

**Town of Bluefield
Town Council
Minutes
May 26, 2020**

The Bluefield, Virginia Town Council held a regularly scheduled Town Council Meeting on Tuesday, May 26, 2020 at 7:30 p.m. in the Council Chambers of the Town Hall located at 112 Huffard Drive, Bluefield, Virginia.

PRESENT

Don Harris, Mayor
Jarrod Bailey, Councilmember
Chuck Presley, Councilmember
Ron Holt, Councilmember
Anglis Trigg Jr., Vice-Mayor
Jimmy Jones, Councilmember

ALSO PRESENT

Mike Watson, Town Manager
Kim Hernandez, Town Clerk
Alan McGraw, Interim Town Attorney
Billie Roberts, Comm. Dev. Coordinator
Rachel Looney, Administrative Asst.
Shane Gunter, Police Chief
6 Members of Public

CALL TO ORDER

Mayor Harris called the meeting to order at 7:30 p.m.

INVOCATION AND PLEDGE

Jim Drake, Parkview Baptist Church led the Invocation. Mayor Harris led the Pledge of Allegiance.

APPROVAL OF AGENDA

Mayor Harris moved up Citizens Requests & Special Presentations and Citizens Comments before the Executive Session.

Councilmember Bailey made a motion to approve the amended agenda. Councilmember Presley seconded the motion. The motion passed unanimously by voice vote.

Vice-Mayor Trigg:	Yes
Councilmember Presley:	Yes
Councilmember Bailey:	Yes
Mayor Harris:	Yes
Councilmember Jones:	Yes
Councilmember Holt:	Yes

CONSENT AGENDA

Councilmember Holt made a motion to approve the consent agenda. Councilmember Presley seconded the motion. The motion passed unanimously by voice vote.

Vice-Mayor Trigg:	Yes
Councilmember Presley:	Yes
Councilmember Bailey:	Yes
Mayor Harris:	Yes
Councilmember Jones:	Yes
Councilmember Holt:	Yes

CITIZEN REQUESTS AND SPECIAL PRESENTATIONS

Anytime Fitness – Melanie Protti-Lawrence (attached at end of minutes)

Mrs. Protti-Lawrence handed out a written request to council. She stated that she was appealing to do all that she could for local businesses and was asking to be allowed to reopen her Bluefield, VA facility. She stated that it was Day 70 of being closed and it was not only affecting her but her members, employees, etc. and that she operated as a small retail business. She stated that the Princeton location had been open following Governor Justice's restrictions for one week with no problem. She stated that it was staff operated from 6 a.m. to 10 p.m., staff checked temperatures and asked 6-8 health screening questions. She stated that each member was given their own disinfectant to use for themselves and they were at 40% capacity. She stated that she had only seen 15-25 members at one time at the Bluefield location and that was during the Grand Opening. She stated that they were following enhanced cleaning guidelines and the equipment had been spread out. She asked that council please consider the SWVA area which was Day 18 of zero cases and stated that SWVA should not be judged the same as Northern VA. She stated that Northam talked about mask requirements if anyone left the house and not much on anything else with the possibility that this Friday Phase 2 may start but she did not think that would happen or that gyms would be allowed in that phase. She stated that the letter she handed out had to be sent in to corporate.

Mr. Holt stated that he was in agreement and that everyone was getting frustrated but it needed to be for all businesses and not just one.

Mr. Watson stated that he loved Melanie to death but just to be clear that council was getting ready to make a motion to override what the Governor said.

Mrs. Protti-Lawrence stated that the Governor did not care about us here.

Mr. Presley asked if they would be making a motion to send the letter to corporate.

Mr. Holt stated that Law Enforcement had discretion on misdemeanors but that it did not mean that the State Law Enforcement would not come here and enforce it.

Mrs. Protti-Lawrence stated that she had State Police as members and there were for it but that it did not mean they would not come here to enforce it. She stated that she fully understood that.

Mr. Presley stated that he did not know how to word the motion correctly.

