

September 5, 2023

A Regular Work Session of the Danville City Council convened on September 5, 2023 at 7:50 p.m. in Council Chambers located on the Fourth Floor of the Municipal Building. The following Council Members were present: James B. Buckner, L .G. "Larry" Campbell Jr., Bryant Hood, Mayor Alonzo L. Jones, Barry Mayo, Vice Mayor Gary P. Miller, Sherman M. Saunders, and J. Lee Vogler, Jr., (8). Madison J.R. Whittle was absent (1)

Staff Members present were: City Manager Ken F. Larking, Deputy City Manager Earl B. Reynolds Jr., City Attorney W. Clarke Whitfield, Jr., and City Clerk Susan M. DeMasi.

Mayor Jones presided.

PROGRAM UPDATES

Mr. Larking gave an update on the splashpads in the City explaining when the projects were bid out, the hope was to have the Third Avenue splashpad completed by May of this year. Through various reasons and delays, that May target was not met. There were supply chain issues, the splashpads were custom-made and finding a particular vendor to do the work necessary to complete them has been more time consuming than expected. Nothing was happening at the Doyle Thomas splashpad; it was on hold while the one subcontractor that works for Blair Construction was doing work at Third Avenue, and then they can move that crew over to Doyle Thomas. There had been minimal work done there, but nothing substantial over the past week. It would have been great to have Third Avenue open this summer; obviously that will not happen and both will be open next summer; Doyle Thomas was not scheduled to be open this summer.

Mr. Vogler noted originally they were both going to be ready for this summer; it was very frustrating. Blair Construction was doing a good job but was there anything in the contract that holds them to get these things done at a certain time; were there any repercussions for them not doing it. As far as Ballou Park, should the City go ahead and order the supplies now so maybe they will be here ten months from now. Mayor Jones questioned when they do a Request for Proposal, was there a timeline for the projects to be completed and Mr. Larking noted there typically was within the contract a timeline. Various things can affect it, that can extend the timeline, weather being the most common element that can affect that timeline; there were other things that they can point to. The challenge was when the parties start to get into a fight with the contractor, they risk further delays to get the project done. They want to be careful how they employ that strategy; obviously the City wants to look at that.

Mr. Buckner noted the problem was supply chain and labor force which sounds like those were the two main things; no matter how much the city says to get it done, it will not get done faster if they don't have the materials to do it or the people. Mr. Vogler stated other people have found out ways to do it, why can't they; find someone else, and Mr. Larking stated it was a low bid environment, the next highest bids were quite a bit higher for these projects and they were already well over what the city had budgeted.

City Attorney Clarke Whitfield noted that typically city contracts contain something called a force majeure clause which means in extraordinary circumstances such as epidemics, pandemics, labor shortages, supply chain issues, all those things, that they were supposed to use due diligence to complete the project in light of those, but it does extend the timeline.

Mr. Larking explained it was not just the contractor in this situation, looking back at the entire timeline of when these concepts started from the idea phase to where they were now. They were a few months behind on the construction, but really it was the design that has taken a lot longer

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than it should have. With regard to Ballou Park, the City was designing a larger scale splashpad; the construction documents were submitted to Community Development and Engineering for a review to make sure they adhere to all the codes. A couple of comments were made, and that process has to work its way through before it can go out to the bid. It was supposed to go out to bid in November and then hopefully they will get a contractor that goes ahead. There was a certain amount of time to get Phase 1 done, the City only has \$2M budgeted for Ballou Park at this point even though they were designing for a \$5M splashpad. It was going to take some time to get it through that process. Mayor Jones noted citizens around Doyle Thomas had mentioned opening up parking spaces to use the park for an event, and noted their excitement over a new picnic shelter and table.

Mr. Vogler questioned with any kind of project, was the City required to take the lowest bidder no matter what or does the city have the discretion to choose a different one if it was higher. Maybe in certain circumstances the city should consider not necessarily taking the lowest bidder, but factoring the lowest bidder was constantly behind schedule and not doing things when they say they were going to be done; maybe somebody else would be better. Mr. Larking explained for most city projects, yes they do have to take the lowest responsible bidder. Mr. Whitfield noted the lowest responsible bidder was one who has not defaulted time after time on projects for the city or others. Mr. Vogler stated so if somebody bids and they were slightly more than the cheaper one, and the city feels very strongly that the one that was not the cheaper one would be the better one, the city was forced to choose the cheaper one and Mr. Whitfield noted that was correct. Mr. Larking questioned was it a state law that would have to be changed to allow leeway for that and Mr. Whitfield noted it was. If the city finds out a bidder has defaulted on contracts, the city can go through a legal process to basically out that bid and award it to the next lowest bidder.

Mr. Saunders questioned if there was a deadline on when the project was supposed to be completed and Mr. Larking noted the contract usually has a deadline, and was sure this one did as well. Mr. Whitfield explained that was typically what City contracts do, but in a situation where they cannot get the materials, they may have trouble getting people, they are going to take advantage of the force majeure clause and there was not a lot the city can do about it. Mr. Saunders asked if the city gets any remuneration or reimbursement because the contract was not met and Mr. Whitfield stated typically there was a penalty per day or per week that the project was overdue, barring unusual circumstances. Mr. Larking noted staff will have to look at these contracts. Mayor Jones noted he would like to know what day the contractor said the project would be completed. If by chance it states that Third Avenue was supposed to be completed by September 2023, then to Mr. Saunders' point, let Council know what the City Attorney was doing about it.

