

**TOWN OF ABINGDON  
SPECIAL CALLED MEETING  
MONDAY, FEBRUARY 12, 2018 – 10:30 AM  
COUNCIL CHAMBERS – MUNICIPAL BUILDING**

A Special Called meeting of the Abingdon Town Council was held on Monday, February 12, 2018 at 10:30 am in the Council Chamber of the Municipal Building.

**A. WELCOME by *Mayor Lowe***

**B. ROLL CALL – *Cecile Rosenbaum, Town Clerk***

**Members of Council Present:**

Mrs. Cathy C. Lowe, Mayor  
Mr. Richard E. Humphreys, Vice Mayor  
Mr. Robert M. Howard  
Ms. M. Cindy Patterson  
Mr. J. Wayne Craig

**Administrative/Town Staff:**

Greg Kelly, Town Manager  
Cecile Rosenbaum, Asst. Town  
Mgr/Clerk  
Jon Phelps, IT Department  
Kim Kingsley, Paralegal/Deputy Treasurer  
Floyd Baily, Director of IT  
Tony Sullivan, Police Chief

**C. CLOSED SESSION – Pursuant to Section 2.2-3711(A)(7) of the Code of Virginia, 1950, as amended, Council will convene in a closed meeting to discuss potential or probable litigation. (VIDEO 0:46 - 12:36)**

**On motion by Mr. Craig, seconded by Mr. Humphreys, the Council to go into closed session pursuant to Section 2.2-3711(A)(7) of the Code of Virginia, 1950, as amended, for the purpose of discussion possible or probable litigation.**

**The roll call vote was as follows:**

<b>Mr. Craig</b>	<b>Aye</b>
<b>Ms. Patterson</b>	<b>Aye</b>
<b>Mr. Howard</b>	<b>Aye</b>
<b>Mr. Humphreys</b>	<b>Aye</b>
<b>Mayor Lowe</b>	<b>Aye</b>

**On motion of Mr. Craig, seconded by Mr. Humphreys, the Council reconvened in open session.**

**The roll call vote was as follows:**

<b>Mr. Craig</b>	<b>Aye</b>
<b>Mrs. Patterson</b>	<b>Aye</b>
<b>Mr. Howard</b>	<b>Aye</b>
<b>Mr. Humphreys</b>	<b>Aye</b>
<b>Mayor Lowe</b>	<b>Aye</b>

Cecile Rosenbaum, Asst. Town Manager and Clerk, read the following certification to be adopted by the Council members:

***WHEREAS, the Council of the Town of Abingdon, Virginia has convened in a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions set forth in the Virginia Freedom of Information Act; and***

***WHEREAS, Sec. 2.2-3712(D) of the Code of Virginia, 1950, as amended, requires a certification by the Town Council that such closed meeting was conducted in conformity with Virginia law; and***

***NOW THEREFORE, be it resolved, that the Council of the Town of Abingdon, Virginia hereby certifies that to the best of each member's knowledge (i) only public business matters lawfully exempted from an open meeting requirement by Virginia law were discussed in closed meeting to which this certification resolution applies and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Town Council.***

**The certification was as follows:**

<b>Mr. Craig</b>	<b>I so certify</b>
<b>Mrs. Patterson</b>	<b>I do not so certify</b>
<b>Mr. Howard</b>	<b>I so certify</b>
<b>Mr. Humphreys</b>	<b>I so certify</b>
<b>Mayor Lowe</b>	<b>I so certify</b>

Ms. Patterson stated that she left the meeting at approximately 10:55 am after learning that the Council was to discuss appealing a FOIA matter. Ms. Patterson stated that Ms. Lowe and Mr. Humphreys had contacted Mr. Bob Ward about replacing Mark Flynn as their attorney and that of the Town Council. Ms. Patterson stated that she does not agree with appealing this matter and felt she was not informed with regard to the development of this appeal.

**A motion was made by Mr. Humphreys, seconded by Mr. Howard, to retain Bob Ward, Esq. to represent the Council in a FOIA matter pending in the Washington County Circuit Court, as Mark Flynn, Esq. had resigned from the case when he accepted a cabinet position with the government, and authorize the Town Manager to pay fees for said representation from the general funds.**

Ms. Patterson questioned whether Deb Icenhour appeared as co-counsel with Mr. Flynn in this matter. Ms. Patterson stated that she did not receive information, either from Mrs. Icenhour that she has withdrawn her position as co-counsel. Mr. Kelly stated that Mrs. Icenhour was **not (APPROVED CORRECTION: April 2, 2018 Regular Council Meeting)** acting as co-counsel as she was a named defendant and that she has retained separate counsel. Ms. Patterson stated that she apologized if she was incorrect, however that is what was said during the hearing. Ms. Patterson stated that Mrs. Icenhour went into Judge's Chambers and listened to all the information the Judge, Mr. Proctor and Mr. Flynn presented and that she was representing herself verbally as co-counsel. Ms. Patterson stated that she did not understand how that transpired and there was no withdrawal. Mr. Kelly again stated that Mrs. Icenhour never indicated that she was co-counsel, and I would have certainly advised her not to do so, since she was a named defendant in this case. (Video 6:23 – 7:46)

