and Federal laws we cannot spray within a certain distance of a creek.

Councilman Petrie opined while we don't have the resources to deal with the creek problems it would be a good idea to define the bottleneck areas where debris and high water situations would cause low lying flooding. He suggested we have a priority list in case of an emergency such as a hurricane or some other disaster.

Mr. Scudder advised that on Chalk Mine Run there has been widening done and there are areas where debris can park. They started up above but when you get to Advanced Auto and down below we have all this public infrastructure and homes. He said the work they did does not have any impact on below stream. He said he finds that is hard to comprehend. If you open up a great big area that fills up with water and you have a bottle neck down from the opening, to him that causes a problem.

Councilman Petrie said that while we are dealing with the resource, or lack thereof, at least identify areas that have tremendous growth of stuff in those areas that could potentially cause a bottle neck and we could attack those areas when resources become available.

Mr. Roberts said speaking very generally, just like there were a lot of different agencies involved in building the project that we already have, there are a lot of options and different agencies and programs that could fund planning and construction of new projects. He mentioned the Army Corp., FEMA, Virginia Department of Emergency Management and the Virginia Department of Housing Community Development. Those are just a few of the top ones that programs that could fund flood hazard mitigation projects on the scene. He opined the most comprehensive work on our watershed is a document that was done by the NRCS. This document is the watershed plan that was done in 1999. The document identifies a whole bunch of projects and was done after some of the other stream projects were done by other people. The document lays out a long list of projects; bridge replacements, new culverts, stream bank stabilization, debris basins on several creeks. The City has only done a few things from the plan. Most of what we have done from the plan was to work on Chalk Mine Run. Where we are now is they are asking if we want to do these projects. The last project we had was designed to do the lower section of Chalk Mine Run from Rockbridge Avenue to the Maury River. They have designed some modifications to that stretch. The construction was put on hold somewhere around 2010 or 2011. The bottom line is we want to pursue this. The first thing that needs to be done is update the whole plan. The key is finding the right program or combination of programs from different federal agencies that will achieve the lowest possible cost to the City. The City cannot afford to spend hundreds of thousands of dollars on stream projects. However, there are options out there that will cover for planning grant activity, grant for construction activity available through the NRCS and

other entities. He opined that however you cut the cake, whatever partners or grants that we get, it is going to take time and energy and the staff to manage it. There will also be some amount of local dollars.

Mayor Tolley wanted to know if this project is too big for the PVC.

Councilman Petrie said he will be meeting with them in a couple of weeks and he will ask.

Councilman Dyer said he is guessing we make the study, apply for grant money, design and then implementation.

Mr. Roberts stated that some of this is big money. For example, in 2011 they had pretty much of the complete design for the lower portion of Chalk Mine Run to do bank stabilization, work on or replacement of the Route 60 Bridge and work on the railroad bridge. The construction cost 6 or 7 years ago was estimated to be around 5.1 million dollars.

Mayor Tolley said we have projects identified. They want an answer as to if we want to do updates. He opined it involves money to do updates.

Mr. Scudder said this is the same thing that VDOT has done with the 6 year money which is doing all of your sidewalks and streetscapes and curbs along with everything else in town. He said they are going around and trying to weed out projects that are not attainable.

Mayor Tolley said the reason they are doing that is because there is money available. They use the term "shovel ready". Even Chalk Mine Run is not shovel ready because the engineering work was done so long ago. It will have to be redone

Mr. Scudder said he does not understand but that is the case in their minds.

Councilman Henson said the biggest problem on Chalk Mine Run was not addressed but it did go to the bridge on Route 60.

Mr. Roberts said that is part of the project; the railroad bridge that is next to Route 60 and it catches debris. They were not pushing us hard to say yes or no now. They just wanted to remind us it is here.

Mayor Tolley opined that it is up to us to find money from other sources to get the project done.

Mr. Roberts agreed with Mayor Tolley. The burden is on us to locate other sources for funding.

Councilman Henson wanted to know if the railroad trussell could be added to this project.

Mr. Roberts said if the lower Chalk Mine Run project was designed over, we would include the railroad trussell. We are hoping to run the Chessie Trail connection through there.