Mr. Vogler noted he serves on a business commission and can bring this situation up; would the city like the flexibility, and Mr. Whitfield stated the problem was they have an objective standard; it would have to create something that created an objective standard so that the City was not accused of favorability. Mr. Vogler noted if they can find a way to nuance it so that the city didn't have that situation, but if there was clearly a bid that was slightly more, but absolutely the better bid, a locality should be able to take that one and not be forced to pick one that was not as good; would the City like that flexibility; Mr. Larking stated it depends on the circumstances. There were other tools, there were public/private partnerships that enable the city to have a different way of completing projects like these that could potentially be less costly and the City could work with who they chose, based on a proposal similar to what was done with the police station. Mr. Larking noted the objective standard of a low bid situation does provide a standard; if that they didn't have that, the City would worry about the motivation about trying to keep the costs in line. Mr. Hood stated he believed the citizens would like to hear an update on the status of the splashpads.

ECONOMIC DEVELOPMENT UPDATES

Director of Economic Development Corrie Bobe noted around 2018 the city began working with MEP, Making Everything Possible, a UK manufacturer of automotive, aerospace and defense components. They located to the community through the pandemic, and a performance agreement was signed with them in 2021. They have experienced a few delays in getting up and running based on the aerospace industry, getting certifications and finalizing a high bay space at the Institute. As part of their recruitment process, the city of Danville through the IDA agreed to partner with MEP on an equipment loan; at the time, the City entered into it with American National Bank. Given the slowdown after they signed the performance agreement and the delay in getting certification in their facility, they did not draw down on that particular loan and American National Bank asked that the City transfer that over to the Virginia Small Business Financing Authority. The city has gone through the process with the VSBFA to approve a \$984,000 loan for equipment purchases; there were a few additional steps needed to take place. MEP was still within their performance period, which was a five year period that began in April of 2021, but within their existing performance agreement there were two phases outlined: the first phase being that they would have eight employees, and \$800,000 of taxable capital investment with a certain wage range. That phase one period expired August 24th, so they were in violation of their performance agreement. At the upcoming RIFA meeting staff will be discussing with the Board, amending the approval. The remainder of their performance agreements with the Tobacco Commission and the State do not have that phased approach, they have the pure five year period to hire forty-five people and invest \$6.445M. For the equipment loan, the VSBFA was requiring a moral obligation from the city for the joint loan between MEP and the IDA; staff does need to bring that back to City Council for approval at an upcoming meeting. Ms. Bobe noted she wanted to make Council aware of this; they were working with their partners in RIFA and the county to ensure that the local performance agreement was being updated. It was nearly \$1M of equipment financing, and it was very generic equipment so if something does happen, it should be easily resold elsewhere; the financing authority will have first lien position on all of the equipment. The city will go through a draw request and approval process; the company will not have access to the full loan, they can only purchase incrementally as new contracts require. They do have their largest contract in the works which will require them to draw down between \$80,000 to \$100,000 in the near future.

CLOSED MEETING

At 8:11 p.m., Vice Mayor Miller **moved** that this meeting of the City Council of the City of Danville, Virginia be recessed and that Council immediately reconvene in a Closed Meeting for the following purposes: discussion or consideration of the acquisition and/or disposition of real property for a public purpose where discussion in an open meeting would adversely impact the bargaining position of the City as permitted by Subsection (A)(3) of Section 2.2-3711 of the Code of Virginia, 1950 as amended, and more specifically to consider a discussion regarding the sale and/or potential purchase of a specific parcel of property for use by prospective industrial, commercial, and mixed use projects looking to locate in the City, and an Economic Development discussion and update concerning a prospective business or industry where no previous announcement has been made and/or the expansion of an existing business or industry where no previous announcement has been made as permitted by Subsection (A)(5) of Section 2.2-3711 of the Code of Virginia, 1950, as amended and more specifically to consider an update on multiple prospective commercial, mixed use, hospitality, and industrial projects considering locating within the City and/or locating within the region in cooperation with the City's regional partners.

The Motion was **seconded** by Council Member Mayo and carried by the following vote:

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VOTE: 8-0-1
AYE: Buckner, Campbell, Hood, Jones, Mayo,
Miller, Saunders, and Vogler (8)
NAY: None
ABSENT: Whittle (1)

Upon unanimous vote at 8:40 p.m., Council reconvened in open session and Vice Mayor Miller **moved** for adoption of the following Resolution:

CERTIFICATE OF CLOSED MEETING

WHEREAS, the Council convened in Closed Meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Freedom of Information Act; and

WHEREAS, Section 2.1-344.1 of the Code of Virginia, 1950, as amended, requires a Certification by the Council that such Closed Meeting was conducted in conformity with Virginia Law;

NOW, THEREFORE, BE IT RESOLVED that the Council hereby certifies that, to the best of each Member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements of Virginia Law under Section 2.2-3711 were heard, discussed or considered, and (ii) only such public business matters as were identified in the Motion by which the Closed Meeting was convened were heard, discussed or considered by the Committee.

The Motion was **seconded** by Council Member Mayo and carried by the following vote:

VOTE: 8-0-1
AYE: Buckner, Campbell, Hood, Jones, Mayo,
Miller, Saunders, and Vogler (8)
NAY: None
ABSENT: Whittle (1)

MEETING ADJOURNED AT 8:41 P.M.

APPROVED:

s/Alonzo L. Jones
MAYOR

ATTEST:

s/Susan M. DeMasi, CMC
CITY CLERK