Mr. Trigg suggested they let the attorney speak.

Mrs. Protti-Lawrence stated that she did not believe it needed to go that far and basically what she was asking was if she were to reopen on June 2nd would she be allowed to operate without be arresting, forced to shut down or be charged an exuberant fine that would shut her down for good. She stated that if this went beyond the end of June that she would not be able to reopen both her Bluefield and Wytheville locations and would have to choose.

Mr. Bailey asked if her business license was listed as a retail business.

Mrs. Protti-Lawrence stated that it was and she paid taxes under retail business.

Mr. Holt suggested that they consult with staff and come back with a motion.

Mr. McGraw stated that everyone understood the pain that Small Businesses were going through. He stated that his initial opinion without having looked over it was council was moving beyond their discretion to authorize something that was not permitted. He stated with all due respect to Mr. Holt that all local entities may not enforce but there was a mechanism to allow anyone to file suit to force a government body or official to do something that was required by law. He urged extreme caution and stated that he understood what she was saying. He stated that Law Offices were businesses too and they had been deeply impacted as well.

Mrs. Protti-Lawrence asked if he had been closed.

Mr. McGraw stated essentially.

Mrs. Protti-Lawrence stated that she has had zero income for 56 days yet she paid her rent, her taxes and her employees. She stated that she realized it was a bold move and had a law background and realized it was a potentially risky move but at this point she as a business owner had to make the decision if that was a risk she was willing to take or to keep her business closed and have to risk shutting the doors completely. She stated that was a very real thing that thousands of business owners were facing. She stated that she did not think the cure could be worse than the disease and that was exactly what they were seeing take shape in the Commonwealth of VA right now especially in SWVA.

Mayor Harris stated that he was a small business owner himself and had not paid the state any sales tax since all of this happened because he did not have any business. He stated that he was with her 100%.

Mr. Bailey asked Mr. Watson with the exception of Melanie's business or a sit down restaurant what were the other businesses in Town that were not allowed to operate yet.

Mrs. Protti-Lawrence stated that hair salons were open by appointment only with a mask.

Mr. Watson stated the auctioneers.

Mr. Bailey asked if that was it.

Mr. Watson stated that he was trying to think off of the top of his head.

Mr. Bailey asked where her license was retail would that not allow her to reopen.

Mr. Watson stated that he would love to see her open and that she would be safe at doing so but council needed to understand that they were stepping outside of their realm.

Mr. Presley asked what their potential consequences could be.

Mr. McGraw stated that town governing bodies were subject to malfeasance or misfeasance for acting above and beyond their authority. He stated that he was struck by the fact that they would be exceeding their authority to essentially override the State Government in this issue as painful as it was.

Mrs. Protti-Lawrence stated that if we had the case load that Northern VA or Blacksburg had then should would not be there because she did believe that it was a serious virus.

Mr. Holt stated that we said we were a 2nd Amendment Sanctuary back then and asked what the difference would be in saying we were a Sanctuary Town that did not want to enforce.

Mr. McGraw stated that while they could do and say things that the effect was another matter entirely. He stated that he just recalled the legal action to enforce a Government Official to carry out the law was called Writ of Mandamus. He stated that it was a well-recognized legal action where any resident could sue to have a court ordered official/officer to do what the law required. He urged extreme caution and stated that they were stepping out onto thin ice legally.

Mayor Harris stated that this was happening all over the nation and people were rebelling.

Mr. McGraw stated that he understood that but it was not a legal argument.

Mr. Presley asked what could be done to them.

Mrs. Protti-Lawrence stated that basically a citizen could sue.

Mr. McGraw stated that he was not sure that was all and was only one possibility.

Mrs. Protti-Lawrence asked what the worst case scenario would be.

Mr. McGraw stated once again if you do not have the authority to do something why would you and he did not believe a Town Council in VA had the authority to step out and set rules above and beyond what was constitutionally granted.

Mr. Holt stated that he appreciated what he was saying and knew he was in a hard position and was doing the best as a legal professional and offering the best legal advice and did not want him to feel like they were attacking him.