## **NEW BUSINESS:**

### **NB #1 DR. KEELER TO PRESENT A REPORT ON THE HAPPENINGS AT BVCPS:**

Dr. Keeler said he would like to give Council an update on what is happening at the schools since the teachers are returning on August 7 and an update on the class of 2017. He then invited everyone to the convocation that will be held at Parry McCluer High School on Monday, August 7. On August 12<sup>th</sup> there will be a back to school event at the football field at PMHS for grades K through 12. The athletes, cheerleaders and the band will be attending. They are handing out free books for K through 5<sup>th</sup> grade. On August 4<sup>th</sup> from 9 to 12 and on August 5<sup>th</sup> from 9 to 12 they will be giving out free school supplies for all Kling students. The free or reduced lunch rate is somewhere between 65 to 70%. He opined there are a substantial number of people living in poverty in Buena Vista. He said that they had 110 families show up in the first 3 hours to pick up book bags, paper, pencils, markers and glue sticks. The program was very well received. The 21<sup>st</sup> Century Grant, which is their best summer camp, had from 60 to 80 students throughout the summer. He opined it was highly successful and it was also done in Buena Vista this year. They also started a literature camp that ran for 5 weeks. The camp was for kids in elementary and middle school. They called the camp "Lit Camp". It did very well and Enderly had 60 kids attend. They also received a grant to open up one of their cafeterias for all of the kids throughout the summer. They also have a backpack initiative for all of our elementary schools where nearly 200 kids participate. On Friday of each week canned food is sent home with the students. To help with this program they got the grant for free lunches. It was extended for ages 1 through 19. During the 7 weeks they had the grant they fed 1900 lunches and also fed 100 adults. They will put in for that grant again next year. Dr. Keeler then addressed the class of 2017. He said that 87 kids graduated and 68 are attending college which equals 78% of the total class. Another 22% either went into the military or the work place. The school has a 90% on time graduation rate. They have hired 7 new teachers and 3 new para-professionals. Debbie Gilbert has been named the new principal for the middle school and Mark Wheeler has been named the new head coach for the varsity football team. Dr. Keeler said he is proud of last year's success in accreditation. The high school and the middle school were fully accredited for the second year in a row and the elementary schools are partially accredited.

**NB #2 PRESENT A PROCLAMATION FOR MR. TODD JONES  
CELEBRATING HIS 40 YEARS OF LEGAL SERVICES:**

Mayor Tolley presented the following Proclamation to Mr. Todd Jones:

**PROCLAMATION**

**WHEREAS, MR. TODD JONES**, did graduate from the

University of Michigan Law School in 1974; and

**WHEREAS, MR. JONES** did move to Rockbridge County

in 1976 and opened his law office in Buena Vista in 1977 ; and

**WHEREAS, MR. JONES** did establish his residence in

the City of Buena Vista in 1978; and

**WHEREAS, MR. JONES** served on the Planning

Commission, Habitat for Humanity, TAP Board of Directors, the

Rockbridge Area Community Services Board, the Business

Development Council and the Rockbridge Partnership; and

**WHEREAS, MR. JONES** began serving the City of

Buena Vista in 1998 by being elected to serve on City Council;

Appointed as Vice-Mayor in 2002; Appointed Mayor in 2005

and elected Mayor in 2006.

**THEREFORE**, on behalf of the citizens of Buena Vista

and the City Council, we express our deepest appreciation to

**MR. TODD JONES** for giving of himself and his career to the

City of Buena Vista for the last 40 years.

---

Larry F. Tolley, Mayor

Mr. Jones said that he has always enjoyed this community and appreciated its strength and reliance. At some points it is aggravating but he has always felt free and encouraged to defend us in larger areas.

**NB #3 APPROVE REIMBURSEMENT TO THE BVFD IN THE AMOUNT OF \$1,000.00 FOR CARNIVAL LICENSE;**

Councilman Fitzgerald motioned to approve the reimbursement of \$1,000.00 to the Buena Vista Fire Department for their carnival license, seconded by Councilman Petrie, carried by Council.

**ADJOURNMENT:** There being no further business Mayor Tolley adjourned the meeting.

---

Larry Tolley, Mayor

---

Dawn M. Wheeler, Clerk of Council