

**TOWN OF ABINGDON
REGULAR COUNCIL MEETING
MONDAY, JUNE 1, 2009
COUNCIL CHAMBERS - MUNICIPAL BUILDING**

A regular meeting of the Abingdon Town Council was held on Monday, June 1, 2009 at 7:30 p.m. in the Council chambers of the Municipal Building.

Mayor Morgan called the meeting to order and welcomed everyone in attendance.

A. ROLL CALL

Members of Council Present:

Edward B. Morgan, Mayor
Dr. French H. Moore, Jr., Vice Mayor
Mrs. Lois H. Humphreys
Mrs. Cathy Lowe
Mr. Jason N. Berry

Administrative/Town Staff:

Gregory W. Kelly, Town Manager
Cecile M. Rosenbaum, Town Clerk
Deborah Icenhour, Town Attorney
Mark Godbey, Town Treasurer/Dir. Of Finance
Jim Smith, Dir. Of Wastewater Operations/Town Eng.
Garrett Jackson, Dir. Of Planning
Kevin Worley, Dir. of Parks and Recreation
Myra Cook, Dir. Of Tourism
Jim Cowart, Dir. of Econ. Dev/Grants Writer
John Dew, Dir. Of Public Services/Construction
Floyd Bailey, Dir. of Information Technology
Tony Sullivan, Chief of Police
Rob Case, IT Department
John McCormick, Asst. Fire Chief

Visitors:

Lemont Dobson, Dexter Peltzer, Kim Clark, Michael Wartella, Matt Crum, Bobbie Moretz, John Wolfe and others

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At this time Mayor Morgan declared the regular meeting in session and asked the Clerk to call the roll. Mayor Morgan noted that the Council presentation by Dexter Peltzer of the Abingdon Senior Center would resume.

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Mrs. Lowe commented that she felt that Mr. Peltzer should return to his Board for guidance about his anticipated budget shortfall. Mr. Peltzer indicated that he had funding as of this date to operate the Center through September of 2009. At this time, Council indicated that they may need to review the matter again at the August meeting. Dr. Moore inquired about Council contingency funds but commented

that he felt that the Senior Center should be able to sustain itself without reliance on the Council to keep it operational. Mrs. Lowe inquired about food program information that Mr. Peltzer provided. Mrs. Humphreys recommended that Mr. Peltzer begin collecting annual membership dues from the seniors as it has not been emphasized in the past. Mr. Berry commented on the funding allocation for the Center from United Way.

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#### **B. PLEDGE OF ALLEGIANCE.**

The Pledge was not held due to continuation of presentations from the prior work session meeting.

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C. APPROVAL OF MINUTES

- May 4, 2009 Work Session meeting
- May 4, 2009 Regular Meeting

On motion of Mrs. Humphreys, seconded by Mrs. Lowe, the Council approved the minutes of the May 4, 2009 work session meeting and the May 4, 2009 regular meeting minutes as presented.

The roll call vote was as follows:

Mr. Berry	Aye
Mrs. Lowe	Aye
Mrs. Humphreys	Aye
Dr. Moore	Aye
Mayor Morgan	Aye

The motion carried.

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#### **D. SPECIAL EMPLOYEE ACKNOWLEDGEMENTS**

- Mr. Kelly recognized Bobbie Moretz, employee of the Finance Department, and thanked her for her fifteen (15) years of service to the Town of Abingdon.
- Mr. Kelly recognized Nathaniel “ John “ Wolfe, employee of the Coomes Recreation Center, and thanked him for his fifteen (15) years of service to the Town of Abingdon.

#### **E. PETITIONS AND PUBLIC HEARINGS**

- 1. Public Hearing - Public Hearing – Proposed acquisition of real property owned by Clifton-Stewart Rentals, LLC, Mac R. Clifton and Carol T. Clifton, located on Route 11, Lee Highway, Abingdon, Virginia containing 59.335 acres, more or less, (Tax Map No. #'s 086-A-7, 086-A-9, 086-A-18,18A, 19, 20, 21 and 3.523 acre portion of Tax Map #086-A-6) for the purpose of developing and/or locating thereon of business and industry and for any and all public uses, including but not limited to recreational facilities and sports related fields and complexes.**

Mr. Kelly commented that the purpose of the public hearing was for the Town to acquire a piece of property from Clifton-Stewart Rentals, LLC, et al, located on Route 11, Lee Highway and that this action was being taken as a result of the settlement of a lawsuit the sellers had initiated against the Town and Washington County.

Mayor Morgan opened the public hearing asked if anyone wished to speak to the matter.

Kim Clark, representative of Abingdon Health Care Center, LLC, came before the Council and indicated that the her company would be filing a competitive application to obtain a certificate of need to build a skilled nursing facility in the Abingdon area. Mrs. Clark commented at length on the contract that had been negotiated between the Town and sellers of the subject property. Mrs. Clark requested the Council delay decision on the proposed property acquisition and asserted various legal arguments as to why she believed the action should be delayed.

Hunter Smith, representative Abingdon Health Investors, LLC a subsidiary of Smith/Packett, Med-Com, LLC came before Council to ask for their support of the acquisition of the proposed property. Mr. Smith indicated that this company is planning a development on the proposed property site that would include cottages, assisted living facility, and a skilled nursing facility. Mr. Smith noted that State Delegate Terry Kilgore, Congressman Rick Boucher and Delegate Joe Johnson had provided written letters of support for Abingdon Health Investors, LLC certificate of need process.

Mayor Morgan asked if anyone else wished to speak to the matter and hearing no response, declared the public hearing closed.

**On motion of Mr. Berry, seconded by Dr. Moore, the Council went into closed session pursuant to the Code of Virginia, 1950, as amended, Section 2.2-3711(A)(7) for consultation with legal counsel pertaining to actual or probable litigation.**

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

|                       |            |
|-----------------------|------------|
| <b>Mr. Berry</b>      | <b>Aye</b> |
| <b>Mrs. Lowe</b>      | <b>Aye</b> |
| <b>Mrs. Humphreys</b> | <b>Aye</b> |
| <b>Dr. Moore</b>      | <b>Aye</b> |

Mayor Morgan      Aye

The motion carried.

