

Memo

From: Charles Meyer and Eileen Geller

cc: Mayor Albert D. Bugg, III, Town Council of Irvington, Virginia

Date: June 4, 2021

Re: Public Report¹ on Investigation into Allegation of Financial Mismanagement asserted against Town of Irvington, Virginia and Resulting Audit

I. Introduction

O'Hagan Meyer, PLLC (the "Firm"), has been engaged to investigate allegations of financial misappropriation and mismanagement levelled against the Town of Irvington, Virginia (the "Town") during a Town Council meeting on December 10, 2020, by Klaus Schaschek, a resident of the Town. At that time, Mr. Schaschek addressed Town Council to complain that certain funds had been "misappropriated" and that certain contractual agreements had not been properly approved and funded by the Town Council, among other allegations of financial mismanagement.

Following the December 2020 complaint of "misappropriation of funds" and other alleged financial mismanagement, the Town Mayor and Town Attorney reported these allegations to the Town's Insurance Company, VRSA, so that an independent investigation could be made. The VRSA engaged the Firm to launch this investigation and separately engage Brown Edwards, a certified public accounting firm, to conduct a financial review of the Town's finances that would cover the time period in question. This financial review adopted certain Agreed Upon Procedures ("AUP") to review each disbursement and financial transaction in excess of \$100 from July 1, 2018 through December 31, 2020. *See* Brown Edwards AUP Report attached as **Exhibit A**.

Following its investigation of Mr. Schaschek's allegations, the Firm has concluded that there was no misappropriation of funds by any member of Town Council, the Town Attorney, or Town Staff. The Firm also has concluded that there was no criminal conduct or other conduct alleged by Mr. Schaschek for which the Town could be held civilly liable. The investigation did

¹ This report does not include any written advice of legal counsel to the Town of Irvington, materials prepared in anticipation of litigation, and/or for active administrative investigations concerning matters properly the subject of a closed meeting under Virginia Code § 2.2-3771.

uncover several instances of clerical and booking errors, most of which have been corrected, but the investigation into these allegations did not reveal any instances of intentional wrongdoing or malfeasance for which the Town could be held liable. Specifically, our investigation concluded that the Schaschek Allegations of December 10, 2020 regarding any financial misappropriations are unfounded, while the remaining allegations highlight only clerical errors, most of which had already been corrected.

II. Scope of Investigation

To investigate the allegations of misappropriation and financial mismanagement, the Firm conducted a series of interviews of Town employees, Town Council, the Mayor, former Mayor, Town Attorney, and interim Treasurer, in addition to interviews with Mr. Schaschek. In total, the Firm interviewed thirteen (13) witnesses, many more than once. The Firm also gathered and reviewed over 4,000 pages of financial documents, budgets, bank statements, accounting files, and Town Council meeting minutes. The Town engaged the accounting firm Brown, Edwards & Company, LLP to conduct a review of certain financial transactions from July 1, 2018 through December 31, 2020.

III. Allegations Reviewed

On December 10, 2020, the Town Council held a regularly scheduled meeting to conduct Town business. During the public comment portion of the meeting, Klaus Schaschek, a resident of Irvington, read from a prepared statement, in which he asserted that the Town had misappropriated certain funds and engaged in a pattern of financial mismanagement (the “Schaschek Allegations”). Specifically, Mr. Schaschek alleged:

1. The Town “misappropriated” funds for the Trolley, for a one-time bonus for the Town attorney, and for a payment to Lilian Merrill;
2. The Town Balance Sheet is a “total mess since August,” when the “Equity” and “Retained Earnings” entries were mixed, and liabilities were not properly recorded making it appear as though the Town recorded an increase in Net Income;
3. The CARES Act funds were co-mingled with general operating funds, and the CARES Act Fund account was not reduced by expenditures, which came out of the general operating account;
4. The Flack Shack contract should not have been signed by the Mayor as it was not approved by the Town Council and that this contract “might become a case for the court;”
5. The Town Attorney should have objected to this contract; and
6. The Town Attorney was incorrect in suggesting that funds could be utilized from the Contingency Fund for this project.

Mr. Schaschek then called for the Town to approve a financial audit of the financial records and to limit the Town Attorney’s involvement in Town affairs.

During the course of this investigation, the Firm also reviewed a number of other allegations raised by members of Council and Town Staff. Many of the issues included duplicative claims to those raised by Mr. Schaschek. A number of complaints also pertained to de minimus or clerical errors, which are also not addressed here. In addition, we received complaints regarding internal criticisms or derogatory comments made which were not the basis for our initial engagement and which are not reported here. Other issues raised are not addressed in this Report to the extent they involve any advice of legal counsel to the Town of Irvington; contain materials prepared in anticipation of litigation; and/or reflect active administrative investigations concerning matters properly the subject of a closed meeting under Virginia Code § 2.2-3771.

IV. Legal Authority Governing Investigation

Dillon's Rule

Virginia follows Dillon's Rule, which provides that municipal corporations, like the Town of Irvington, "have only those powers that are expressly granted, those necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable." *Marble Tech., Inc. v. City of Hampton*, 279 Va. 409, 417 (2010). This is because municipal corporations have no powers other than those "clearly and unmistakably granted" by the state. *Id.*

Similarly, the authority granted to the Town by Virginia law is vested in the Council, not individual Council members. Va. Code § 15.2-1401. In other words, no single member of the Council has any authority over Town business or operations in his or her sole capacity; rather, the Council can only act as a single entity, within its limited scope and through its votes.

Service Contract Doctrine

Relevant to this action, the Town's Charter provides: "The council may adopt rules for regulating its proceedings, but no tax shall be levied, or corporate debt contracted, except by a recorded two-thirds vote of all the members elected to the council or appropriation of money exceeding the sum of one hundred dollars be made, except by a recorded affirmative vote of a majority of all the members elected to the council." Town of Irvington Charter, as Amended, Art. III §12. The Town Ordinances mirror this provision in §31.21.

Under the plain language of the Town Charter and Ordinances, the Council may not levy a tax or contract for any "corporate debt" absent a "recorded two-thirds vote of all the members elected to the Council." Meanwhile, appropriations over \$100 require a "recorded affirmative vote of a majority of all the members elected to the Council."

The well-settled "service contract doctrine" provides some clarity and explanation for what constitutes a "debt" for which a recorded two-thirds vote of all the members of Council would be required. Specifically, the Supreme Court of Virginia has stated that "a continuing services contract, for which the municipality agrees to pay in installments as the service is furnished, does not create a present debt for the aggregate amount of all the installments throughout the term of the contract within the meaning of constitutional limitations of municipal

indebtedness.” *Bd. of Sup’rs of Fairfax County v. Massey*, 210 Va. 680, 683 (1970), citing *Bd. of Sup’rs of Fairfax County v. Massey*, 210 Va. 253, 260 (1969).

Applying this doctrine to Irvington’s Charter and Ordinances, a super-majority is not necessary to approve contracts which are “in the nature of continuing-services contracts which fall outside the constitutional debt clause in that they impose no obligation on the governing body to pay for future services, but only to meet accounts payable for services already rendered within each accounting year.” *Herren*, 230 Va. at 395.

V. Relevant Background

Treasurer and Clerk, Sharon Phillips

Sharon Phillips was the second treasurer hired after the Town started utilizing QuickBooks for its accounting and financial recordkeeping. In addition to her role as Treasurer, Ms. Phillips also served (and currently serves) as the Town Clerk. Both positions are considered part-time, and the expectation was that the Treasurer role would consist of approximately 5 hours per week, while the Clerk role would consist of approximately 20 hours per week, for a total of 25 hours a week. These hours were expected to be performed during the Town Office’s business hours of 9 a.m. to 1 p.m. Monday through Friday with 5 hours spent attending meetings during off-business hours. Ms. Phillips advised that, initially, she had no difficulty completing her work during regular business hours. Over time, however, her workload has exponentially increased. Between 2016 and 2020, for example, the number of Town Council meetings has almost tripled.

In February 2020, Ms. Phillips became the sole employee of the Town after the Town Administrator (Roy Kime) resigned. This continued until a new Zoning Administrator was hired in June 2020. Thus, in addition to the increased number of Council meetings, other Clerk-duties, and all her responsibilities as Treasurer, Ms. Phillips also took on all Town Administrator and Zoning Administrator responsibilities for approximately 5 months in 2020. Ms. Phillips indicated that in 2020, her “part-time” 25-hour position routinely required in excess of 60 hours of work a week.

Following the Schaschek Allegations claiming financial misappropriation and mismanagement, Ms. Phillips resigned the Treasurer portion of her duties effective December 17, 2020. She continues working for the Town in her capacity as Clerk.

