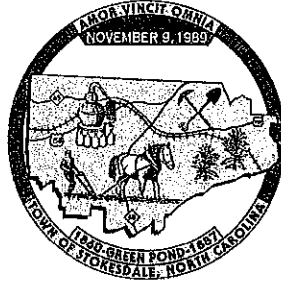


The portion of the March 12, 2020, Closed Session Minutes addressing a Contractual Agreement were released by the Town Council in full written form on February 10, 2022.



Closed Session Minutes 3/12/2020 pursuant to N.C.G.S. §143-318.11(A)(3) Regarding a contractual agreement.

This closed session meeting is regarding the Beaver Outdoor Solutions contract. Mayor Flynt turned the meeting over to Attorney Tom Medlin to get an update on where we stand with the contract. Tom said he has already sent out some prior emails, he thinks everyone has seen them by now. The emails kind of gave what the facts are. There was an estimate March 11, 2019 and it stated that this would be a one (2) year contract in length. The actual agreement typed up by our prior attorney did not define or reference a term. But on three separate occasions in the contract it references Attachment Exhibit A. Tom is assuming that the estimate attached to the contract is Exhibit A, even though it is not listed as such. This attached estimate spells out the work to be performed and the cost for that work. Tom then said he understands that there have been some concerns over how expensive Beaver has been. He said we talked about it in the prior months closed session and discussed moving forward taking this contract as a one-year contract because of the word "one" overruling the number "2". He said like when you write a check the written-out amount of the check supersedes the numbers. Tom then reminded everyone that he had sent a copy of the first letter he sent to Beaver after the last meeting, because of the emails between Beaver and Alisa where Beaver asked Alisa if his contract was a one- or two-year contract. Tom explained to Beaver what the facts were and that council was taking his contract to be a one-year contract and offered Beaver to submit a proposal for this year. Beaver wrote Tom back and said that Tom didn't have all facts and that he needed to talk to the councilmen that were seated at the time the contract was accepted. Tom said in the next day or so Alisa contacted him, told him she had relistened to the recording and she heard additional information on the recording he needed to hear. So, Alisa sent him the recording and he listened to it today (March 12, 2020). After listening to it, at the 1 hour 4-minute mark Frank Bruno presented the Beaver Proposal, it was priced weekly to be billed monthly, subject to the attorney drafting a contract based on this proposal. Frank Bruno then motioned to approve the Beaver Outdoor Solutions proposal pending a contract drafted by the attorney to be signed by Beaver and the Mayor. Work was to begin on April 1, 2019. Frank's motion did not mention the term of the contract. At 1 hour 14 minutes mark a question was directed to Frank Bruno, the question was so you are asking us to approve a two-year contract? The concern between some of council was that this was an election year and this could tie the hands of future council persons. Frank Bruno's answer was that a two-year contract is kind of a standard. In his negotiations with Beaver the owner had asked for a two-year contract because of equipment he would have to purchase. Frank further stated that if you don't want a written contract you can let them do the work without a contract. He just felt it was better to have a contract. That way you can make them live up to the contract standards. Tom said if we stay with the position that this is a one-year contract what could happen is nothing or Beaver could sue the

Town. If they sue it could be a little over \$42,000. Plus, attorney and court cost at risk. Tom said what a court will do is look at the four corners of the document and determine what the term of the contract is based on the information in that document. The court could say it's a one-year contract, but they could come back and say it is a two-year contract. Tom said the estimate and contract are vague, there is confusing information. If the court can't determine the term, they can offer the Town outside evidence. At that point if the other side subpoena copies of the minutes and recordings they will hear what Tom is telling us he heard today. That is going to strengthen the other side's case. Tom told council he will do what ever they ask him to do, but he thinks the right thing to do is to accept this as a two-year contract and allow Beaver to continue their services within the confines of what is listed in the contract. Jim Rigsbee said he has been confused with billing and asked if we can ask them to define their bills better. Alisa explained that they are not consistent with billing and they tended to bill extra jobs along with their weekly contract services and many times she has had to send an invoice back for them to break it down better. Derek said here that he has felt like Beaver is deliberately structuring invoices to fit under the property committee's spending authority. Tom said we will address that in a minute. Jim Rigsbee said he would like to start with the April 1, 2020 invoice to see Beaver billing us \$3661.66 per month which is the contract agreement and nothing more. Tom agreed with that. Tom said he looked over the \$ 10,000. Invoice documents and once again he is looking at a point of view of are you keeping the contract or are you trying to find a way out. Is there anything here that you think might help you? According to an email there was an estimate for \$10,000. For lawn care services that was sent to the town and it appears to have been done in March 2019. I assume it was done before March 14,2019 because according to the Town Clerk's email she sent a check for \$ 10,000. On March 12, 2019. Thinking that the estimate was actually an invoice for work done. March 12, 2019 was two days before the Beaver's contract was approved and signed. So, it appeared that we were asking for work outside the contract. Then according to emails Frank Bruno requested separate invoices for different areas that had been quoted in the \$ 10,000. Estimate. And specifically, according to the owner (Vic Beaver) he wrote back and said the breakdown was so the invoices would not be over Frank's spending limits. Tom had been made aware that there is a \$5,000. Spending limit for the property committee. Then Tom said at that point when a \$ 10,000. Estimate comes in rather than breaking it down into smaller invoices to fit under the spending limit that should have gone to Council for a vote. Breaking unified work, you have asked them to do into smaller invoices because its this area, this area and this area you are putting form over substance. The substance they are still doing all this work and its over the property committees limit so he doesn't have the authority to authorize it. It's what attorneys call Ultra Vires (beyond the powers), outside the corporate authority. That's one thing that it was a council member here doing it, but Beaver participated. They were asked to break it down; they already had a \$ 10,000. Check, they weren't going to give the check back. So, Beaver writes Frank back and says what I'll do is send 5 smaller invoices and then he says I'll void the \$10,000 invoice and apply the \$10,000. To the 5 smaller invoices. Tom said apparently the work had been done by this time because this was in July. Beaver said it actually went over an extra \$ 1400. You will still owe to pay. Tom said his notes show that this deprived other council members from debating and approving the services, deprived the citizens from knowing about it. Beaver participated in that. Tom said could that be grounds for a claim that they have committed fraud? Or participated in fraud? Tom then said they may turn around and point the finger back at the council member and say they asked us to do it. Tom said he thinks from the invoices that they knew it exceeded the limit and they participated in it. Derek interjected here that he felt like it put Alisa in a very compromising position, everyone in this meeting spoke at once and did agree with Derek.