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On motion of Dr. Moore, seconded by Mr. Berry, the Council reconvened in regular session.

The roll call vote was as follows:

|                |     |
|----------------|-----|
| Mr. Berry      | Aye |
| Mrs. Lowe      | Aye |
| Mrs. Humphreys | Aye |
| Dr. Moore      | Aye |
| Mayor Morgan   | Aye |

The motion carried.

The Town Clerk, Cecile Rosenbaum, 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:

|                |              |
|----------------|--------------|
| Mr. Berry      | I so certify |
| Mrs. Lowe      | I so certify |
| Mrs. Humphreys | I so certify |
| Dr. Moore      | I so certify |
| Mayor Morgan   | I so certify |

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At this time, Deborah Icenhour, Town Attorney, addressed the Council members and stated that the Notices for Public Hearing as required by state code had run in the Bristol Herald Courier on May 17th and May 24th. Mrs. Icenhour further stated that the minutes of the April 6th 2009 regular Council meeting specifically stated that the Town Manager and Town Attorney were granted full discretion to act on behalf of the Council to negotiate the settlement of the lawsuit initiated by Clifton Stewart Developers, et al. wherein the Town agreed to purchase the property.

After consulting with Legal Counsel, **On motion of Mrs. Humphreys, seconded by Mr. Berry, the Council authorized the purchase of the 59.335 acres of real property from Clifton Stewart Rentals, LLC and Mac R. Clifton and Carol T. Clifton in accordance with the Real Estate Acquisition contract dated April 8, 2009 and Council further authorized the Town Manager to execute all documents, including financial documents, necessary with carrying out the purchase. The noted purpose of this purchase shall be for the development and location of business and/or industry and for any and all public uses, including but not limited to recreational facilities and sports related fields and complexes.**

The roll call vote was as follows:

Mr. Berry	Aye
Mrs. Lowe	Aye
Mrs. Humphreys	Aye
Dr. Moore	Aye
Mayor Morgan	Aye

The motion carried.

In addition, **On Motion of Mrs. Humphreys, seconded by Dr. Moore, the Council appropriated the sum of \$2,180,000.00 from funds being borrowed from a public bond issue and authorized the Town Manager to use said funds for that purpose.**

The roll call vote was as follows:

Mr. Berry	Aye
Mrs. Lowe	Aye
Mrs. Humphreys	Aye
Dr. Moore	Aye
Mayor Morgan	Aye

The motion carried.

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- 2. Public Hearing – Proposed Bond Issue to provide funds, together with other available funds, to finance the acquisition of the real property by the Town and cost of certain capital improvements to the visitor's bureau, recreation center, and wireless network facilities of the Town and to refund certain obligations of the Town and to pay costs of issuing the bonds.**

Greg Kelly, Town Manager, addressed the Council to explain the purpose of the public hearing was to hear comments on the proposed bond issue. Mr. Kelly indicated that the proposed bond issue funds would be used to fund capital improvement projects in Town, refinance existing debt, and for the purchase of the land from Clifton Stewart Rentals, LLC, et al as was acted on by Council during Agenda Item E1. Mr. Kelly further commented that the low bidder for the bond issue was Carter Bank and Trust.

Mayor Morgan declared the public hearing open and inquired if anyone present wished to speak. Hearing no response, Mayor Morgan declared the public hearing closed.

**On motion of Dr. Moore, seconded by Mrs. Lowe, the Council adopted the resolution set forth in Council Agenda Item H-3 and further authorized the execution of all documents necessary with the issuance of the bonds with Carter Bank and Trust as set forth in the resolution as follows:**

**RESOLUTION OF THE COUNCIL OF  
THE TOWN OF ABINGDON, VIRGINIA AUTHORIZING THE ISSUANCE OF  
GENERAL OBLIGATION BONDS IN AN AGGREGATE PRINCIPAL AMOUNT  
NOT TO EXCEED \$5,150,000, AND PROVIDING FOR THE FORM, DETAILS  
AND PAYMENT THEREOF AND THE REFUNDING OF CERTAIN PRIOR  
BONDS AND AUTHORIZING CERTAIN RELATED ACTIONS**

The Town of Abingdon, a political subdivision of the Commonwealth of Virginia (the "Town") has previously issued bonds (the "Prior Bonds") held by the United States Department of Agriculture, Rural Development, and the Council of the Town (the "Council") desires to reduce debt service costs to the Town by refunding the Prior Bonds.

By resolution adopted May 7, 2007, the Council has previously authorized the issuance of the Town's general obligation bonds in an amount not to exceed \$800,000 to provide funds, together with other available funds, to finance the costs of acquiring the real property generally known as Dunns Meadow, the Town has issued its bond anticipation note for the acquisition, and the Council now desires to provide for the refunding of the bond anticipation note on a long term basis.

The Council has determined to acquire certain real property within three miles of the Town's boundaries, containing 59.335 acres, for the purpose of development or locating thereon businesses and industry and for any and all public uses, including but not limited to recreation facilities and sports-related fields and complexes, and to make capital improvements to the Town's visitors' bureau, recreation center, and wireless network facilities.

The Council desires to provide for the issuance of its bonds or notes, the proceeds of which will be used to refund the Prior Bonds, to provide long-term financing for the acquisition of Dunns Meadow and the 59.335 acres, to pay the costs of the capital improvements to the Town's visitors' bureau, recreation center and wireless network

facilities, and pay the costs of issuing the bonds, to provide for the form, details and payment of the bonds and the refunding of the Prior Bonds and to authorize certain related actions.

BE IT RESOLVED BY THE COUNCIL OF THE TOWN OF ABINGDON:

Section 1.1. Authorization of Bonds. It is hereby determined to be advisable, necessary and expedient for the Town to borrow an amount not to exceed \$5,150,000 in the aggregate, to provide funds, together with other funds that may be available, to refund the Prior Bonds, to provide long-term financing for the acquisition of Dunns Meadow and the 59.335 acres, to pay the costs of the capital improvements to the Town's visitors' bureau, recreation center and wireless network facilities, and pay the costs of issuing the bonds authorized by this resolution. Pursuant to the Constitution of Virginia and the Public Finance Act of 1991, there are hereby authorized to be issued and sold, at one time or from time to time, general obligation bonds or notes of the Town in an aggregate principal amount not to exceed \$5,150,000 (the "Bonds").