VI. Findings of Fact Relevant to Schaschek Allegations

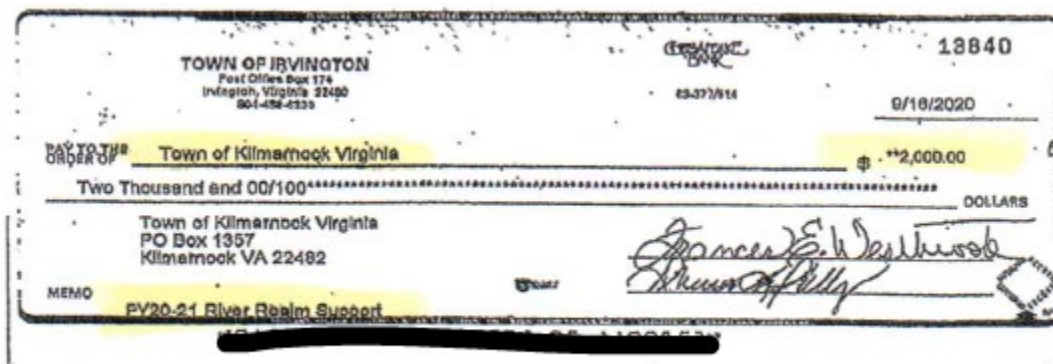
1. That the Town “Misappropriated” Funds for the Trolley; a One-Time Bonus for the Town Attorney; and a Payment to Lilian Merrill.

a. The Trolley.

During our interviews with Mr. Schaschek, he made it clear that he did not intend to allege that anyone engaged in any criminal wrongdoing when he used the word “misappropriated.”²

Mr. Schaschek advised that he receives financial records from the Town by virtue of a standing FOIA request, and he relayed that the “Check Detail” records he received in September 2020 indicated that a \$2,000 payment had been made to “Kilmarnock, Town of” and coded to the “Trolley, Town of Kilmarnock” account. Based on this internal ledger entry, Klaus Schaschek assumed that a \$2,000 check had been improperly sent to the Town of Kilmarnock for the Trolley, which such a payment had never been authorized by Council.

The September 16, 2020 check to “Town of Kilmarnock” in the amount of \$2,000 was in payment of “FY 20-21 River Realm Support,” as noted on the check. The check was signed by Treasurer Sharon Phillips and Vice Mayor Fran Westbrook.



Check 13840 Date: 09/28 Amount: \$2,000.00

A review of the QuickBooks Audit Trail indicates an entry was initially made on September 9, 2020 at 11:00:28 a.m. reflecting an invoice dated August 26, 2020 to Town of Kilmarnock for “FY 20-21 River Realm Support” in the amount of \$2,000. The entry is coded to “Community Support/Tourism: Trolley.” On September 16, 2020 at 12:00:15 p.m., a new entry indicates a bill was paid by check number 13840 to “Town of Kilmarnock.” On December 16, 2020 at 10:29:02 a.m., the original invoice entry in QuickBooks (from September 9, 2020) was updated to change the code from “Community Support/Tourism: Trolley” to “Community Support/Tourism: Virginia River Realm,” to correct the ledger entry.

² Merriam-Webster defines “misappropriation” as “to appropriate wrongly (as by theft or embezzlement).” In addition, Black’s Law Dictionary defines “misappropriation” as “the application of another’s property or money dishonestly to one’s own use; see EMBEZZLEMENT.”

Significantly, the payment to River Realm was properly approved and appropriated by the Town Council, which specifically included this project in the Town's initial 2021 Fiscal Year Budget for \$2,000. The Council then appropriated \$2,000 for River Realm during the September 10, 2020 Council Meeting by unanimous vote.

Findings: There was no misappropriation of funds for the Trolley. There was no \$2,000 payment for the Trolley, or any other payment for the Trolley in 2020. The allegation of misappropriation is misplaced and predicated on an internal clerical error by Ms. Phillips when she initially coded the payment in the QuickBooks program to "Community Support: Tourism: Trolley," instead of coding it to "Community Support: Tourism: River Realm." This clerical error was corrected on December 16, 2020. There is no question the payment to Kilmarnock for River Realm was approved and appropriated by Council and the check accurately addressed and paid to Kilmarnock for the River Realm project.

b. The "One-Time Bonus" to the Town Attorney.

Based on our interviews with Mr. Schaschek and others, we have come to the understanding that Mr. Schaschek and some Council Members believe that the Town did not properly approve a new contract for the Town Attorney. Accordingly, these individuals believe a \$3,000 payment made in September 2020 pursuant to that contract was improper.

On July 1, 2020, Town Attorney Nancyellen Keane sent a Town Attorney Engagement Agreement to Mayor Bugg and the Council Members (the "Town Attorney Contract"). According to its express terms, the Town agreed to pay Keane Law PLLC a fixed monthly rate of \$1,000 per calendar month for the term of the agreement (July 1, 2020 through June 30, 2022) as well as ordinary and reasonable out-of-pocket expenses. In addition, the Town agreed to pay "a bonus of \$3,000 in recognition that the legal services needs of the Town during the 2019-20 year exceeded the contracted amount of five (5) hours per month." Further, the Town Attorney Contract provides that the Town would pay each invoice from Keane Law LLC within 30 days of receipt.

As reflected in the Town Council meeting minutes for the special meeting held July 9, 2020, a Motion to reappoint Keane Law PLLC as Town Attorney for a two-year term was approved by a vote of 4 to 3, with the Mayor providing the tie-breaking vote. In addition, the Motion to authorize Mayor Bugg to execute a contract extension for Town Attorney to June 30, 2022 was approved by a vote of 4 to 3, again with the Mayor casting the tie-breaking vote. As reflected on the executed copy of the Town Attorney Contract, signed by Mayor Bugg on July 13, 2020, the Clerk affixed the Seal of the Town of Irvington and noted "Adopted by the Irvington Town Council during a special meeting held on July 9, 2020."

In addition, as reflected in the meeting minutes for the Town Council's July 9, 2020 special meeting, a motion to appropriate FY20/21 general operating expenses was approved unanimously by the Town Council. A list of "Annual Appropriation" items referenced at the meeting includes "Keane Law, PLLC" as one of the annual expenses included in the "Annual

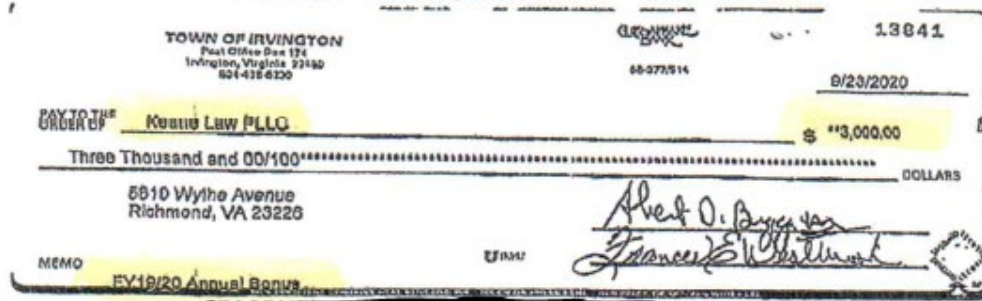
Appropriations” expenses and approved the unanimous vote by Town Council. The Town Council voted 6-0 on July 9, 2020 to approve the list of appropriations.

Annual Appropriation:

- Staff payroll expenses & related payroll taxes
- Utilities
 - Heating Fuel Quarles
 - Electricity Dominion Energy
 - Internet Atlantic Broadband
 - Telephone Atlantic Broadband
 - Water Aqua
- Google
- Ambrose Disposal Service
- Keane Law, PLLC
- Lancaster County (RE/PP tax collection fee
- Contractual Obligations
 - Arrowhead
 - Foster & Three Sons

On September 23, 2020, Check Number 13841 was made payable in the amount of \$3,000 to Keane Law PLLC for “FY19/20 Annual Bonus.” The check was signed by Mayor Bugg and Vice Mayor Fran Westbrook.

Check 13839 Date: 09/28 Amount: \$200.00



Check 13841 Date: 09/24 Amount: \$3,000.00

Some Council Members noted that they had never seen the July 1, 2020 Town Attorney Contract prior to voting on it. Prior to the July 9, 2020 meeting, Council Members had seen the then-existing Town Attorney contract. The contract had been unanimously approved the prior year in June 2019 by a vote of 6-0 in favor. The Town Attorney Contract for Fiscal Year 2021 is identical in all material respects as the Town Attorney’s Fiscal Year 2020 contract with the Town, except as to the term and handling of non-encrypted emails. Both contracts provided for monthly payments up to \$1,000 (for 5 hours of work billed in 1/10th of an hour increments at \$200 an hour), plus a bonus payment of \$3,000 in recognition of the excess hours performed by the Attorney in each prior fiscal year. In total, both Contracts provided for payments of \$15,000 to Keane Law, PLLC.

Several Council Members expressed frustration about a bonus payment being made at the beginning of the term. However, the terms of the Town Attorney Contract explicitly note that the “bonus” payment is in recognition of excess hours worked the prior fiscal year and, therefore, a payment for work done in the past:

Fiscal Year 2020 Contract:

As additional consideration, the Town shall pay the Firm a bonus of \$3000 in recognition that the legal services needs of the Town during the 2018-19 year exceeded the contracted amount of five (5) hours per month. The Firm made an in-kind donation of pro bono legal services to the Town of 200 hours in 2018-19.

Fiscal Year 2021 Contract:

As additional consideration, the Town shall pay the Firm a bonus of \$3000 in recognition that the legal services needs of the Town during the 2019-20 year exceeded the contracted amount of five (5) hours per month (“Bonus”). The Firm made an in-kind donation of pro bono legal services to the Town of over 275 hours in 2019-20.