Mr. McGraw stated that they were the ones in a difficult position.

Mrs. Protti-Lawrence asked him if Governor Northam was not acting outside of his authority under the Constitution of VA by determining who was essential and non-essential. She stated in her reading of the Constitution of VA he did not have that authority.

Mr. McGraw stated that he had not looked into it but there were a number of courts who had fallen on both sides of this and upheld the Governor's actions. He stated that he did not think it had gotten into the Federal Courts yet but individual state courts had ruled both ways.

Mrs. Protti-Lawrence stated that Ohio and Wisconsin had both ruled in favor of gyms and other small businesses to reopen.

Mr. Holt asked as a local government body could they file suit in Circuit Court against the Governor stating that we wanted to reopen small businesses and did not have any local cases here in SWVA.

Mr. McGraw stated perhaps and apologized for stammering but this was something he had just been hit with and was responding with general notions.

Mrs. Protti-Lawrence stated that there were other states like Pennsylvania who were doing that.

Mayor Harris stated that Florida had been open for 2 weeks. He stated that they were caught in a situation where the attorney was advising caution and his first reaction would be for her to meet with the attorney and Mike.

Mrs. Protti-Lawrence stated that it would not be worth anyone's time because the attorney would tell her that she could not do it and Mike had already told her what he had. She stated that she understood that they had to say no but that they also needed to know as a business owner that she would do what she needed to do but the dynamic of what she was trying to figure out was that she could step outside of the bounds of her franchise agreement with Anytime Fitness Corporate and reopen but she could not bill for memberships which defeated the purpose. She stated that she has had several members asking her to bill them and take her money but she chose in the beginning to not charge her members and they have not been charged for 2 months because that was the right

thing to do. She stated that corporate did not make her do that but she chose to do that because it was the right thing to do. She stated that 70 days was ridiculous with no end in sight. She stated that the Governor would not simply state the phases nor what businesses would be affected by each phase. She stated that his communication had been unclear for the Small Business Owners which has led them to make very tough decisions.

Mr. Bailey asked what Wythe County/Town of Wytheville had told her.

Mrs. Protti-Lawrence stated that Wythe County had said that they think she should reopen and if they received a formal complaint then they would come and give her a warning but would not arrest or fine her. She stated that she could not be in her Wytheville location everyday like she could in Bluefield in case something like that were to happen so that was the reason she had chosen to come this route first. She stated that this gym was her heart and soul and that she had been trying to have it here since 2014.

Mr. Holt stated that he understood it both financially and emotionally and he had a lot of Small Business Owners who were friends of his. He stated that they all wanted to help her and asked if they could take a couple of days to discuss and have a Special Called Meeting to address this.

Mayor Harris stated that based on the advice of the Town Attorney that there was nothing that they could do at this point but liked the idea of council meeting with the Town Attorney and Mike to see if there was any way to fix this.

Mr. Holt stated even if it were possible litigation.

Mrs. Protti-Lawrence thanked council.

CITIZEN COMMENTS

David Wohlford, Sedgewood stated that concerning the previous conversation that Richmond may revoke the business license. He stated that they were not the only ones in this boat and suggested putting an organization that the Town belonged to on this and putting pressure on Richmond to get something done. He stated that the Governor was trying to shut down the state until after elections and things were going to get dangerous and they needed to put plans together on how to address and enforce. He stated that VDH was the enforcement and it could be taken to Federal Court to address. He stated that it was good to see Mr. Jones back.

EXECUTIVE SESSION

Mayor Harris asked Mrs. Hernandez to read the Executive Session.

MOTION FOR CLOSED MEETING

It is hereby moved that the Council of the Town of Bluefield, Virginia enter into a closed meeting pursuant to Section 2.2-3711 (A) (1, 6) of the Code of Virginia as amended, The specific purpose for this motion is to discuss the following matter(s):

Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body

Discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected with such closed meeting being confined to the following subject (s): interviews with prospective candidates for Town Attorney and contract for local services.