The Bonds shall be general obligations of the Town, the principal of, premium, if any, and interest on which are payable from ad valorem taxes to be levied without limitation as to rate or amount on all property in the Town subject to taxation, to the extent other funds of the Town are not available and appropriated for such purpose, and a pledge of the full faith and credit of the Town.

To the extent permitted by Section 15.2-2601 of the Public Finance Act of 1991 (Chapter 26, Title 15.2, Code of Virginia of 1950, as amended) (the "Act"), the Council hereby elects to issue the Bonds under the provisions of the Act without regard to the requirements, restrictions or other provisions contained in any charter or local or special act.

Section 1.2. Details of Bonds. The Bonds shall be issued as fully registered bonds without coupons. Each of the Bonds shall be in the principal amount and shall bear interest at the rate or rates, and the principal thereof and interest thereon shall be repayable in the amounts, all as established in accordance with Section 1.3 of this resolution.

Section 1.3. Principal Amount; Payment Dates and Other Details of the Bonds. Each of the Mayor and Vice Mayor of the Town is hereby authorized and directed to determine, before the issuance of each of the Bonds, the principal amount of the Bond, the date of the Bond, the interest rate or rates thereon or the means for determining such rate or rates, and the due dates and amounts of the installments of principal of and interest on the Bond, the provisions, if any, for optional redemption of the Bond, and all other details of the Bond, provided, however that:

- a. the final maturity of each Bond shall not exceed twenty-five (25) years from the date of the Bond;
- b. the aggregate principal amount of all the Bonds shall not exceed \$5,150,000;
- c. the refunding Bonds shall be issued in a principal amount not exceeding that necessary to amortize the principal of and premium, if any, and interest on the bonds to be refunded and pay all expenses reasonably incurred in the issuance of the refunding bonds less the amount then in any sinking, escrow and other funds which are available for the payment of the principal, premium, if any, or interest on the bonds to be refunded; and
- d. the Bonds issued to pay for the acquisition of the 59.335 acres and the costs of the capital improvements to the Town's visitors' bureau, recreation center and wireless network facilities and the costs of issuing such Bonds shall not exceed \$2,970,000.

The execution of any Bond as described in Section 1.4 of this resolution shall conclusively evidence the details thereof as having been so determined as authorized by this resolution.

Section 1.4. Execution of Bonds. The Bonds shall bear the manual or facsimile signatures of the Mayor or Vice Mayor of the Town and shall bear a manually impressed or imprinted facsimile of the seal of the Town,

attested by the manual or facsimile signature of the Clerk of the Town. In case any officer whose signature shall appear on any Bond shall cease to be such officer before the delivery of the Bond, such signature shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until such delivery. Any Bond may be signed by such persons

as at the actual time of the execution thereof shall be the proper officers to sign such Bond although at the date of such Bond such persons may not have been such officers.

Section 1.5. Form of Bonds. The Bonds shall be in substantially the following form, with such appropriate variations, insertions and omissions as shall be consistent herewith:

No. R-

\$

UNITED STATES OF AMERICA  
COMMONWEALTH OF VIRGINIA  
TOWN OF ABINGDON

General Obligation Refunding [Bond] [Note] Series

Dated Date

Registered Owner:

Principal Amount:

DOLLARS

The Town of Abingdon, a political subdivision of the Commonwealth of Virginia (the "Town"), for value received, hereby acknowledges itself indebted and promises to pay to the registered owner named above or registered assigns, on the maturity date shown above, the principal sum shown above and to pay to the registered owner hereof, interest hereon until payment in full at the rate or rates per annum determined as provided below, payable as follows:

Interest on this bond shall be computed based on a 360-day year consisting of twelve 30-day months.

This bond shall bear interest at the per annum rate equal to

Any payment on this bond shall be applied first to interest accrued to such payment date and then to principal.

Principal, premium, if any, and interest shall be payable in lawful money of the United States of America to the registered owner, at its address as it appears on the registration books kept for that purpose at the principal office of the Clerk of the Town, who has been appointed Registrar. In case the date of maturity of the principal of this bond or the date fixed for the redemption of this bond shall be a date on which banking institutions are authorized or obligated by law to close at the place where the principal office of the Registrar is located, then payment of principal, premium, if any, and interest need not be made on such date, but may be made on the next succeeding date which is not such a date at the place where the principal office of the Registrar is located, and if made on such next succeeding date no additional interest shall accrue for the period after such date of maturity or date fixed for redemption.

This bond has been authorized by a resolution duly adopted by the Council of the Town on June 1, 2009 (the "Resolution"), and is issued pursuant to the Constitution and applicable statutes of the Commonwealth of Virginia, including the Public Finance Act of 1991 (Chapter 26, Title 15.2, Code of Virginia of 1950, as amended) to provide funds, together with other funds that may be available, to [refund certain bonds of the Town] [to acquire certain real property [to make certain capital improvements to the Town's visitors' bureau, recreation center, and wireless network facilities] , and to pay the cost of issuing this bond. Copies of the Resolution are on file at the office of the Registrar. Reference is hereby made to the Resolution and any amendments thereto for the provisions, among others,



describing the pledge of the full faith and credit of the Town and covenants securing this bond, the nature and extent of the security, the terms and conditions upon which this bond is issued, the rights and obligations of the Town and the rights of the holder of this bond.

This bond and the premium, if any, and interest thereon are payable from ad valorem taxes to be levied without limitation as to rate or amount on all property in the Town subject to taxation to the extent other funds of the Town are not available and appropriated for such purpose, and a pledge of the full faith and credit of the Town. This bond and the premium, if any, and interest hereon shall not be deemed to constitute a pledge of the faith and credit of the Commonwealth of Virginia or any political subdivision thereof, except the Town. Neither the faith and credit nor the taxing power of the Commonwealth of Virginia or any political subdivision thereof, except the Town, is pledged to the payment of the principal of, or premium, if any, and interest on, this bond.

[The principal of this bond is subject to prepayment in whole or in part at anytime at the option of the Town without penalty or premium.] Prepayments of installments of principal shall not affect the obligation of the Town to pay the remaining installments payable as provided above.