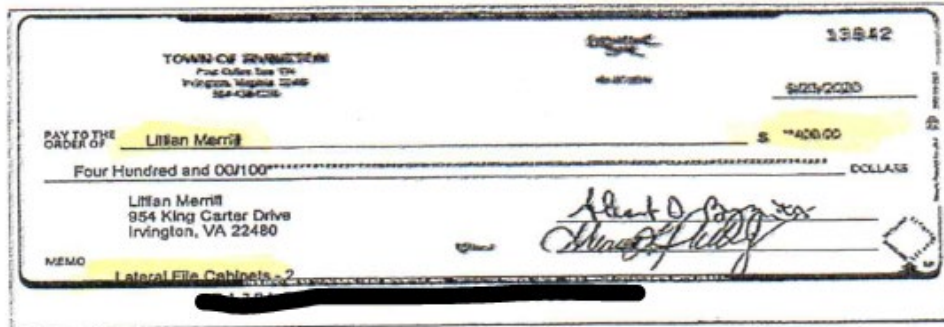
Findings: There was no misappropriation of a one-time \$3,000 bonus for the Town Attorney. The Town Council budgeted \$15,000 for professional services for Fiscal Year 2021; approved the extension of the Town Attorney’s contract with identical terms to the prior fiscal year; and appropriated payments to Keane Law, PLLC, for the 2021 Fiscal Year. The payment of \$3,000 is included in the Town Attorney Contract, which was approved and appropriated by the Council. While the contract was accurately described as having the same terms as the prior contract, it was not actually circulated for review prior to the vote to approve the contract on July 9, 2020.

Some Council Members voiced a second concern that a contract for services cannot be approved by a tie-breaking vote of the Mayor under the Town’s Charter and Ordinances. This objection is not supported by well-settled Virginia law. The Town Charter requires a super majority vote (and precludes a tie breaking vote of the Mayor) only for the raising of taxes and contracts of debt. The Supreme Court of Virginia has explicitly rejected the idea that contracts for “debt” include service contracts, such as the Town Attorney Contract, where payment is due and owing after services are rendered to the Town. As such, the Town Attorney Contract is a valid and binding legal obligation of the Town.

c. The Payments to Lillian Merrill.

Mr. Schaschek noticed a payment on the Town’s financial records to “Lillian Merrill” but did not see where the Council had ever approved or appropriated funds for that particular payment. Nor could Mr. Schaschek determine the reason for this payment. Faced with this incomplete information, Mr. Schaschek included this complaint in his December 10 presentation.

Based on our interviews and review of relevant documents, a one-time payment of \$400 was made to Lillian Merrill for the purchase of two file cabinets on September 23, 2020, Check Number 13842. The check was signed by Mayor Bugg and Ms. Phillips for payment of “Lateral File Cabinets – 2,” as indicated on the check. We can find no record of any other payments to Lillian Merrill, and a review of the QuickBooks Audit Trail confirms this one payment entered on September 24, 2020 at 10:23:26 a.m., for Check Number 13842 dated September 23, 2020 in the amount of \$400 and coded to “Office Expense: Equipment.”



Check 13842 Date: 09/28 Amount: \$400.00

According to our interviews with Ms. Phillips and Mayor Bugg, this expenditure was incurred to obtain two file cabinets from town resident Lillian Merrill. As reflected on the Town Council meeting minutes for June 11, 2020, the Council approved the FY 20/21 Budget, which included a line item for “Office Expenses” in the amount of “\$12,940.” Further, as reflected on the Town Council meeting minutes for July 9, 2020, the Town Council appropriated expenditures up to \$750 for “Projected Cash Disbursements.” As Vice Mayor Fran Westbrook explained (and as captured in the July 9, 2020 Town Council minutes), this \$750 approved appropriation was intended to cover unknown office expenses:

the anticipated expenditures for the month of July. We do have the category of projected cash disbursements and while that is not backed by any invoices this represents office supplies that are purchased online using the town debit card. We don't know the price prior to the purchase so we don't have the invoice to tie into this so we are estimating a projected cash disbursement for the month of July to cover office supplies. Any questions?"

Likewise, Council voted to appropriate an additional \$750 for “Office Supplies” during the August 13, 2020 meeting.

During our interview, Ms. Phillips explained that when the Town moved out of its old office in September of 2020, the movers broke one of the Town’s existing file cabinets. The movers replaced that cabinet at their expense. Ms. Phillips then inquired about the new filing cabinet, as the Town needed additional filing cabinets to store zoning records. The movers advised that they knew of some used filing cabinets available for purchase from Irvington resident, Lillian Merrill. After speaking with the Mayor about the purchase, Ms. Phillips contacted Ms. Merrill and was able to negotiate a discounted purchase price for the filing cabinets needed to store the Town’s zoning files.

During interviews for this investigation, some Council Members voiced their concerns about this purchase by Ms. Phillips, because she did not seek prior approval of Council to spend \$400 for these file cabinets. Some Council Members stated that Ms. Phillips was not permitted to make any purchases in excess of \$100 without first seeking approval of the Council. When asked whether this purchase, which was coded in the Town’s financials as “office expense,” qualified as an office expense for which the Council previously appropriated as much as \$1,500 in votes on July 9, 2020 and August 13, 2020, some Council Members took the position that

filing cabinets are not an “office expense” but a capital asset, which was not appropriated in either of those meetings.³ A \$200 used item is not usually categorized as a capital asset.

Findings: There is no evidence that any funds were “misappropriated” when the Town paid \$400 to Lillian Merrill for her filing cabinets. The payment was made for needed office equipment to store Town zoning records. This is undisputed. According to the Town’s Financial Policy, purchases at less than \$500 do not require prior approval from Council. Further at a “unit cost” of \$200 this purchase, even though for furniture, did not qualify as a “fixed asset” under the Policy. Moreover, during the July 9, 2020 and August 13, 2020 meetings, the Council specifically authorized a combined \$1,500 in projected cash disbursements for office expenses that would be incurred in the future. There is no evidence of any wrong-doing or violation of Town policy with respect to this purchase.

Mr. Schaschek and some members of Council were under the erroneous impression that all expenditures over \$100 had to be pre-approved by a majority of Town Council. We can find no Town policy to this effect. There seems to be some confusion about the Town Charter provision requiring that all appropriations greater than \$100 must be approved by a super-majority of Council. The plain language of the Charter makes clear that this super-majority vote only applies to appropriations, not expenditures. Council can appropriate a General Operating budget for “office expenses,” for example, and need not then engage in separate appropriation votes to authorize every individual expenditure falling within that budget, just as Council did with the two \$750 office expense appropriations votes approved by the Council on July 9, 2020 and August 13, 2020.

³ The Minutes from the September 23, 2020 Budget and Finance Committee workshop on the budget reveals a discussion about these filing cabinets in which members of Council specifically stated that the purchase could be coded to “office expenses” and the line item budget for “office expenses” was increased to cover this cost.

In fact, the Committee increased the Office Expense line item from \$14,000 to \$15,500 to account for the purchase of the filing cabinets, carpeting for the new office, and other expenses:

F. Westbrook: I do think maybe that would be more appropriately reflected in office expense as opposed to using the mayor’s fund for that, because that’s what we are using it for. So if that’s the case, Sharon you plan on spending how much \$1,000?

Sharon Phillips: The lateral files are \$400 and the carpet right now is \$500.

F. Westbrook: So if we raise office expense to \$15,000 from \$14,000, does that sound.

B. Schaschek: I think so. If you think \$1,000 is going to cover it, if you think you need more than \$1,000, you think \$1,000 is sufficient.

Sharon Phillips: The carpet is \$500 and the lateral files are \$400.

B. Schaschek: But that’s today, you don’t know what tomorrow is. So why don’t we add an extra \$500 to it because you don’t know, if you don’t spend it then it just.

Sharon Phillips: I do think we are in a bit of a state of flux with the new office, we just don’t know what we’re going to need, when we’re going to need it. We were all in one room.

(Minutes for Town Council Workshop held September 23, 2020 at pages 15-16.)

Brown Edwards noted that the overall office expenses exceeded the limited amount appropriated by Town Council in July and August 2020. This limited, piecemeal appropriation highlights the importance and efficiency of making annual, general appropriations for all such operating expenses at one time, instead of doling out limited monthly appropriations that fail to meet budgeted and/or actual expenses.

2. Errors on the Town Balance Sheet

In his Allegations, Mr. Schaschek also notes that the financial records reflect an increase in retained earnings, which improperly reflects increased property values, not increased earnings.

In reviewing the Town’s QuickBooks entries, the values of Town’s property holdings were increased to reflect the 2019 Lancaster County Property Reassessment on August 7, 2020. These entries were coded as “Retained Earnings” and account for the difference between the “Equity” and “Retained Earnings” entries noted by Mr. Schaschek that first appeared on the Town’s August Balance Sheet.

Date	Num	Adj	Name	Memo	Account	Debit	Credit
08/07/2020	51			Per 2019 Real Estate Reassessment - to North Commons		310,000.00	
				Per 2019 Real Estate Reassessment - to Retained Earnings			310,000.00
						310,000.00	310,000.00
08/07/2020	52			Per 2019 Real Estate Reassessment - to Main Commons		168,800.00	
				Per 2019 Real Estate Reassessment - to Retained Earnings			168,800.00
						168,800.00	168,800.00
08/07/2020	53			Per 2019 Real Estate Reassessment - to Town Office		51,700.00	
				Per 2019 Real Estate Reassessment - to Retained Earnings			51,700.00
						51,700.00	51,700.00

(QuickBooks Journal Entry Report.) The Audit Trail indicates that these entries were actually made on August 10, 2020 at approximately 2:14 p.m. and backdated to August 7, 2020.