**The roll call vote was as follows:**

<b>Mr. Craig</b>	<b>Nay</b>
<b>Ms. Patterson</b>	<b>Nay</b>
<b>Mr. Howard</b>	<b>Aye</b>
<b>Mr. Humphreys</b>	<b>Aye</b>
<b>Mayor Lowe</b>	<b>Aye</b>

**A motion was then made by Ms. Patterson, seconded by Mr. Craig, to retain separate legal counsel on her behalf.**

Discussion ensued. Ms. Patterson stated that it appears there is a conflict of interest with three Council members voting for and two Council members voting against the appeal. Mayor Lowe requested that Ms. Patterson consult with counsel of her choosing.

**The roll call vote was as follows:**

<b>Mr. Craig</b>	<b>Aye</b>
<b>Ms. Patterson</b>	<b>Aye</b>
<b>Mr. Howard</b>	<b>Nay</b>
<b>Mr. Humphreys</b>	<b>Nay</b>
<b>Mayor Lowe</b>	<b>Nay</b>

**A motion was made by Mr. Humphreys, seconded by Mr. Craig, to instruct the Clerk to post notice that at least three or more Council members may participate in a closed session meeting in Richmond, Virginia on February 20, 2018 at 11:00 am. (VIDEO 12:37 – 15:55)**

Mr. Kelly stated that while in Richmond the Council would need to identify any type of closed session to be held, and it should be identified by a specific section of the code. Brad Stallard, Esq. stated that this is not an open public setting. Ms. Patterson questioned whether the public would be allowed to attend and what type of accommodations. Brad Stallard, Esq. stated that the public would not be allowed in or be allowed to participate.

**The roll call vote was as follows:**

<b>Mr. Craig</b>	<b>Aye</b>
<b>Ms. Patterson</b>	<b>Aye</b>
<b>Mr. Howard</b>	<b>Aye</b>
<b>Mr. Humphreys</b>	<b>Aye</b>
<b>Mayor Lowe</b>	<b>Aye</b>

**On motion by Mr. Craig, seconded by Ms. Patterson, to authorize the Town Manager to pay for travel expenses for Council members attending a closed session in Richmond, Virginia. (VIDEO 15:56 – 16:51)**

Discussion ensued regarding travel to Richmond, Virginia. Mr. Kelly stated that the prior motion should be amended to include travel.

**On motion amended by Mr. Craig, seconded by Ms. Patterson, the Clerk was instructed to post notice that at least three or more Council members would participate in a closed session meeting in Richmond, Virginia on February 20, 2018 at 11:00 am to include up to two nights of hotel accommodations. (VIDEO 16:51 – 17:28)**

**The roll call vote was as follows:**

<b>Mr. Craig</b>	<b>Aye</b>
<b>Ms. Patterson</b>	<b>Aye</b>
<b>Mr. Howard</b>	<b>Aye</b>
<b>Mr. Humphreys</b>	<b>Aye</b>
<b>Mayor Lowe</b>	<b>Aye</b>

Brad Stallard, Esq. questioned whether the subject matter had to be included in the motion.

**MAYOR LOWE NOTED THAT MR. HOWARD LEFT THE MEETING AT 12:28 PM**

Mr. Kelly stated that the agenda should reflect the reason and a motion to go into closed session at that time. Mr. Kelly stated that the initial motion was for a public notice for Feb 20 if you are going to Richmond, spending the night and more than two are planning to be together you need to post notice for the entire travel time together and other times you are together in Richmond.

**On motion by Mr. Craig, seconded by Ms. Patterson, instructed the Clerk to post notice that at least three or more Council members plan to travel to Richmond, Virginia on February 19 - 21, 2018 for the purpose of a closed session on February 20, 2018 at 11:00 am pursuant to Code of Virginia, 1950, as amended, Section 2.2-3711(A)(1). (VIDEO 20:19 - 21:14)**

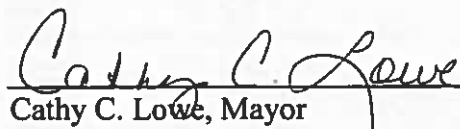
**The roll call vote was as follows:**

<b>Mr. Craig</b>	<b>Aye</b>
<b>Ms. Patterson</b>	<b>Aye</b>
<b>Mr. Howard</b>	<b>Absent</b>
<b>Mr. Humphreys</b>	<b>Aye</b>
<b>Mayor Lowe</b>	<b>Aye</b>

Mayor Lowe stated that she had hoped to schedule the budget meetings; however, Mr. Howard is not here, but may participate in a doodle-poll to give available dates.

Mayor Lowe declared the meeting adjourned.

  
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Kimberly Kingsley, Deputy Clerk

  
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Cathy C. Lowe, Mayor