This bond shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

All acts, conditions and things required by the Constitution and statutes of the Commonwealth of Virginia to happen, exist or be performed precedent to and in the issuance of this bond have happened, exist and have been performed, and this bond, together with all other indebtedness of the Town, is within every debt and other limit prescribed by the Constitution and statutes of the Commonwealth of Virginia.

IN WITNESS WHEREOF, the Town has caused this bond to bear the manual or facsimile signature of the [ Vice] Mayor of the Council of the Town, its seal to be imprinted or impressed hereon and attested by the manual or facsimile signature of the Clerk of the Council of the Town, and this bond to be dated the dated date shown above.

**SEAL**

Attest:

**[SPECIMEN - DO NOT SIGN]**

**[SPECIMEN - DO NOT SIGN]**

Clerk, Town of Abingdon

Mayor, Town of Abingdon

Section 1.8. Registrar. \_The Clerk of the Town is hereby appointed Registrar for the Bonds.

Section 1.9. Registration, Transfer and Exchange. \_The Town shall cause books for the registration and transfer of the Bonds to be kept at the principal office of the Registrar, and the Town hereby instructs the Registrar to keep such books and to make such registrations and transfers under such reasonable regulations as the Town or the Registrar may prescribe. Transfer of the Bonds may be registered upon books maintained for this purpose at the office of the Registrar. Prior to due presentment for registration of transfer the Registrar shall treat the registered owner as the person exclusively entitled to payment of principal, premium, if any, and interest and the exercise of all other rights and powers of the owner.

Upon surrender for transfer or exchange of any Bond at such office, the Town shall execute and deliver in the name of the transferee or transferee a new Bond for the aggregate principal amount which the registered owner is entitled to receive, subject in each case to such reasonable regulations as the Town or the Registrar may prescribe. Any Bond presented for transfer, exchange, or payment, (if so required by the Town or the Registrar) shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and substance reasonably satisfactory to the Town and the Registrar, duly executed by the registered owner or by his duly authorized attorney-in-fact or legal representative. No Bond may be registered to bearer.

The new Bond delivered upon any transfer or exchange shall be a valid obligation of the Town, evidencing the same debt as the Bond surrendered, shall be secured by this Resolution and entitled to all of the security and benefits hereof to the same extent as the Bond surrendered.

Section 1.10. Charges for Exchange or Transfer. No service charge shall be made for any exchange or transfer of the Bonds, but the Town may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto.

Section 1.11. Preparation and Sale of Bonds. The Council hereby determines that it will be in the best interests of the Town and the Commonwealth of Virginia to sell the Bonds to the financial institution or institutions recommended at this meeting by Davenport & Company, the Town's financial advisor. A copy of Davenport's recommendation presented at this meeting is attached hereto and made a part hereof as Exhibit A. The Mayor, Vice Mayor and the Clerk of the Town are

hereby authorized and directed to take all proper steps to have the Bonds prepared and executed in accordance with their terms.

Section 1.12. Application of Proceeds of Bonds. The proceeds derived from the sale of the Bonds shall be paid as follows:

- (a) a portion of the proceeds of the Bonds issued to refund the Prior Bonds shall be paid to the holder of the Prior Bonds to refund the Prior Bonds in full and the balance of such proceeds shall be applied to the payment of the expenses reasonably incurred in issuing such Bonds; and
- (b) the proceeds of the Bonds issued to pay the costs of acquisition of the 59.335 acres and the costs of the capital improvements to the Town's visitors' bureau, recreation center and wireless network facilities (the "Projects") shall be paid to, or at the direction of, the Town Manager who shall promptly deposit the funds in a bank or other depository to the credit of the Town. Such proceeds shall be accounted for through a fund designated "Town of Abingdon Acquisition and Improvement Fund" (the "Fund"), to be applied to the costs of acquisition and capital improvements and the costs of issuance of such Bonds. Withdrawals shall be made from the Fund only after the Town Manager or his designee has certified that the amount being withdrawn from the Fund is being used to pay bona fide costs of the Project or bona fide costs of issuing such Bonds.

The proceeds may be paid initially to the Town for deposit in the Town's general fund and then applied as described above. Each of the Treasurer and the Town Manager of the Town is authorized and directed to receipt for such proceeds and to provide that the proceeds described in subclauses (a) and (b) above are applied as required by this resolution.

## ARTICLE II

### PARTICULAR COVENANTS

Section 2.1. Payment of Bond. The Town shall pay promptly, as provided herein, the principal of, premium, if any, and interest on the Bonds. Nothing in the Bonds or in this Resolution shall be deemed to create or constitute an indebtedness of the Commonwealth of Virginia or any political subdivision thereof other than the Town, or a pledge of the full faith and credit of the Commonwealth of Virginia or of any political subdivision thereof other than the Town.

Section 2.2. Tax Rate Covenant. The Council hereby covenants and agrees that so long as any of any of the Bonds is outstanding, to the extent other funds are not lawfully available and appropriated for timely payment of the Bonds, the Council will levy and collect annually over and above all other taxes authorized or limited by law, an ad valorem tax, without limitation as to rate or amount, on all the taxable property in the Town in an amount sufficient to pay principal of, premium, if any, and interest on the Bonds as the same become due and payable.

### ARTICLE III

#### TAX-EXEMPT OBLIGATIONS

Section 3.1. Tax-Exempt Bonds. The interest on the Bonds issued hereunder for the purpose of paying for the acquisition of the 59.335 acres is intended to be taxable for federal income tax purposes, and the interest on all other Bonds issued hereunder (the "Tax-Exempt Bonds") is intended to be exempt from such taxation. Accordingly, the covenants and provisions in this Article shall apply only with respect to the Tax-Exempt Bonds.