Ms. Westbrook explained that the Budget and Finance Committee decided to increase these values to reflect the increased property value of the Town’s real property. Ms. Westbrook acknowledged, however, that even though Mr. Marchetti is on the Budget and Finance Committee, he was not part of the decision to make this adjustment.

Ms. Westbrook acknowledged that she approved increasing these values to reflect the new assessment, but denied making the actual entries in QuickBooks. Ms. Westbrook stated that she assumed Ms. Phillips made the entries. Ms. Phillips likewise denied making the entries in QuickBooks and stated that Ms. Westbrook made these entries. Because there is only one log-in for QuickBooks, we are unable to determine who prepared these QuickBooks entries.

Findings: Mr. Schaschek raises a valid concern regarding an improper retained earnings entry on the balance sheet in August 2020. The balance sheet was incorrectly adjusted on August 10, 2020 (backdated to August 7, 2020) to reflect an increase in property values as “Retained Earnings.” This coding was a clerical error. Unfortunately, this revision was also made in contravention of generally accepted accounting principles, which call for assets to remain at their initial purchase price value on the balance sheet until they are subject to improvements or are sold.

3. CARES Act Funds Comingled with General Operating Funds

Mr. Schaschek next alleges that, despite the novelty of CARES Act funding to localities as a result of the Covid-19 pandemic, that it “is against accounting practice” to comingle normal operating funds and CARES Act funds. He takes issue with the fact that the CARES Act account was not actually debited by the amount of qualified expenses, as such expenses came out of the Town’s general operating fund. We sought clarification from Mr. Schaschek regarding these two contradictory positions, and he made clear that the Town could account for CARES Act-qualifying expenditures in two ways: 1) by including them within the general operating budget but including a corresponding liability for any remainder of unspent CARES Act funds, or 2) by segregating the CARES Act expenditures entirely. Mr. Schaschek’s overarching concern was that the CARES Act funds were listed as revenue/income to the Town, and had not been likewise designated as a liability, as those funds would have to be returned if not spent in accordance with the terms of the CARES Act.

By way of background, the CARES Act was passed by Congress and signed into law in March of 2020. Virginia received an allotment of funds based on its population, and then state leaders disbursed funds to localities in June of 2020. The Town’s share of these funds comes from Lancaster County, and funds were distributed to the Town from Lancaster County on July 23, 2020 in the amount of \$35,245.21 and on October 21, 2020 in the amount of \$35,245.21.

Guidance for use of these funds has been minimal and often confusing. The U.S. Department of Treasury recently issued new guidance in the Federal Register on January 15, 2021, with some explanation as to what types of expenses qualify for reimbursement. Specifically, CARES Act funds may only be used to cover costs that:

1. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
2. were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and
3. were incurred during the period that begins on March 1, 2020, and ends on December 31, 2021.

(See Coronavirus Relief Fund for States, Tribal Gov’ts, and Certain Eligible Local Gov’ts, 86 Fed. Reg. 4,182-4,194 (Jan. 15, 2021).)

Significantly, the Town Treasurer contacted a colleague in another locality who is also a member of the Virginia Treasurer’s Association to seek guidance on how the Town should manage the funds. According to the guidance Ms. Phillips received, best practice is to account for CARES Act funds and expenditures through the General Operating Account. In fact, Ms. Phillips’s contact relayed that putting CARES Act funds in a stand-alone budget was not advisable or recommended. Ms. Phillips followed this guidance and maintained all expenditures through the General Operating Account. She coded all eligible expenditures in QuickBooks as “CARES Fund Grant – Expenses.”

When the CARES Act funds were deposited on July 23, 2020 and October 21, 2020, the Town Council was operating on an interim budget from July 1, 2020 through November 17,

2020. It was not until November 17, 2020 that the Town Council approved a budget that reflected the CARES Act funding and provided line items relating to anticipated or incurred expenditures of those funds. Accordingly, expenses incurred prior to November 17, 2020 that were nevertheless reimbursable under the CARES Act had to be paid out of the General Operating Fund, as there was no Council-approved mechanism providing otherwise. Further, expenditures that qualify as reimbursable expenses under the CARES Act but which were incurred prior to the receipt of any CARES Funds on July 23, 2020, by necessity, had to be paid out of the General Operating fund (such as the PPE purchased in May, June, and July 2020).

Findings: In light of the novelty of the CARES Act and the limited and often ambiguous guidance provided by the Treasury Department as to approved uses during the initial months of the pandemic, it is difficult to find any evidence of financial mismanagement regarding the initial handling of these funds. As such, qualifying expenditures should be accounted for and booked like other unique grants or similarly-situated restricted funds. Because qualifying expenditures pre-dated the receipt of the actual funds, initial expenditures necessarily came out of the General Operating account. Based on our interview of the Interim Treasurer and review of other municipalities, the Town reasonably may continue to account for expenditures through its General Operating account, but should move funds from the CARES Act account into the General Operating account to reimburse for all qualifying expenses submitted as CARES Act expenses. In addition, the Town should not list CARES Act funds as an “asset” without recording a counterbalancing “liability” on its Balance Sheet.

4. The Flack Shack Contract Not Properly Approved and “Might Become a Case for the Court”

Mr. Schaschek then raised concerns relating to the “Flack Shack”⁴ Contract not being properly approved. Mr. Schaschek contends that the vote to authorize the Mayor to sign the contract was improper; that the underlying grant application could not bind the Town; and that this “might become a case for the court.”

After speaking with Mr. Schaschek, we understand he believes the 3-1-1 vote authorizing the Mayor to enter into the “Flack Shack” Contract is not valid and enforceable. He also questioned whether the grant application itself could create a binding obligation of the Town. When asked what he meant by claiming the matter “might become a case for the court,” he shared that he was concerned about the Town’s liability if it did not pay the amounts due and owing to “Flack Shack” under the contract. In essence, he shared his concern that the Town could be sued for breach of contract.

There is a lengthy history associated with the Flack Shack Contract, which arises out of a grant application to the Virginia Tourism Corporation (“VTC”) first proposed in late 2019 by several Irvington businesses, who wanted to include the Town as a grant partner. We located a discussion on the record during the Council’s October 10, 2019 meeting during which then-Mayor Rannie Ransone advised the grant partners that “you have our blessing to get a group

⁴ While Mr. Schaschek’s written remarks refer to the “Flag Shak” contract, we understand him to mean “Flack Shack.”

together and if staff can be of any assistance to you and maybe get this filled out and if you need hard figures you might have to call Bonnie or Fran to help you.” The Mayor suggested that the grant partners be in touch with Mr. Kime or Ms. Phillips for assistance.

The application was eventually submitted with the Town’s participation in December of 2019, and approved by the VTC in February 2020. During the February 13, 2020 Council Meeting, Council discussed the project briefly and indicated that it would consider how much funding to put into the project at a future budget workshop. Because of Covid-19 and related issues, the Budget and Finance Committee was unable to meet to conduct any such workshops until the fall of 2020. As a result of COVID related delays, the 2020-2021 Fiscal Year Budget initially consisted of a reauthorization of the same figures utilized in the 2019-2020 Budget, which obviously contained no delineated funding for this project.

Ultimately, during Council’s September 10, 2020 meeting, the Council voted to authorize Mayor Bugg to be the Town’s representative on the grant project and to execute a contract with Flack Shack to begin the work on this project. The discussion on the record on September 10, 2020, however, indicates an objection from Council Member Schaschek, who noted that the Council never formally voted to approve the submission of the grant application and questioned whether it is a binding obligation of the Town. The Town Attorney noted that the application was submitted by the Town and the other four partners, and further pointed out that “Council approved the application and there was probably some sort of conversation at the table but they were authorized to submit the application.” The Council ultimately voted to approve the motion by a vote of 3-1-1, with Ms. Schaschek abstaining from the vote. Following this vote to approve the Flack Shack contract, Mayor Bugg executed a contract with Flack Shack, on October 5, 2020.

Findings: On September 10, 2020, Town Council voted to enter into a contract with Flack Shack. That vote was valid and proper under the Town Charter. The contract approval did not require four affirmative votes by Council, because, as detailed more extensively above, contracts for services rendered are not “debts.” Like any services contract, therefore, the Flack Shack contract did not require a super-majority vote for approval. In light of the 3-1-1 approval vote and subsequent engagement of Flack Shack by contract signed by the Mayor on October 5, 2020, this obligation is a valid and binding obligation of the Town regardless of any connection to the underlying grant.

As for the grant application, at the October 2019 meeting the Mayor represented that the grant partners had approval to move forward with the application and should be in contact with Ms. Phillips to do so. This statement by the former Mayor may constitute sufficient express authority for Ms. Phillips to represent the Town on this application. Even if it did not, the doctrine of apparent authority would nevertheless operate to bind the Town on the grant application submitted and authorized by the Town’s Clerk. Whether or not Ms. Phillips was authorized to be the Town’s representative on the grant application is somewhat of a moot issue, given the Town’s decision to approve the Flack Shack Contract. If the Town wished to reject the grant funding and avoid any obligations relating to the grant, it should not have approved the Flack Shack Contract. Further, it seems prudent and an exercise of the Town’s fiduciary duty to seek the partial reimbursement available under the grant in light of the binding contractual

obligations with Flack Shack. If not, the Town will expend some \$25,000 in marketing-related expenses required under the contract and would forfeit the \$15,000 reimbursement available under the grant.

