

**Hazen City Commission
Special Meeting
August 23, 2018
Hazen City Hall**

Present: President Obenauer, Commissioner Pillar, Commissioner Stern and Commissioner Wolf.

Absent: Commissioner Haack

Others Present: Editor Dan Arens, Auditor Erhardt, Jerod Klabunde, Luke Arnold, Josh Reiner & Jon Schroeder (Moore Engineering), Trevor Christianson & Ted Billadeau (Mayo Construction).

The meeting was called to order at 3:01 PM by President Obenauer.
President Obenauer led the Pledge of Allegiance.

CONSULTATION WITH ATTORNEY & ENGINEER

2018 Street Project – Patching/Paving Cost Discussion: President Obenauer thanked everyone for attending the meeting and expressed a wish to figure out and resolve the issue of the patching and paving costs.

Jerod Klabunde, Moore Engineering, continued the discussion of the issue stating; there is \$189,846.03 for patching and the issue is not the quality of work completed as the work completed is very good. The question goes back to contract specifications and a hope to find a common ground. Mr. Klabunde was prepared to discuss the specifications and patching. Commissioner Pillar addressed the fact that a contract was signed, and everyone recognizes the value of the work completed. Commissioner Pillar stated he is not an expert and he is unable to determine the effect of the extra time that streets were open and hopes to come to a “mid-point” as conditions are hard to prove after the fact and he would like to determine a reasonability of more damage caused because milled streets were left open. Trevor Christianson, Mayo Construction, presented information to the commission. Mr. Christianson understands there is a contract between the city and Mayo, as well as a contract between the city and Moore Engineering and that the issue is not between Mayo and Moore. Mr. Christianson said the initial schedule was presented on May 3rd and milling was started seven days later than proposed while paving was eleven, or twelve, days later so work was only four days off the original plan. The contractor had no intentions of leaving things open but, there were concerns about the two-inch and four-inch mill streets that were brought up at the weekly meetings. Ted Billadeau, Mayo Construction, brought up curb removal concerns addressed at the 5/17 and 5/24 meetings. Commissioner Pillar asked how these concerns were stated and Mr. Christianson said there was less concern about the schedule and more about design. Commissioner Pillar asked if there was ever a discussion about blocking off streets to limit traffic. Mr. Christianson explained that the full depth streets were addressed first and the two-inch milling began on June 13th and there were some areas with obvious problems immediately after milling. Commissioner Pillar said the commission understood that there would be some type of patching required in different areas. Mr. Christianson talked about how some trouble areas were evident and looking for direction on how to proceed when areas were not marked.

Commissioner Pillar talked about special meetings of the commission to address issues. Mr. Christianson presented photos of areas that were brought up in the weekly meetings with one photo illustrating areas of concern next to paving done on one side of the road. Commissioner Wolf expressed concern about how long that area had been open, and Mr. Christianson explained that the pavement was thin and the amount of time it was open did not matter. Mr. Billadeau spoke about the condition of base on 2nd Ave NE, by city hall, and the fact that it was in good shape and the street didn't "flex" under traffic like a lot of the other streets. Mr. Christianson stated that when the asphalt left after milling is too thin it won't last. Mr. Christianson said there were seventy-five patches done throughout the town and the fact that this number may have grown because of traffic. Mr. Christianson said a large portion of the four-inch milled streets did not hold up and the city commission acted to fix areas with the cement treated base. Mr. Christianson said there were some two-inch mill areas where the same thing happened and questioned why the crack sealing ended up being double the quantity contained in the plans. President Obenauer asked if this grew this much since the estimate was made with no clear reason explained. Mr. Christianson said there was an agreement to do patching and the contractor, in good faith, did this work at a cost less than what is allowed by DOT spec. There was discussion on the exact wording of the DOT spec and two different versions presented by the contractor and engineer. Mr. Christianson then said they agreed to patch and nothing was marked as they were trying to pave, and they had to wait a week or longer for direction. Commissioner Pillar said he had reviewed the videos of the construction meetings and there was no conversation about what to do or waiting for response. Commissioner Stern said that, at the construction meeting he and Commissioner Wolf attended, there was discussion about some of the cost of patching being the responsibility of the contractor. Mr. Christianson indicated that they were patching for seventeen days. Commissioner Pillar indicated that he didn't hear any concerns expressed in the construction meetings and Mr. Billadeau stated that most of the construction meetings included comments and Mr. Christianson said perhaps the conversations could have been portrayed different. Mr. Klabunde said he had discussion with the contractor about options to reduce costs relating to the repairs and patching. Mr. Christianson said the areas were fixed in good faith and discussed the change order for cement treated base and a deduction for asphalt cement to balance the change order. Mr. Klabunde attempted to explain the use of contingency and variables available when using recycled asphalt as part of the mix design and Mr. Christianson asked why the deduct from the cement treated base change order was not used to cover patching costs. Commissioner Pillar stated it was clear there were areas that needed to be patching but, it seems that a road milled is not going to hold up to traffic for a long period of time. President Obenauer said that Divide Ave did not appear that bad when first milled and Mr. Billadeau said there were places exhibiting deflection under normal traffic. Commissioner Pillar stated the biggest contention is that streets that were left open longer became worse. Mr. Christianson said the length had to do with staffing as the cement treated base and patching slows down production hugely. Commissioner Wolf said that some of the patching could have been avoided had the streets been paved earlier; some not all of it. Mr. Christianson then addressed the contract and verbiage relating to changed conditions and the process to file a claim, if necessary but, he stated he wants to be fair and work it out. Commissioner Pillar asked about the