#### Section 3.2 Maintenance of Tax-Exempt Status.

(a) No Adverse Action. The Town shall not take any action that would adversely affect the exemption of interest on the Tax-Exempt Bonds from Federal income taxation. The Town shall, to the extent permitted by Virginia law, take all actions necessary to maintain the tax-exempt status of interest on the Tax-Exempt Bonds under Federal or Virginia law, including all actions necessary to comply with Section 103 or Sections 141 through 150 of the Internal Revenue Code of 1986, as amended (the "Code") or the regulations promulgated by the Treasury Department with respect thereto. Without limiting the generality of the foregoing, the Town shall comply with any provision of law which may require the Town at any time to rebate to the United States any part of the earnings derived from the investment of the gross proceeds of the Tax-Exempt Bonds, unless the Town receives an opinion of nationally recognized bond counsel that such compliance is not required to prevent interest on the Tax-Exempt Bonds from being includable in the gross income for Federal income tax purposes of the registered owners thereof under existing law.

The Town shall not take or approve any action, Arbitrage/Investment the Town shall not, or approval of investment or use of the proceeds of the Tax-Exempt Bonds which would cause the Tax-Exempt Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and the regulations thereunder. The Town, barring unforeseen circumstances, shall not request or approve the use of the proceeds of the Tax-Exempt Bonds other than in accordance with the Town's "non-arbitrage" certificate delivered at the time of the issuance of the Tax-Exempt Bonds.

(c) Tax Compliance Agreement. Each of the Mayor, Vice Mayor and Town Manager is hereby authorized and directed to execute and deliver a tax compliance agreement regarding any matters described in Section 3.2(a) and (b) and any other matters reasonably required by the initial purchaser of the Tax-Exempt Bonds, which agreement shall be in such form and content as may be required by bond counsel to the Town.

Section 3.3 Designation as Qualified Tax-Exempt Obligation. The Tax-Exempt Bonds are not private activity bonds and are hereby designated by the Council as Qualified Tax-Exempt Obligations, as defined in Section 265(b)(3) of the Code. The Town hereby represents and covenants as follows:

(i) The Council will in no event designate more than \$30,000,000 of obligations as qualified tax-exempt obligations in the current calendar year, including the Tax-Exempt Bonds, for the purpose of Section 265(b)(3) of the Code;

(ii) The Town, all its "subordinate entities," within the meaning of Section 265(b)(3) of the Code, and all entities which issue tax-exempt bonds on behalf of the Town and such subordinate entities have together not authorized to be issued more than \$30,000,000 of tax-exempt obligations in the current calendar year (not including "private activity bonds," as defined in Section 141 of the Code), including the Tax-Exempt Bonds;

(iii) Barring circumstances unforeseen as of the date of delivery of the Tax-Exempt Bonds, the Town will not issue tax-exempt obligations itself or approve the issuance of tax-exempt obligations of any of such other entities if the issuance of such tax-exempt obligations would, when aggregated with all other tax-exempt obligations theretofore issued by the Town and such other entities in the current calendar year, result in the Town and such other entities having issued a total of more than \$30,000,000 of tax-exempt obligations in such year (not including private activity bonds), including the Tax-Exempt Bonds; and

(iv) The Council has no reason to believe that the Town and such other entities will issue in the current calendar year tax-exempt obligations in an aggregate amount that will exceed such \$30,000,000 limit;

provided however, that if the Town receives an opinion of nationally recognized bond counsel that compliance with any covenant set forth in (i) or (iii) above is not required for the Tax-Exempt Bonds to be a qualified tax-exempt obligation, the Town need not comply with such restriction.

#### ARTICLE IV

#### MISCELLANEOUS

Section 4.1. Contract with Bondholders. The provisions of this resolution shall constitute a contract between the Town and the holders of the Bonds for so long as the Bonds are outstanding.

Section 4.2. Authority of Officers and Agents. The officers and agents of the Town shall do all acts and things required by them of this resolution and the Bond for the complete and punctual performance of all the terms, covenants and agreements contained therein. The appropriate officers of the Town are further authorized and empowered to take such other action as they may consider necessary or desirable to carry out the intent and purpose of this resolution, and the issuance of the Bonds.

Section 4.3. Limitation of Liability of Officials of Town. No covenant, condition or agreement contained herein shall be deemed to be a covenant, agreement or obligation of an officer, employee or agent of the Town in his or her individual capacity, and no officer of the Town executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof. No officer, employee or agent of the Town shall incur any personal liability with respect to any other action taken by him or her pursuant to this resolution, provided he or she acts in good faith.

Section 4.4. Conditions Precedent. Upon the issuance of the Bond all acts, conditions and things required by the Constitution and statutes of the Commonwealth of Virginia or this resolution to have happened, exist and to have been performed precedent to or in the issuance of the Bonds shall have happened, exist and have been performed.

Section 4.5. Non-Arbitrage and Other Certificates. The Mayor and Vice Mayor and such other officers as may be requested are hereby authorized to sign appropriate certificates setting forth, among other things, the expected use and investment of the proceeds of the Tax-Exempt Bonds in order to show that such expected use and investment will not violate the provisions of Section 148 of the Code and regulations issued pursuant thereto,

applicable to "arbitrage bonds." Such certificates may also contain certain elections with regard to Section 148 of the Code and such officers are hereby authorized to make such elections on behalf of the Town and the Council.

Section 4.6. Headings. Any headings in this resolution are solely for convenience of reference and shall not constitute a part of the resolution nor shall they affect its meaning, construction or effect.

Section 4.7. Severability. If any court of competent jurisdiction shall hold any provision of this resolution to be invalid and unenforceable, such holding shall not invalidate any other provision hereof.

Section 4.8. Effective Date. This resolution shall take effect immediately. All ordinances, resolutions or parts thereof in conflict herewith are hereby repealed.

Section 4.9. Filing of Resolution. The Clerk of the Council is hereby authorized and directed to see to the immediate filing of a certified copy of this resolution with the Circuit Court of Washington County, Virginia, pursuant to Section 15.2-2607 of the Public Finance Act of 1991.

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

|                       |            |
|-----------------------|------------|
| <b>Mr. Berry</b>      | <b>Aye</b> |
| <b>Mrs. Lowe</b>      | <b>Aye</b> |
| <b>Mrs. Humphreys</b> | <b>Aye</b> |
| <b>Dr. Moore</b>      | <b>Aye</b> |
| <b>Mayor Morgan</b>   | <b>Aye</b> |

**The motion carried.**

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3. Public Hearing – Proposed Amendment – Application to Repeal, Amend and Reenact Article 26, Definitions of the Town of Abingdon Zoning Ordinance.