5. The Town Attorney Should Have Objected to the Contract with Flack Shack.

Mr. Schaschek ascribes some blame to the Town Attorney relating to the VTC grant application and subsequent Flack Shack contract, because he believes that the Town Attorney should have known that the application was being submitted without approval. Mr. Schaschek also asked “council to curtail the lawyer’s involvement in the town's affairs, give her only very specific tasks.” When asked about these contradictory expectations, he reiterated that the Town Attorney should only get involved in legal issues when asked to do so by the Council or Mayor.

Findings: From our review of meeting minutes, the Town Attorney was never asked to provide any input on the grant application process, whether in the application preparation or submission stage. Nor was the Town Attorney asked to weigh in on any legal issues relating to the grant after it was approved by the Virginia Tourism Corporation. To the extent Mr. Schaschek takes issue with the Town Attorney's statement during the September 10, 2020 Council meeting that “[t]he grant itself when it was submitted was a contract,” grants are contractual in nature. A party agrees to the terms and conditions imposed by the grantor, upon submission of the application, in exchange for the use of specified funds. To the extent the receiving party fails to abide by those terms and conditions, the funds would have to be repaid. In addition, it appears that the Town had bestowed apparent authority, if not express authority, on Ms. Phillips as the Town's point of contact for the grant application process. During the October 2019 meeting, then Mayor Ransone expressly stated that the grant partners had the Town's full support and that they should contact Ms. Phillips or Mr. Kime for assistance in completing the application. Further, to the extent Mr. Schaschek means that the Town Attorney should have objected to the Mayor signing the contract with Flack Shack, that action was properly approved by the Council, as discussed in the previous section.

6. Funds for the Flack Shack Contract Should Not Have Come Out of the Contingency Fund.

Mr. Schaschek next takes issue with the use of the Contingency Fund, from which Council agreed to use \$3,000 to pay Flack Shack for services rendered with this project. Because there was no budget in place until November 17, 2020 with a dedicated line item for this particular obligation, Council members discussed options for funding this project during the September 10, 2020 Council meeting. According to the minutes, during the course of this discussion, the Town Attorney said “I have a question about the appropriation. If you come into an expense that you weren’t thinking you were going to have, there is a contingency fund that you use for certain things. I don’t know whether you would consider using that for this or any portion of it but I’m sure there is a way to appropriate funds if you want to do it. It just matters if you want to do it or not.” Sept. 10, 2020 Minutes at p.8-9. Ms. Westbrook responded, “You are right and we have done that when we have had unexpected expense come forward.” Sept. 10, 2020 Minutes at p.10. Ms. Westbrook then suggested that the Council appropriate the \$3,000 from the contingency fund to pay Flack Shack until the new budget was adopted that would account for the full obligation under the contract. At that meeting, Council voted 3-1-1 to

appropriate those funds. However, because four affirmative votes were required, Council conducted a second vote on this issue during the October 8, 2020 meeting, which resulted in a vote of 5-0 to appropriate funds for this project.

Mr. Schaschek told us that his concern with utilizing funds out of the Contingency Fund relates to future budgets and a review of prior year spending. When funds come out of the Contingency Fund, there is no readily apparent information indicating how those funds were utilized. In his opinion, the funds for this project should have come out of the line item for “Tourism,” notwithstanding that such an action would have gone over the designated budget for that line item.

We asked Ms. Westbrook about the use of the Contingency Funds and specifically about the concerns Mr. Schaschek raised. Ms. Westbrook noted that state law requires that if a budget goes over by more than 1%, the Town would be required to prepare an amended budget. This expenditure would have accounted for a more than 1% increase over the Town’s then-existing budget. In addition, she noted that the Budget and Finance Committee was already working on an Amended Budget that would eventually be presented and approved in November 2020, and which would account for the full Flack Shack contract obligation and funds that would be paid under that agreement.

Findings. While Mr. Schaschek directs this concern toward the Town Attorney, Ms. Westbrook, who chairs the Budget and Finance Committee, was in agreement with this strategy and explained the reasoning for it. We find no error in the Town opting to account for this expenditure through the Contingency Fund, particularly in light of the reasons outlined by Ms. Westbrook. We would also note that the Council approved the Amended Budget in November 2020, which specifically includes a line item for this expense, which should alleviate the concern Mr. Schaschek raised.

VI. Additional Issues Identified during this Investigation

1. Interim Treasurer’s Findings

Following Ms. Phillips resignation as Treasurer, the Town retained the services of Jay Sanudo of Robinson, Farmer, Cox CPAs to perform the treasurer services on an interim basis. In the course of his day-to-day review of the Town’s financial records, Mr. Sanudo highlighted several transactions that raised red flags for him. The first was a journal entry in QuickBooks entered on June 30, 2018 but noted to be retroactive to the 2015 fiscal year. The entry noted an addition of \$106,618.94 applied to “Retained Earnings,” which concerned Mr. Sanudo for several reasons, including the fact that it was backdated and reported as retained earnings without any explanation or reason for this entry.

A Town Council member recalled that the Town was conducting an internal audit at the time and thought that the change was likely made in order to reflect the ending balance of the Town’s checking account as of June 30, 2018 so the new fiscal year could start with accurate figures. Thus, while this transaction concerned Mr. Sanudo from an accounting standpoint, it does not appear to present any legal issues or misappropriation relevant to our review.

The second series of transactions that concerned Mr. Sanudo were made in August of 2020. Mr. Sanudo noted that the value of certain property held by the Town was increased to 2019 Lancaster County Property Assessment values through these entries. In addition, the increases in property value totaling \$530,500 were improperly booked as “Retained Earnings.” Mr. Sanudo advised that generally accepted accounting principles (“GAAP”) would require the value of fixed assets to remain at their historic purchase price until they are sold or undergo substantial capital improvements. To the extent such increases were noted, however, they would need to be classified as Assets, not “retained earnings.”

Mr. Sanudo also alerted us to the fact that the Town had been withholding federal unemployment taxes even though it is exempt from such withholdings. Mr. Sanudo advised that he has updated the payroll tax calculation since taking over the Interim Treasurer duties, and those taxes have been properly calculated and paid for 2021.

Finally, Mr. Sanudo was concerned that there was only one login and password for the QuickBooks system, which prevents tracking who makes entries and/or changes in the records. Standard practice is to provide individual login and passwords for every individual authorized to use QuickBooks. According to our interviews, several individuals accessed QuickBooks and made entries in the system at various points in time during the relevant time period. It is unclear who else may have been able to access the system or if passwords were shared. We recommend that every person authorized to access QuickBooks in the future have his or her own log-in and password and that log-in information not be shared.

2. Audit Findings from Brown Edwards

As noted, Brown Edwards was engaged to conduct a review of the Town’s finances subject to certain Agreed Upon Procedures (“AUP”), which are included in the AUP Report attached as Exhibit A. While we do not intend to repeat all of the findings from that AUP Report, a few issues bear discussion here.

Brown Edwards identified a series of banking transfers that occurred during the audit period. Several of those transfers lack appropriate support or authorization in Council Minutes. This includes a transfer in February of 2019 (although Council retroactively approved that transfer), and two transfers between the General Operating Account and a Money Market account in May and August of 2020. The latter transfers have no record support. Ms. Phillips advised that these two transfers were performed at the direction of Ms. Westbrook, who wanted to ensure that the Town’s General Operating Account balance was not too high, as funds would perform better if they were held in the Money Market account instead. However, there is no Council authorization in any of the minutes to support these transfers.

In addition, Brown Edwards identified certain account openings and closings for which supporting documentation was missing. This included the lack of documentation indicating that certain individuals were authorized to open or close accounts. Specifically, an account was closed in February 2019 by Ms. Westbrook, but there is no documentation indicating that she was authorized to conduct business on behalf of the Town with respect to that account.

Likewise, in February 2020, Kathleen Pollard closed a CD account, and there is no documentation indicating that she was authorized to conduct business on behalf of the Town with respect to that account.

Despite the lack of approval and documentary support for these transfers, Brown Edwards was able to verify and match transfer amounts, meaning that there was no misappropriation of funds resulting from these transfers. Regardless, the Town should implement and follow procedures for properly authorizing and approving transfers, even between Town accounts, and follow strict documentation requirements for authorized persons to act on behalf of the Town with respect to opening and closing accounts.

Finally, Brown Edwards identified a documentation concern with respect to the Town's documentation of Town business at Council meetings. During the initial stages of the AUP, the meeting minutes provided by the Town did not include back-up documentation with a definitive record indicating what actually got approved for payment by Council, even though the minutes may reflect a discussion of the material and an affirmative vote. As a result, Brown Edwards was initially unable to verify the approval of many expenditures incurred by the Town during the audit period. The only remedy for this issue was to provide the physical minute books maintained by the Town directly to Brown Edwards for review. We understand that the Town does not currently maintain those records in an electronic format—only in the hard-copy minute book with originals included in a bound book that makes the records difficult to access for copying or scanning purposes.

As a best practice going forward, we would recommend that the Town maintain an electronic file of its records that contains the complete minutes with all documents appended in one PDF (or similar) file. This will better-facilitate FOIA requests for the information, future audits of this type, and other requests for official records of the Town.