Derek added he was not at all comfortable with that. He said it reeks of wrong. Tom agreed and told Alisa it was not her fault. Everyone started talking at once again. Then Derek said he feels we were intentionally deceived by a vendor. Mayor Flynt spoke up and said if Frank approved the invoicing then its on Frank. Derek said that's not lost on him, but Beaver participated. Tom said on the attorney side of this an argument could be made once to say okay we are not going to extend this contract. Number 1 we are going to stick with our position that it's a one-year contract not two. However, we have also learned and we believe that you participated in a fraudulent activity against the council on these matters and that's grounds for terminating the contract. There was more all at once conversation. Tom spoke up and said having said that once again you have a legal argument that can be made if you get into a legal fight you never know if you are going to win or lose those arguments in front of a judge and jury. We probably would have to go to mediation regarding a possible settlement and or buying our way out of the contract. Tom said the bottom line is you have a contract for \$42,000. To put at risk, in addition to legal fees that will cost you if you decide to cancel. Tom said that's the council's decision. Your other alternative is you don't want to pay legal fees, you don't want to run the risk of losing \$42,000. Or you can stick with what we just said, you bill us the \$3661.66 each month we are not going to do any extra services? We will contract any other services with another vendor. Then at the end of contract tell him not to ever submit anything to us again. Derek asked Tom, do you think in the invoice restructuring do you think they thought they were committing fraud? Tom replied I don't know what a person thinks. In my life I have always thought people were good, but I have found out different. Tom thinks Beaver was aware that there was a spending limit and it was under \$10,000. And Beaver was helping Frank get it under that limit. Derek asked Tom, Is that Fraudulent? Jimmy Landreth answered yes, that's fraudulent. Derek said okay its fraudulent. Mayor Flynt said okay then its also fraudulent on Frank's part, right? Tom said well Frank was outside his spending limit. Mayor Flynt said it could be contributory negligence. Tom said this isn't negligence this is fraud. Frank participated in it, Whether Beaver were to turn around and try to sue Frank to contribute, no he was a public figure and Tom doesn't think he has any personal exposure. Jim Rigsbee said he agrees 100% with Derek on hating to be defrauded but at the same time he agrees with Tom that there has been no complaints about the job Beaver has done, make them structure their invoices like they are supposed to do, no extras, get through the contract and move on. Jimmy Landreth asked if a letter could be sent to cover what we want which is the the mowing part of the contract only \$ 3661.66 per month and nothing else. After more talking all at once it was decided to let Tom put a letter together. Derek stated he hears what Jim Rigsbee says. He hears what Tom Medlin is saying but he can't get past this. He can't forgive fraud. Jim Rigsbee said we are making a big assumption that they knew they were defrauding us. They were accommodating from a payroll stand point. Derek and Jimmy Landreth disagreed. Tom added if someone is going to contract with the Town, they have to know what the rules are. Whether Beaver did or didn't they are required to. In answer to Derek's uneasiness, Tom said we can send them a letter. In the letter tell them that we restate our position that the contract is vague, that our attorney has listened to the meeting tapes, however because it is vague and we haven't had any complaints about the services we are going to allow them to continue the contract under the basic terms of the maintenance for the year. However, then I can spell out that we have lost confidence in them as a vendor, so therefore we will not be using him for any extra services and when this contract is up, he doesn't need to plan to do anymore business with us. Derek said he would hate to tell a vendor we've lost confidence in them and then continue to do business with them. Jim Rigsbee agreed if Beaver starts doing half his job what is our recourse? Derek asked Tom, Has Beaver participated before in fraudulent activity? Tom

said it's not black and white. Its in a gray area, but it looks like it and its sure smells like it. Tom then said you can make this decision in this closed session which way you want me to go. Jim Rigsbee agreed to have Tom do the letter. Mayor Flynt also agreed to the letter. After a few more questions revisited Jimmy Landreth was okay with Tom sending a letter. Derek ended this conversation with he was good.

The Contractual Agreement portion of this closed session ended; Alisa left the closed session for the opening of the Staffing Opportunity portion.

Approved June 11, 2020

\_\_\_\_\_ Mayor

Attest \_\_\_\_\_ Town Clerk