Garrett Jackson, Director of Planning, came before the Council to comment on the proposed definitions for the Town Zoning Ordinance. Mr. Jackson indicated that the Planning Commission had reviewed the material in detail and recommended that Council approve the application to Repeal, Amend and Reenact Article 26, Definitions of the Town Zoning Ordinance as presented.

Mayor Morgan declared the public hearing open and asked if anyone wished to speak to the matter. Hearing no persons wishing to speak, Mayor Morgan declared the public hearing closed.

On motion of Mrs. Lowe, seconded by Mr. Berry the Council approved the application to Repeal, Amend and Reenact Article 26, Definitions of the Town of Abingdon Zoning Ordinance as presented and as recommended by the Planning Commission.

The roll call vote was as follows:

Mr. Berry	Aye
Mrs. Lowe	Aye
Mrs. Humphreys	Aye
Dr. Moore	Aye
Mayor Morgan	Aye

The motion carried.

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#### F. CONSIDERATION OF ANY BIDS - NONE

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G. REPORTS FROM THE TOWN MANAGER

1. Authorization for opening of a public alley to be known as "Hill Alley".

Jim Smith, Town Engineer appeared before the Council members and reported that this matter came to him as a request from the Burley Tobacco Festival and Farm Show, Inc. (Fairgrounds) to open a right-of-way on property adjacent to Forest Hills Memory Gardens between Hill Street and the Fairgrounds. Mr. Smith reported that he reviewed the matter and his recommendation was that the right of way be opened but that the access gates be closed and locked at the discretion of the Town Manager. Mr. Smith further recommended that the right-of-way be opened contingent upon approval of erosion and sediment control plans and improvement plans by the Department of Public Works. Mr. Smith confirmed that the matter had been heard by the Planning Commission and they concurred with his recommendation.

On motion of Mrs. Lowe, seconded by Mrs. Humphreys, the Council approved the request from the Burley Tobacco Festival and Farm Show, Inc. (Fairgrounds) to open a right-of-way on property adjacent to Forest Hills Memory Gardens between Hill Street and the Fairgrounds. The Council further approved the recommendation that the right-of-way access gates be locked at the discretion of the Town Manager and that the right-of-way be opened contingent upon approval of erosion and sediment control plans and improvement plans by the Department of Public Works.

The roll call vote was as follows:

Mr. Berry	Aye
Mrs. Lowe	Aye
Mrs. Humphreys	Aye
Dr. Moore	Aye
Mayor Morgan	Aye

The motion carried.

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**2. Consideration of renaming of Highlands Street Park.**

Kevin Worley, Director of Parks and Recreation, appeared before the Council members to report that the Recreation Advisory Commission had met and voted unanimously to rename the Highlands Street Park to King's Mountain School Park. Mr. Worley recommended that the Council take formal action to rename the park and indicated that the signage would be changed to reflect the new name.

**On motion of Dr. Moore, seconded by Mrs. Lowe, the Council approved the recommendation of the Recreation Advisory Commission to officially rename the Highlands Street Park to King's Mountain School Park and directed that signs be placed at the Park to reflect the new name.**

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

|                       |            |
|-----------------------|------------|
| <b>Mr. Berry</b>      | <b>Aye</b> |
| <b>Mrs. Lowe</b>      | <b>Aye</b> |
| <b>Mrs. Humphreys</b> | <b>Aye</b> |
| <b>Dr. Moore</b>      | <b>Aye</b> |
| <b>Mayor Morgan</b>   | <b>Aye</b> |

**The motion carried.**

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H. PASSAGE OF RESOLUTIONS

1. Resolution of the Council of the Town of Abingdon, Virginia to Support the Issuance of a Certificate of Need To Abingdon Health Investors, LLC In Its Efforts To Locate A 120 – Bed Skilled Nursing Facility In Washington County, Virginia.

Mr. Kelly addressed the Council and reported that the Resolution before Council for consideration was a step in the certificate of need process for Abingdon Health Investors, LLC a subsidiary of Smith/Packett, LLC in order to locate a skilled nursing facility in Washington County. Mr. Kelly recommended adoption of the Resolution as presented.

Mayor Morgan inquired if anyone from the public wished to speak to the Resolution.

Kim Clark, representative of Abingdon Health Care Center, LLC, appeared before the Council members to ask that they consider tabling any action on the proposed Resolution. Ms. Clark indicated that her company would be filing a certificate of need as well and

asked the Council take into consideration that there are 2 health care nursing facilities interested in locating in Washington County.

Hunter Smith, representative with Abingdon Health Investors, LLC came before the Council and commented that his company had been gathering information and working in Abingdon, Washington County for three (3) years to find a suitable site for a health care nursing facility. Mr. Smith declared that Abingdon Health Investors, LLC is already here in Abingdon and they are committed to being in the community.

On motion of Mr. Berry, seconded by Dr. Moore, the Council approved the Resolution as follows:

WHEREAS, the CEO of Smith/Packett Med-Com, LLC, A Roanoke firm with many years of experience in the development of retirement communities, began its initial working concept on this project several years ago and has kept faith with the community to develop and build a retirement center for the Washington County/Abingdon, Virginia area; and

WHEREAS, although the company is engaged in building centers in other locations throughout the southeastern United States and is being pursued by other interested towns and cities, the Washington County/Abingdon project is very important to the company; and

WHEREAS, Smith/Packett Med-Com, LLC has formed a business subsidiary dedicated exclusively to the project, Abingdon Health Investors, LLC, and has entered into an agreement whereby it will purchase sufficient real property to develop its initial phase of a retirement community, skilled nursing facility, with optional acreage for future growth; and

WHEREAS, Abingdon Health Investors, LLC has received endorsements and letters of support from Congressman Rick Boucher, Virginia Delegate Joseph P. Johnson and Virginia Delegate Terry G. Kilgore., each of whom supports the efforts of Abingdon Health Investors, LLC because it will offer healthcare career and job opportunities as well as better healthcare to aging residents and constituents who are often forced to leave the area to seek suitable facilities; and

WHEREAS, there has been demand for such retirement facilities within this area and southwest Virginia is underserved in its retirement community/nursing home facilities that entice its aging residents to stay in the area; and

WHEREAS, Abingdon Health Investors, LLC has prepared its initial requirements and plans, having made applications for permits and requests for hearings and zoning changes, in order to begin construction in January – February 2010; and

NOW, THEREFORE, BE IT RESOLVED, that the Abingdon Town Council does hereby endorse and support the issuance of the requested Certificate of Need from the Virginia Department of Health which will enable Abingdon Health Investors, LLC to construct and offer much needed services to the residents of Washington County/Abingdon, Virginia.