VII. Conclusions and Recommendations

After a thorough review of the documents, interviews with stakeholders, and an evaluation of governing legal authority, we find no evidence of any misappropriation of funds by any member of the Town staff or Town Council. Under any reasonable interpretation of the word “misappropriation,” we find no evidence of wrongdoing. Specifically, there was no theft or fraud with respect to the \$2,000 payment to Kilmarnock, the \$3,000 payment to Keane Law, PLLC, or the \$400 payment for the purchase of filing cabinets to Lilian Merrill. To the extent Mr. Schaschek intended to communicate that the Council had not approved and appropriated funds for any of these expenditures, that allegation lacks merit. All of these limited expenditures were approved by Town Council and contractually enforceable. Although the check to Kilmarnock was misclassified in the Town's QuickBooks system, that error was de minimus and corrected. There was no payment or misappropriation for the Trolley. These funds came out of the correct budget.

Likewise, we find no merit to Mr. Schaschek's contention that the Flack Shack contract was not approved by Council. As acknowledged by Mr. Schaschek, this contract was approved by a 3-1-1 vote on September 10, 2020. This affirmative vote is sufficient to approve a services

contract like the contract with Flack Shack. We now understand that when Mr. Schaschek suggested that this contract “might become a case for the court,” he meant to communicate that if the Town did not make payments owed under the Flack Shack contract, then the Town could be subject to suit for breach of contract. We agree with Mr. Schaschek on this point, and Council should be certain to fulfill the Town’s obligations and continue to appropriate funds due and owing to Flack Shack and any other party that has entered into a contract with the Town for services rendered.

Mr. Schaschek ascribes some blame to the Town Attorney relating to the Virginia Tourism Corporation grant application and subsequent Flack Shack contract. From our review of meeting minutes, the Town Attorney was never asked to provide any input on the grant application process, whether in the application preparation or submission stage. Nor was the Town Attorney asked to weigh in on any legal issues relating to the grant after it was approved by the Virginia Tourism Corporation.

Mr. Schaschek correctly highlighted an accounting error with Retained Earnings on the Balance Sheet. In so doing, however, he accused the “treasurer” of creating the problems with the Balance Sheet. Our review indicates that the problem stems from the direction of a Town Council member, not the Treasurer. The increase in book value of property is also in contravention of generally accepted accounting principles.

Ultimately, there appears to be mounting frustration involving a misunderstanding of the Council’s statutory and legal obligations relating to approval of contracts. Some Council members (and Mr. Schaschek) believe that a super-majority of Council members is required to approve any expenditure over \$100. This is not an accurate reading of the Town’s Charter or Ordinances. Some Council members and Mr. Schaschek conflate “expenditures” of \$100 and “appropriations” of \$100. The Charter and Ordinances require only that “appropriations” exceeding \$100 be approved by a super-majority of Council. Neither the Charter nor Ordinances require a super-majority vote for expenditures over \$100.

The current part-time staff levels are not adequate and workloads exceed the hour expectations for staff. This was true even before the COVID-19 Emergency. Unfortunately, the Town is only paying current staff positions for 20 or 25 hours a week, respectively, when, in fact, the work hours significantly exceed those contracted hours, year over year.

The Town’s Financial Policy, which has largely gone unused, sets out a division of labor and checks and balances to ensure that no one employee retains total control over all aspects of the Town’s finances. However, from February 2020 until the appointment of an Interim Treasurer in January 2021, Ms. Phillips performed all such tasks.

One complicating factor is the Town’s February 2020 decision to reclassify the Town Administrator position into a Zoning Administrator with a new job description. According to a review commissioned by then-Mayor Ransone, the Town needed to add an additional staff member to the roster, for a total of three part-time individuals. One would serve as the Clerk and Treasurer, one as the Zoning Administrator, and one as an Administrative Assistant. The Town Council declined to add an Administrative Assistant, leaving the Town with only two part-time

employees, neither of whom is the Town Administrator. The Financial Policy delegates a number of oversight tasks to the Town Administrator (a position that doesn't exist), most of which are apparently being performed currently by the same employee.

We recommend that the Town Council consider whether amendments to its Charter and structure of government are necessary. As it stands, the Town Council acting as a body manages the Town (*i.e.*, no employee, any one Council member, or the Mayor can provide oversight or instruction to Town staff as to day-to-day operations and handling). This creates obvious and unnecessary micromanagement by the Council and the potential for confusion among staff in the event individual members of Council attempt to provide oversight or management. We recommend the Town study whether it should amend its governing documents to create a Council/Manager style of government or to provide additional authority and oversight to the Mayor. At a minimum, the Council needs to either budget for and approve the hiring of a third staff member to handle the day-to-day administration assigned by the Financial Policy to the "Town Administrator," or amend its Policies to re-distribute those responsibilities among current staff. As noted, no member of Council can perform these staff positions without forfeiting their elected position on the Council.

We further recommend that the Town consider retaining the out-sourced services of Mr. Sanudo with Robinson, Farmer, Cox as the Financial Policy contemplates that the Treasurer and Clerk would provide separate services relating to financial management. If Mr. Sanudo (or a similarly situated CPA with a respectable firm) is delegated the Treasurer responsibilities, the Town hires an Administrator (or delegates those job duties to the Mayor), then Ms. Phillips as the Clerk would have no overlap in duties, which appears to have been spirit behind some of the separation in tasks assigned under the proposed Financial Policy (*i.e.* "Financial duties and responsibilities must be separated so that no one employee has sole control over cash receipts, disbursements, payroll, reconciliation of bank accounts, etc."). We also recommend a formal vote with a copy of the finalized Financial Policy attached to clarify the terms of the Policy that the Town intends to follow.

Finally, Council is advised to refrain from utilizing language that could be construed as derogatory or defamatory. This is particularly true of statements made during public meetings and on the record, but this advice applies with equal force to comments made during executive sessions and/or in interactions with the general public in any kind of official capacity. This should not be construed as advice against any criticism whatsoever, but it should be construed as advice to choose words wisely.

Members of Council should not use derogatory language and should refrain from calling anyone—including Town staff, Town Officers, and each other—a "liar," "derelict," "incompetent," or any other derogatory term. Doing so exposes the Town and/or themselves to potential liability for defamation. Such derogatory language also undermines the comity and professionalism of Town Council and adversely impacts morale and the capacity to hire and retain qualified staff and Town Officers. Finally, Council should also refrain from characterizing positions taken and statements made that are inconsistent with or not reflected in the verbatim minutes.

Recommendations:

Based on our review, we recommend that the Town Council take the following steps to facilitate operations and move beyond this period of contentiousness:

- Improve the formal record of Council business by appending or otherwise recording documents which form the basis of any Council votes to minutes (such as the Financial Policy, which was voted on in June of 2018 but not appended to the Minutes, or certain appropriations votes for which a list of expenditures was present at the Council table during the meeting but not appended to the Minutes). We further recommend saving that record in an electronic format for ease of access in the future;
- Direct the Interim Treasurer, Jay Sanudo, to make the appropriate adjustments to the Town's accounts relating to CARES Act funding;
- Correct the Balance Sheet and revert the property holdings back to their original acquisition values in keeping with generally accepted accounting principles. In the alternative, these entries should be reclassified from "Retained Earnings" to "Equity" as suggested by Mr. Schaschek if the Council decides to retain the reassessed values on the Balance Sheet;
- Continue to retain the services of Robinson, Farmer, Cox and Mr. Sanudo (or some other reputable CPA firm) for the handling of the Treasurer duties moving forward;
 - This would include delegating payroll (and calculation of payroll taxes) to Robinson, Farmer, Cox and Mr. Sanudo (or some other reputable CPA firm);
- Upgrade the Town's QuickBooks software to the most recent version and create individual log-ins and separate passwords for every individual who uses the software;
 - To the extent the Town opts not to utilize outside services for the preparation of payroll and associated payroll taxes, the Town should utilize the payroll services available through the QuickBooks software to 1) ensure that the Town is utilizing the proper calculations and 2) submit payments automatically and in a timely fashion;
- Implement a strategy to ensure the Town is not unnecessarily paying taxes for which it is exempt, including unemployment payroll taxes and sales tax;
- Request that the VTC grant partners continue to present regular updates on the project to Town Counsel; ask for updates from Flack Shack on work performed to date; and follow-up on the status of submissions to VTC for reimbursement, as the deadline to seek reimbursable funds is fast approaching;
- Implement a financial policy or prepare (with the input of the Interim Treasurer) a new policy governing operations and a division of labor consistent with the Town's goal of

separating duties among staff so that no one employee is responsible for all financial-related tasks;

- Conduct a study of the workload and job responsibilities of Town staff and/or consider adopting the recommendation from Mayor Ransone in 2020 to hire a third staff member in order to address increased workload issues among staff;
- Consider amendments to the Town Charter to provide greater authority and oversight responsibility to the Town Mayor (akin to Urbanna) or create a Town Manager style of government (akin to Kilmarnock) as the Town's current Mayor/Council system provides limited authority and guidance over day-to-day operations of the Town, which cannot be performed by Council;
- Attend the governance and orientation training provided by the Town Attorney or other qualified counsel (to the extent any individual member of Council has not attended within the last 12 months) as a refresher on the extent and limits of Council's authority and the legal requirements Council must meet in performing its duties. This training may also address some of the concerns relating to the increased number of meetings and Council's ever-increasing workload;
- Return to the annual general appropriation procedure for all anticipated Town expenditures in the General Operating Budget to avoid a piecemeal, monthly approach to appropriating funds and to ensure that the Town is able to meet its financial obligations in a timely and efficient manner;
- Consider holding a leadership retreat for the Town Council and Mayor during which Council Members and the Interim Mayor can get to know one another better and develop plans and guidelines for Council priorities in the coming year. A number of organizations specialize in moderating such retreats, including organizations that specialize in moderating local government retreats;
- Undergo employment law and HR training on the role of Town Council in supervising employees and how to navigate potential employment claims while also preventing and avoiding those claims from arising in the first place by following best EEO practices.