Councilmember Holt made a motion to enter into Executive Session as described above. Councilmember Presley seconded the motion. The motion passed unanimously by voice vote.

Vice-Mayor Trigg:	Yes
Councilmember Presley:	Yes
Councilmember Bailey:	Yes
Mayor Harris:	Yes
Councilmember Jones:	Yes
Councilmember Holt:	Yes

Mr. Presley made a motion to enter back into regular session. Mr. Holt seconded the motion. The motion passed unanimously by voice vote.

Vice-Mayor Trigg:	Yes
Councilmember Presley:	Yes
Councilmember Bailey:	Yes
Mayor Harris:	Yes
Councilmember Jones:	Yes
Councilmember Holt:	Yes

CERTIFICATION OF EXECUTIVE SESSION

WHEREAS, the Town Council of Bluefield, Virginia convened a closed meeting on May 26, 2020, pursuant to a duly adopted motion, attached hereto, and such closed meeting was convened in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, the Town Council of Bluefield, Virginia returned to its open meeting held on May 26, 2020.

NOW, THEREFORE, THE COUNCIL OF THE TOWN OF BLUEFIELD, VIRGINIA HEREBY CERTIFIES that to the best of each member's knowledge (i) only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act were discussed in the closed meeting held on May 26, 2020, to which this certification applies and (ii) only such public business matters as were identified in the motion convening such closed meeting were heard, discussed, or considered by the Council of the Town of Bluefield, Virginia in such closed meeting.

ROLL CALL VOTE

Vice-Mayor Trigg:	Yes
Councilmember Presley:	Yes
Councilmember Bailey:	Yes
Mayor Harris:	Yes
Councilmember Jones:	Yes
Councilmember Holt:	Yes

The motion passed unanimously by Roll Call Vote.

COMMITTEE REPORTS

None.

UNFINISHED BUSINESS & REPORTS

***Community Investment Partnership Donation (Tazewell County Chamber of Commerce),
ROLL CALL VOTE – Billie Roberts***

Mrs. Roberts stated that at a previous council meeting Regina and Lori talked about the Community Investment Partnership Donation. She stated that they had a Community Development Line item that it could come out of.

Mr. Holt made a motion to approve a \$5k donation. Mr. Presley seconded the motion.

ROLL CALL VOTE

Vice-Mayor Trigg:	Yes
Councilmember Presley:	Yes
Councilmember Bailey:	Yes
Mayor Harris:	Yes
Councilmember Jones:	Yes
Councilmember Holt:	Yes

The motion passed unanimously by Roll Call Vote.

VDOT Update – Billie Roberts

Mrs. Roberts stated that we were still working with VDOT on the SMART Scale and STARS. She stated that a Public Meeting was held in October and comments were received. She stated that College Avenue and US 460 area were identified as target safety needs by VDOT. She stated that 7 intersections were studied with the following identified as high crash locations:

- S College Avenue at College Avenue
- College Avenue at College Drive
- College Avenue at Commerce Drive
- College Avenue at Stadium Drive
- Leatherwood Lane at W Cumberland Road
- US 460 at Leatherwood Lane
- US 460 at Commerce Drive

She stated that the SMART Scale was 100% funded and were asking for comments on a post shared on the Town's Facebook and there was a survey at the end which was easy to navigate. She stated that they received 150 comments from last time and they would like to have feedback on the following:

- Rt. 746 which was connected to Bluefield College to help with high congestion.
- A roundabout at the intersection of Stadium/College coming out of Mitchell Stadium and extending the sidewalks. She stated that the public voiced about the heavy delays with games and this would allow for free flow and was also a hotspot for crashes.
- The corner where the fountain was that the merge lane would be taken out and a new turn lane added and extend the sidewalks. She stated to eliminate a series of merging connections the stop signs would be replaced with signals and the sidewalks would be linked into the shopping area.
- A new eastbound left turn into Bluefield College to help with safety issues and congestion and the sidewalks connected.
- A roundabout on Commerce at BB&T/Sam's which was considered a high crash location and new sidewalks would be installed.