patching and Mr. Christianson said they had reduced their price for patching based on 2,094 tons of patching. Luke Arnold, Moore Engineering, said there were 2,094 tons of mix for patching two-inch mill streets, and 1,518 tons of this amount were for streets that were not paved within five days. Mr. Arnold continued saying that 400 tons of mix, for patching, has been paid for and he does not contend that the contractor is responsible for 100%. Mr. Klabunde said he could not recall waiting two weeks for a decision on anything and Jon Schroeder, Moore Engineering, said he worked with Pete Lewis, Mayo Construction to ensure patch areas were marked ahead of paving and there were areas that fell apart in front of the paver. Mr. Klabunde said the schedule did change based on conversations at the pre-construction meeting. Mr. Klabunde then brought up the fact that pavement cores were done prior to bidding and Moore Engineering has been involved in many two-inch mill projects. Mr. Klabunde also stated that, had the spec been longer, everyone would have bid the project differently. Mr. Klabunde said the commission can make a recommendation for payment and the contractor can accept it or file a claim. Mr. Billadeau brought up patching on 1st Street NW and the fact that the whole street was in poor condition. President Obenauer said the commission understands that there were conditions that were bad and there has been many good comments, from the public, about the project. Mr. Christianson said he has no idea where the city stands on the patching cost and President Obenauer said \$189,000 is not realistic nor is \$11,000 reduced cost for large patches. Commissioner Pillar said he understands the comment on good faith and he is not concerned with the workmanship as he tries to make the best decision for the city and the residents. Mr. Christianson added that they have not submitted any bills for extra work. Mr. Christianson said bidding is tight and the company is not a large corporation. Commissioner Pillar said he does not feel they are not being cooperative and the conditions, of the project, were exacerbated by time and streets were crumbling more and more. Mr. Christianson stated streets were milled and paved and the major cost is for material that is in the street. Mr. Klabunde stated he agreed that there is a benefit to the material that is in the street and he could look at the number of patches, quantities and price to make a recommendation to the city. Commissioner Pillar said his goal is to be fair and he has no intention of gouging anyone. Commissioner Stern had a question about the amount of \$189,000 and was informed this is the amount for patching prior to any retainage. Commissioner Stern also asked for the expenses for patching; tar, oil, labor, overhead and profit. Mr. Christianson said this would be hard to calculate unless it could be based on a full-day because crew will be doing patching part of the time and something else for part of the time. Mr. Klabunde said, looking at the exact numbers for work beyond the five-day timeframe, would amount to \$59,000. Mr. Billadeau said it is hard to go back now and determine responsibility and Mr. Christianson suggested considering a certain percentage due to the longer period because an amount can't be quantified using square footage. Commissioner Stern asked about labor cost for patching and Mr. Christianson said labor and materials are about half-and-half for machine patching but would be closer to two-thirds-one-third for hand patching. Commissioner Stern then talked about the profit in patching since there is a value in the material and labor he would like to see that paid. Mr. Christianson said the contractor is entitled to 10% profit but, in the current market, most projects are being bid with 5% or less profit. Commissioner Pillar recognizing the value in the product in the streets, moved to deduct \$37,969.21 (20%) from the patching cost for a payment of

\$151,876.82, before retention, second by Commissioner Stern. No further discussion, on roll call vote; Pillar, "Aye", Stern, "Aye", Wolf, "Aye", Obenauer, "Aye", motion carried.

Mr. Christianson brought up some remaining issues: 1) The curb and sidewalk work south of the WRT location on 1st Street SW cannot be completed; 2) how the city wishes to proceed with concrete around manholes and gate valves; and 3) drainage at the intersection of 5th Street/2nd Ave NW and the need to install a valley gutter. Mr. Klabunde recommends a concrete valley gutter for concern #3, which may require hiring another contractor to complete or increasing the concrete used to complete the valley gutter. Moore Engineering said there are a few manholes and gate valves that need to be addressed and they will work with the contractor on addressing these.

There being no further business the meeting was adjourned at 4:51 PM CT. The next regular meeting of the commission will be Tuesday, September 4, 2018 at 5:30 PM CT in the Commission Room of the Hazen City Hall.

Approved: _____
Jerry Obenauer, President

Attest: _____
Monte J. Erhardt, Auditor