Thank you for the opportunity to evaluate the issues raised and for your consideration of these findings and recommendations. We look forward to addressing any questions Council may have regarding this report and the proposed recommendations moving forward.

TOWN OF IRVINGTON, VIRGINIA
AGREED-UPON PROCEDURES REPORT
December 31, 2020

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**INDEPENDENT ACCOUNTANT'S REPORT
ON APPLYING AGREED-UPON PROCEDURES**

Town of Irvington, Virginia and
Virginia Risk Sharing Association
Irvington, Virginia

We have performed the procedures described in Schedule A on the cash disbursements and banking transactions of the Town of Irvington, Virginia, (the "Town") for the period July 1, 2018, through December 31, 2020. The Town Council is responsible for approving cash disbursements and related banking transactions on behalf of the Town.

The Town has agreed to and acknowledged that the procedures performed are appropriate to meet the intended purpose of assisting users in determining whether the Town's cash disbursements and related banking transactions for the period July 1, 2018, through December 31, 2020, were properly approved. Additionally, Virginia Risk Sharing Association has agreed to and acknowledged that the procedures performed are appropriate for their purposes. This report may not be suitable for any other purpose. The procedures performed may not address all the items of interest to a user of this report and may not meet the needs of all users of this report and, as such, users are responsible for determining whether the procedures performed are appropriate for their purposes.

The procedures and associated findings are described in Schedule A.

We were engaged by the Town to perform this engagement to apply agreed-upon procedures and conducted our engagement in accordance with attestation standards established by the American Institute of Certified Public Accountants. We were not engaged to and did not conduct an audit or review engagement, the objective of which would be the expression of an opinion or conclusion, respectively, on the Town's cash disbursements and banking transactions for the period July 1, 2018, through December 31, 2020. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

We are required to be independent of the Town and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements related to our agreed-upon procedures engagement.

This report is intended solely for the information and use of the Town of Irvington, Virginia, and Virginia Risk Sharing Association and is not intended to be and should not be used by anyone other than these specified parties.

Brown, Edwards & Company, L.L.P.

CERTIFIED PUBLIC ACCOUNTANTS

Newport News, Virginia
June 4, 2021

Your Success is Our Focus

SCHEDULE A

Procedure #1:

Obtain all monthly account statements for all deposit and investment accounts held by the Town, as indicated by management, for the period from July 1, 2018, through December 31, 2020.

Results:

Accountant obtained monthly account statements for the following accounts and periods:

1. Chesapeake Bank: Two Checking accounts for the period July 2018 through December 2020.
2. Chesapeake Bank: One Money Market account for the period February 2019 through December 2020.
3. Chesapeake Bank: One CARES account for the period July 2020 through December 2020.
4. Chesapeake Bank: Two Certificate of Deposits (CDs) and related automatic renewals for the period July 2018 through December 2020.
5. Chesapeake Bank: Two CDs and related automatic renewals for the period February 2019 through December 2020.
6. Virginia Commonwealth Bank: One CD and related automatic renewals for the period July 2018 through November 2020.

Findings:

We noted no exceptions as a result of this procedure.

Procedure #2a:

For all disbursements greater than or equal to \$100.00, obtain third-party documentation supporting the vendor and amount as noted on the cancelled check. (Note: This third party documentation may consist of receipts, invoices, and/or executed contracts.)

Results:

Accountant identified a total of 463 disbursements for testing. Payroll disbursements to employees comprised 58 of these disbursements. Accountant agreed these disbursements to internally-generated Town payroll records without exception. The remaining 405 disbursements were subjected to the Procedure above.

Findings:

Third-party documentation supported the cancelled check without exception	350
Third-party documentation did not support the cancelled check (see Schedule B for details)	18
No documentation available to perform Procedure (see Schedule B for details)	37

Procedure #2b:

For all disbursements greater than or equal to \$100.00, obtain documentation supporting the authorization to pay, as evidenced in Council Minutes noting the disbursement was included in a budget adopted by majority vote of those present and voting, and was appropriated by motion adopted by vote of a majority of all members elected to Council (four Council members).

SCHEDULE A (Continued)

Procedure #2b (continued):

Findings:

The following expenditures by budget line item were made in excess of Council-approved budget appropriations:

FY18/19:

Community Support and Tourism, Flags & Banners

Appropriated budget: \$7,900.00 Actual expenditure: \$7,949.40

Capital Expenditures, Town Hall Renovations

Appropriated budget: \$- Actual expenditure: \$225.00

FY19/20:

Office Expenses for July, August, and September, not specifically appropriated individually or as part of the annual appropriation

Appropriated budget: \$1,500.00 Actual expenditure: \$2,444.52

Individual disbursements:

Disbursement was included in an adopted budget and appropriated by Council 419

Disbursement was for an amount not specifically approved by Council (see Schedule C for details) 5

No documentation available to perform Procedure (see Schedule C for details) 3

Disbursement not appropriated by Council (see Schedule C for details) 32

Procedure #3:

Trace transfers and ensure the amount is appropriately mirrored in another account held in the name of the Town.

Findings:

Accountant noted no exceptions as a result of this procedure. All transfers were mirrored in another account held in the name of the Town.

Procedure #4:

For all transfers greater than or equal to \$100.00, obtain supporting documentation that the transfer was approved by motion or resolution of Town Council authorizing the transaction via affirmative vote of a majority present and voting.

Results:

Accountant noted transfers on the following dates involving the following accounts:

1. February 2019:
 - a. two checking accounts, a money market account, and two CDs at Chesapeake Bank
 - b. CD at Virginia Commonwealth Bank
2. August 2019: a checking account and a money market account at Chesapeake Bank
3. March 2020: a checking account and a money market account at Chesapeake Bank
4. May 2020: a checking account and a money market account at Chesapeake Bank
5. August 2020: a checking account and a money market account at Chesapeake Bank

Findings:

Accountant noted Council authorization documented in Council meeting minutes via motion or resolution: Transfers #1, #2, and #3. (Accountant notes that Council approval for Transfer #1 did not occur until after the transaction took place. Council approval prior to the transaction occurring was not sufficient to support all details of the transfer.)

No documentation was available to support Council authorization: Transfers #4 and #5.

SCHEDULE A (Continued)

Procedure #5:

For accounts that were opened and/or closed during the period, obtain information directly from bank regarding the identity of the representative(s) of the Town who initiated the opening or closing of the account, as applicable, and ensure those individuals are included on bank signature cards or account opening documents identifying individuals authorized to conduct business with the bank on behalf of the Town. For purposes of this procedure, closing an account shall also encompass the in-person withdrawal of such an amount as to result in a zero ending balance per the monthly bank statement.

Results:

Accountant noted the following accounts that were opened and/or closed during the period:

1. Chesapeake Bank money market account was opened in February 2019.
2. Chesapeake Bank checking account was closed in February 2019.
3. Two Chesapeake Bank CDs were opened/purchased in February 2019.
4. Chesapeake Bank 30-day automatically renewing CD was closed in February 2020.
5. Chesapeake Bank CD opened/purchased in February 2020.
6. Chesapeake Bank CARES account was opened in July 2020.

Findings:

1. Documentation was obtained indicating the account was opened by Frances Westbrook on behalf of the Town. As such, she is included as a signatory on the account per the bank documents.
2. Frances Westbrook initiated a withdrawal of such an amount as to result in a zero ending balance per the February 2019 bank statement. No documentation was provided to indicate that Frances Westbrook was an authorized individual to conduct business on behalf of the Town with regard to this specific checking account.
3. Documentation was obtained indicating the purchase of the CDs was initiated by Frances Westbrook. As such, she is included as a signatory on the account per the bank documents.
4. Documentation was obtained indicating the CD was closed by Kathleen Pollard; however, no documentation was provided to indicate that Kathleen Pollard was an authorized individual to conduct business on behalf of the Town with regard to this CD.
5. There was no documentation available from the bank to identify the representative of the Town who initiated the opening of the account. As such, accountant was unable to perform Procedure over this transaction.
6. There was no documentation available from the bank to identify the representative of the Town who initiated the opening of the account. As such, accountant was unable to perform Procedure over this transaction.