The roll call vote was as follows:

Mr. Berry	Aye
Mrs. Lowe	Aye

Mrs. Humphreys Aye
Dr. Moore Aye
Mayor Morgan Aye

The motion carried.

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2. **A Resolution of the Council of the Town of Abingdon, Virginia to Support and keep Southwest Virginia Beautiful in Raising Public Awareness of the Effects of Cigarette Litter and its Adverse Impact Upon Our Environment, Health, Economics and the Natural Beauty of Our Region.**

**On motion of Mrs. Humphreys, seconded by Mrs. Lowe, the Council accepted the following resolution as presented:**

**WHEREAS**, studies have shown that cigarette butts have been found to be the single most commonly littered item throughout the Commonwealth of Virginia; and

**WHEREAS**, the filters of littered cigarette butts are made of cellulose acetate tow and can take over ten (10) years to decompose, meanwhile releasing harmful chemicals and toxins into the environment that can leach into the soil and wash into drinking water resources; and

**WHEREAS**, most cases of nicotine poisoning in children result from ingestion of cigarettes; and

**WHEREAS**, cigarette butts are a leading cause of wildfires; and

**WHEREAS**, total costs to meet United States Environmental Protection Agency mandates for reducing the Toxic Maximum Daily Load are expected to accelerate to billions of dollars during the next decades, local contributions will thereby dramatically increase resulting in increases for public municipalities, and ultimately taxpayers; and

**WHEREAS**, for all of the foregoing reasons, litter control and litter prevention is vitally important to the quality of life in the Town of Abingdon, Virginia; and

**WHEREAS**, the Abingdon Town Council has an interest in encouraging every citizen and business and its employees to protect and preserve the beauty and cleanliness of the town; and

**WHEREAS**, Keep America Beautiful, Inc., a national nonprofit organization with a history of addressing litter for over fifty (50) years by encouraging individual responsibility, community partnerships and advocating volunteerism is addressing an emerging littering problem with cigarette litter; and

**WHEREAS**, Keep Southwest Virginia Beautiful seeks to launch a cigarette litter prevention program with a goal of reducing cigarette litter in the Town of Abingdon; and

**WHEREAS**, Keep Southwest Virginia Beautiful, as an affiliate of Keep America Beautiful, Inc., wants to work in cooperation with the Town of Abingdon and with citizens, local businesses, and community and civic leaders who have a strong interest in reducing cigarette litter; and

**WHEREAS**, all interested citizens are invited to support the Cigarette Litter Prevention Program in the Town of Abingdon.

**NOW, THEREFORE, BE IT RESOLVED**, that the Council of the Town of Abingdon does hereby proclaim the months of May, June and July and August as Cigarette Litter Prevention Months in the Town of Abingdon.

The roll call vote was as follows:

|                |     |
|----------------|-----|
| Mr. Berry      | Aye |
| Mrs. Lowe      | Aye |
| Mrs. Humphreys | Aye |
| Dr. Moore      | Aye |
| Mayor Morgan   | Aye |

The motion carried.

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3. A Resolution of the Council of the Town of Abingdon, Virginia authorizing the issuance of general obligation bonds in an aggregate principal amount not to exceed \$5,150,000 and providing for the Form, Details, and payment thereof and the refunds of certain prior bonds and authorizing certain related actions.

The Resolution was acted upon by Council earlier in the meeting during consideration of Agenda item E2.

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#### **I. FIRST READING OF ORDINANCES.**

1. An Ordinance of the Council of Abingdon, Virginia to Repeal, Amend and Reenact Appendix B, Zoning Ordinance, Article 26 of the Code of the Town of Abingdon, Virginia, to Define Terminology and Ascribe Meanings to Certain Language Used Customarily in the Interpretation and Application of the Town Zoning Ordinances.

*This Item was acted upon by Council earlier in the meeting during consideration of Agenda Item E3.*

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J. SECOND READING OF ORDINANCES

1. An Ordinance of the Council of the Town of Abingdon, Virginia proposing a budget for the Town of Abingdon, Virginia and to make Appropriations for the Current Expenses of the Town and to Fix a Rate Upon Real and Personal Property, to Fix all other Local Tax Rates and Fees and Rates on Utility Services for the Fiscal Year Beginning July 1, 2009 and ending June 30, 2010.

On motion of Mrs. Lowe, seconded by Mr. Berry, the Council approved the ordinance proposing a budget for the Town of Abingdon, Virginia and to make Appropriations for the Current Expenses of the Town and to Fix a Rate Upon Real and Personal Property, to Fix all other Local Tax Rates and Fees and Rates on Utility Services for the Fiscal Year Beginning July 1, 2009 and ending June 30, 2010 on second reading as presented.

The roll call vote was as follows:

Mr. Berry	Aye
Mrs. Lowe	Aye
Mrs. Humphreys	Aye
Dr. Moore	Aye
Mayor Morgan	Aye

The motion carried.

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- 2. An Ordinance of the Council of the Town of Abingdon to Amend Chapter 66, Subsections 66-1, 66-2 And 66-43 of the Code of the Town of Abingdon, Virginia, to Establish Semi-Annual Collection of Local Taxes and to Amend the Due Dates for Collection of Real Property Taxes and Personal Property Taxes.**

**On motion of Dr. Moore, seconded by Mr. Berry, the Council approved the Ordinance to Amend Chapter 66, Subsections 66-1, 66-2 And 66-43 of the Code of the Town of Abingdon, Virginia, to Establish Semi-Annual Collection of Local Taxes and to Amend the Due Dates for Collection of Real Property Taxes and Personal Property Taxes on second reading as presented.**

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

|                       |            |
|-----------------------|------------|
| <b>Mr. Berry</b>      | <b>Aye</b> |
| <b>Mrs. Lowe</b>      | <b>Aye</b> |
| <b>Mrs. Humphreys</b> | <b>Aye</b> |
| <b>Dr. Moore</b>      | <b>Aye</b> |
| <b>Mayor Morgan</b>   | <b>Aye</b> |

**The motion carried.**

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- K. UNFINISHED BUSINESS – None.**

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- L. MATTERS NOT ON THE AGENDA**

- Mrs. Lowe asked the Council members to consider an appropriation of funds to support a Crooked Road venue at Wither's Hardware Restaurant.