SCHEDULE B

Details of instances where third-party documentation did not support the cancelled check (includes donations/contributions):

Check Cleared Date	Vendor	Check #	Amount	Explanation of Exception
07/30/2018	Steamboat Era Museum	13475	\$ 1,200.00	2018 Crab Fest donation - no third-party support available
12/3/2018	Steamboat Era Museum	13520	\$ 5,000.00	FY18/19 Pledge - no third-party support available
02/22/2019	Atlantic Broadband	13558	\$ 180.45	portion of vendor statement missing - unable to agree vendor statement to amount paid
06/28/2019	Rappahannock Record	13617	\$ 741.00	vendor invoice is for \$722.00 - amount paid is before credits were applied
07/02/2019	White Stone Volunteer Fire Department	13598	\$ 2,100.00	annual donation - no third-party support (acknowledgements do not include dollar amounts)
12/17/2019	Rappahannock Record	13713	\$ 146.26	vendor invoice is for \$394.88
06/18/2020	White Stone Volunteer Fire Department	13790	\$ 2,100.00	annual donation - no third-party support (acknowledgements do not include dollar amounts)
06/18/2020	White Stone Volunteer Fire Department	13791	\$ 10,000.00	Public Safety ATL Fire Grant - no third party support
06/23/2020	Atlantic Broadband	13785	\$ 182.99	portion of vendor statement missing - unable to agree vendor statement to amount paid
07/21/2020	Steamboat Era Museum	13805	\$ 1,200.00	2020 Crab Fest donation - no third-party support available
07/27/2020	Terminix	13806	\$ 323.00	vendor invoice is for \$333.00
08/18/2020	Lancaster County	13824	\$ 2,578.29	Request for Payment from Lancaster Co. Electoral Board is for \$2,579.29 - \$1 difference
09/02/2020	B&B Construction	13829	\$ 760.00	per email from vendor, deposit check was in the amount of \$750
10/13/2020	ICN - See Lease	13848	\$ 1,352.00	Rent for October 2020 - amount does not agree to payment stipulated in lease (corrected with December payment)
10/16/2020	BMS Direct	13857	\$ 225.53	vendor invoice is for \$250.00
10/23/2020	Atlantic Broadband	13859	\$ 187.34	unable to agree vendor statement total to amount paid
11/18/2020	Atlantic Broadband	13869	\$ 194.45	portion of vendor statement missing - unable to agree vendor statement to amount paid
12/18/2020	Lancaster County EDA	13894	\$ 6,000.00	CARES Small Business Grants - no third-party supporting documentation

Details of instances where no third-party documentation was provided (unable to be located by the Town):

Check Cleared Date	Vendor	Check #	Amount	Check Cleared Date	Vendor	Check #	Amount
07/09/2018	Irvington Baptist Church	13457	\$ 225.00	06/29/2020	Irvington Baptist Church	13792	\$ 500.00
8/1/2018	DBT CRD 1024 08/01/18 Amazon Card # 1421	n/a	\$ 103.42	6/29/2020	POS DEB 06/26/20 Amazon C1421	n/a	\$ 151.43
9/25/2018	Rappahannock Rentals Inc	13498	\$ 126.76	7/1/2020	POS DEB 06/30/20 Amazon C1421	n/a	\$ 135.13
1/22/2019	DBT CRD 01/21/19 Amazon C#1421	n/a	\$ 200.04	07/10/2020	POS DEB - Amazon	n/a	\$ 115.82
2/21/2019	DBT CRD 02/20/19 Amazon C#1421	n/a	\$ 111.90	7/16/2020	POS DEB - Amazon	n/a	\$ 481.10
3/19/2019	POS DEB 03/18/19 Amazon C#1421	n/a	\$ 325.38	07/27/2020	Arrowhead Lawncare	13798	\$ 730.00
3/20/2019	POS DEB - 03/19/19 Amazon C#1421	n/a	\$ 124.62	08/17/2020	Irvington Baptist Church	13817	\$ 200.00
4/23/2019	DST CRD 04/22/19 AMZN Digital C#1421	n/a	\$ 189.00	08/17/2020	Dominion Virginia Power	13815	\$ 777.51
5/14/2019	POS DEB 05/13/19 - AMAZON C#1421	n/a	\$ 141.10	08/24/2020	Irvington Baptist Church	13823	\$ 200.00
5/14/2019	POS DEB 05/14/19 WALMART C#1421	n/a	\$ 171.94	9/25/2020	DBT CRD 09/21/20 Wix.com	n/a	\$ 204.00
06/04/2019	Town of Kilmarnock Virginia	13595	\$ 250.00	09/28/2020	Irvington Baptist Church	13839	\$ 200.00
07/29/2019	POS DEB 07/26/19 Amazon C#1421	n/a	\$ 101.06	10/29/2020	POS DEB - Amazon	n/a	\$ 117.22
8/20/2019	POS DEB 08/20/19 AMAZON C1421	n/a	\$ 141.08	11/16/2020	Irvington Baptist Church	13873	\$ 100.00
10/07/2019	DBT CRD 10/04/19 Amazon C1421	n/a	\$ 149.00	12/17/2020	Connemara Corporation	13888	\$ 300.00
10/21/2019	POS DEB 10/21/19 Walmart C1421	n/a	\$ 159.19	12/17/2020	Pos Deb - Amazon	n/a	\$ 131.63
11/25/2019	POS DEB 11/25/19 Amazon C1421	n/a	\$ 302.38	12/17/2020	Pos Deb - Amazon	n/a	\$ 207.13
12/03/2019	POS DEB 12/3/19 Amazon C1421	n/a	\$ 178.13	12/18/2020	Pos Deb - Amazon	n/a	\$ 193.68
4/30/2020	POS DEB - Amazon C1421	n/a	\$ 346.40	12/28/2020	Steamboat Era Museum	13893	\$ 2,500.00
6/24/2020	POS DEB 06/24/20 Amazon C1421	n/a	\$ 110.54				

SCHEDULE C

Details of instances where disbursement is for an amount other than that approved by Council:

<u>Check Cleared Date</u>	<u>Vendor</u>	<u>Check #</u>	<u>Amount</u>	<u>Explanation of Exception</u>
12/23/2020	Paul Elbourn	13896	\$ 3,797.65	Council approved a bid of \$3,400 by unanimous vote (4-0) on June 11, 2020, at a special called meeting
10/08/2020	D.F.C	13844	\$ 705.00	At the regular planned meeting on 9/10/2020, Council approved up to \$1,000; however, a total of \$1,092 was spent.
12/29/2020	D.F.C	13897	\$ 387.00	
09/02/2020	B&B Construction	13829	\$ 760.00	Original proposal was for \$10,735, plus a subsequent addendum for \$360 which is a total of \$11,095; however, a total of \$11,848 was actually paid.
10/26/2020	B&B Construction	13863	\$ 11,088.00	

SCHEDULE C (Continued)

Details of instances where no documentation was able to be provided to support Council approval:

Check Cleared Date	Vendor	Check #	Amount
7/3/2018	TAX PAYMEN VA DEPT TAXATION	n/a	\$ 579.00
07/09/2018	Irvington Baptist Church	13457	\$ 225.00
07/23/2018	Virginia Municipal League	13460	\$ 408.00

Details of instances where expenditures were not appropriated by Council approval:

Check Cleared Date	Vendor	Check #	Amount
08/12/2019	Party Line	13648	\$ 1,630.82
08/14/2019	Creative Designs of Virginia	13637	\$ 204.50
08/14/2019	Entertainment Systems	13644	\$ 750.00
08/15/2019	Chesapeake Academy	13654	\$ 300.00
08/16/2019	Barbour Printing Services, Inc.	13643	\$ 102.00
08/16/2019	C. W. Lowery	13646	\$ 240.00
08/21/2019	Rappahannock Record	13639	\$ 275.00
08/22/2019	Town of Kilmarnock Virginia	13660	\$ 2,250.00
08/23/2019	Ambrose Disposal Service, Inc.	13655	\$ 203.00
08/29/2019	Rappahannock Record	13661	\$ 352.50
09/04/2019	Mary K Earhart, PLLC	13663	\$ 140.00
10/18/2019	Carol Clark	13674	\$ 250.00
11/15/2019	Johanna Carrington Design	13695	\$ 120.00
12/11/2019	M Design	13711	\$ 161.37
02/18/2020	Paul Elbourn	13743	\$ 1,970.52
04/08/2020	C. W. Lowery	13755	\$ 240.00
5/28/2020	DBT CRD - Display Sales	n/a	\$ 747.57
06/08/2020	Lancaster County	13780	\$ 432.40
7/13/2020	DBT CRD 07/12/20 Apple.com C1421	n/a	\$ 346.44
8/03/2020	DBT CRD Google	n/a	\$ 264.00
8/21/2020	POS Deb - Amazon	n/a	\$ 137.39

SCHEDULE C (Continued)

Details of instances where expenditures were not appropriated by Council approval:

Check Cleared Date	Vendor	Check #	Amount
08/24/2020	Irvington Baptist Church	13823	\$ 200.00
11/16/2020	Irvington Baptist Church	13873	\$ 100.00
11/17/2020	Rappahannock Record	13872	\$ 655.51
11/27/2020	DBT CRD - USPS	n/a	\$ 123.00
12/16/2020	DBT CRD - Norton	n/a	\$ 104.99
12/16/2020	DBT CRD - Walmart	n/a	\$ 133.62
12/17/2020	Pos Deb - Amazon	n/a	\$ 131.63
12/17/2020	Pos Deb - Amazon	n/a	\$ 207.13
12/18/2020	Pos Deb - Amazon	n/a	\$ 193.68
12/22/2020	Entertainment Systems	13889	\$ 500.00
12/23/2020	DBT CRD - USPS	n/a	\$ 149.10