**On motion of Mrs. Lowe, seconded by Mr. Berry, the Council appropriated \$2,250 from their contingency funds for the purpose of establishing a Crooked Road venue at Wither's Hardware Restaurant contingent upon the funds being administered by Crooked Road Director, Jonathan Romeo.**

The roll call vote was as follows:

|                |     |
|----------------|-----|
| Mr. Berry      | Aye |
| Mrs. Lowe      | Aye |
| Mrs. Humphreys | Aye |
| Dr. Moore      | Aye |
| Mayor Morgan   | Aye |

The motion carried.

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M. COUNCIL MEMBER REPORTS

- Mr. Kelly reported to the Council that Advance Abingdon had reviewed possible sites for the location of a rope sculpture donated to the Town by the Virginia Highlands Festival Committee. Mr. Kelly indicated that the recommendation was for the sculpture to be placed in the small Town park across from the post office on West Main Street.
- Mr. Kelly reported that it was necessary to have the electrical upgrade at Latture Field completed as quickly as possible and asked the Council to consider appropriating funds from their contingency to pay for the costs.

On motion of Dr. Moore, seconded by Mr. Berry, the Council appropriated \$22,000 from their contingency to cover the costs of the electrical upgrade work at Latture Field.

The roll call vote was as follows:

Mr. Berry	Aye
Mrs. Lowe	Aye
Mrs. Humphreys	Aye
Dr. Moore	Aye
Mayor Morgan	Aye

The motion carried.

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- At this time Dr. Moore and Mr. Berry asked the Council to consider an additional appropriation of funds from Council contingency to go towards the Meals on Wheels at the Abingdon Senior Center.

**On motion of Mr. Berry, seconded by Mrs. Lowe, the Council appropriated \$30,000 from their contingency for the “Meals on Wheels” program at the Abingdon Senior Center and requested that Dexter Peltzer, Director, report back to Council on a regular basis about the “Meals on Wheels” program.**

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

|                       |            |
|-----------------------|------------|
| <b>Mr. Berry</b>      | <b>Aye</b> |
| <b>Mrs. Lowe</b>      | <b>Aye</b> |
| <b>Mrs. Humphreys</b> | <b>Aye</b> |
| <b>Dr. Moore</b>      | <b>Aye</b> |
| <b>Mayor Morgan</b>   | <b>Aye</b> |

**The motion carried.**

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- Mr. Berry commented about the funds remaining in the Council contingency.

At this time, on motion of Dr. Moore, seconded by Mr. Berry, the Council appropriated the remainder of their contingency funds totaling \$13,750 to be transferred to the contingency line item for the Town Manager to use at his discretion.

After further discussion with Council members, Dr. Moore rescinded his motion and no action was taken.

On motion of Dr. Moore, seconded by Mrs. Humphreys, the Council appropriated \$5,000 from their contingency to Ecumenical Faith in Action for the efforts in establishing their new facility and appropriated the remaining contingency funds in the amount of \$8,750 to the Town Manager’s contingency line item.

The roll call vote was as follows:

Mr. Berry	Aye
Mrs. Lowe	Aye
Mrs. Humphreys	Aye
Dr. Moore	Aye
Mayor Morgan	Aye

The motion carried.

- Mrs. Lowe congratulated Myra Cook on receiving the “Breakthrough Award” from her Dale Carnegie course.
- Dr. Moore thanked all the Town staff for their assistance with Plum Alley Day and reported that the day was a huge success.
- Mr. Berry reported that the second visioning meeting for Tourism would be held at the Virginia Highlands Small Business Incubator on June 23rd at 8:30 a.m.

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## **N. MISCELLANEOUS BUSINESS AND COMMUNICATIONS**

### **1. Appointment to the Sinking Springs Cemetery Committee**

- One (1) appointment to the Sinking Spring Cemetery Committee to serve a one (1) year term.
- Three (3) re-appointments to the Sinking Spring Cemetery Committee
  - Jack Frost, Frost Funeral Home – 2 year term and eligible for reappointment
  - Francine Ivery – 2 year term and eligible for reappointment
  - Ed Morgan – 2 year term and eligible for reappointment

**On motion of Dr. Moore, seconded by Mrs. Lowe, the Council appointed Thomas C. Phillips, Jr., Esq., contingent upon his acceptance, to serve a one (1) year term on the Sinking Spring Cemetery Committee. In addition, the Council approved the reappointment of Jack Frost, Francine Ivery and Ed Morgan for two (2) year terms on the Committee.**

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

|                       |            |
|-----------------------|------------|
| <b>Mr. Berry</b>      | <b>Aye</b> |
| <b>Mrs. Lowe</b>      | <b>Aye</b> |
| <b>Mrs. Humphreys</b> | <b>Aye</b> |
| <b>Dr. Moore</b>      | <b>Aye</b> |
| <b>Mayor Morgan</b>   | <b>Aye</b> |

**The motion carried.**

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2. Appointment to the Board of Zoning Appeals

On motion of Dr. Moore, seconded by Mr. Berry, the Council appointed Scott Wilson, contingent upon his acceptance, to a three (3) year term on the Board of Zoning Appeals.


The roll call vote was as follows:

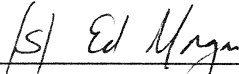
Mr. Berry	Aye
Mrs. Lowe	Aye
Mrs. Humphreys	Aye
Dr. Moore	Aye
Mayor Morgan	Aye

The motion carried.

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Mayor Morgan declared the meeting adjourned.

  
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Cecile M. Rosenbaum, Town Clerk

  
\_\_\_\_\_  
Edward B. Morgan, Mayor