She stated that it was important to pick good projects to benefit everyone.

NEW BUSINESS & REPORTS

SMART Scale Resolution, Motion to Approve, ROLL CALL VOTE – Billie Roberts (attached at end of minutes)

Mrs. Roberts stated that in council's packet was a copy of the SMART Scale Resolution and in the back were maps to submit for 100% funding. She stated that it was good to look for

projects that would score well. She stated the 460 Commerce Drive turn lane improvements would be at both Commerce Drive and Leatherwood Lane and there was lots of public feedback and concern. She stated that an offset left turn lane would improve the safety by improving site distance so there would be a better view and better timing. The third map showed the Walmart Shopping/Ashley Furniture Store and coming out of Anytime Fitness trying to turn left this would eliminate the left turn and would be right turn only and it would connect the sidewalks to fill in the gap to Bluefield College.

Mr. Presley made a motion to approve the SMART Scale Resolution. Mr. Holt seconded the motion.

ROLL CALL VOTE

Vice-Mayor Trigg:	Yes
Councilmember Presley:	Yes
Councilmember Bailey:	Yes
Mayor Harris:	Yes
Councilmember Jones:	Yes
Councilmember Holt:	Yes

The motion passed unanimously by Roll Call Vote.

2020/2021 Budget Ordinance, 1st Reading, Motion to Approve, ROLL CALL VOTE – Kim Hernandez

Mrs. Hernandez stated that this would be the 1st Reading of the 2020/2021 Budget Ordinance. She stated that there would be one change brought back before the 2nd Reading for the BVLL Lighting Project so that they could receive the local government discount and be tax free.

Mr. Presley made a motion to approve the 1st Reading of the 2020/2021 Budget Ordinance. Mr. Holt seconded the motion.

ROLL CALL VOTE

Vice-Mayor Trigg:	Yes
Councilmember Presley:	Yes
Councilmember Bailey:	Yes
Mayor Harris:	Yes
Councilmember Jones:	Yes
Councilmember Holt:	Yes

The motion passed unanimously by Roll Call Vote.

Mrs. Hernandez read it in its entirety:

AN ORDINANCE TO APPROVE AND ADOPT THE 2020/2021 FISCAL YEAR BUDGET FOR THE TOWN OF BLUEFIELD, A VIRGINIA MUNICIPAL CORPORATION, INCLUDING THE INCREASES IN WATER RATES, WAGES, AND SALARIES THEREIN

WHEREAS, a public hearing concerning the approval and adoption of the proposed 2020/2021 FISCAL YEAR BUDGET for the Town of Bluefield, a Virginia municipal corporation, was held before the Council of the Town of Bluefield, Virginia on the 26th day of May, 2020, at 7:00 p.m., after notice of the said public hearing was duly published on the 5th day of May, 2020, in the Bluefield Daily Telegraph, a newspaper having general circulation in Bluefield, Virginia.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF BLUEFIELD, VIRGINIA that the 2020/2021 FISCAL YEAR BUDGET for the Town of Bluefield, a Virginia municipal corporation, which is attached to this ordinance, including the increased water rates, wages, and salaries therein, is hereby approved and adopted by the Council of the Town of Bluefield, Virginia on this 9th day of June, 2020.

BE IT FURTHER ORDAINED BY THE COUNCIL OF THE TOWN OF BLUEFIELD, VIRGINIA that, under the Water Fund of previous fiscal year budgets and as included in the 2020/2021 FISCAL YEAR BUDGET for the Town of Bluefield, a Virginia municipal corporation, water rates were increased by an additional two percent (2%) per year over five (5) years, and such increase is ratified and approved.

BE IT FURTHER ORDAINED BY THE COUNCIL OF THE TOWN OF BLUEFIELD, VIRGINIA that this ordinance is hereby adopted on this 9th day of June, 2020, and this ordinance shall be effective on the 1st day of July, 2020.

BE IT FURTHER ORDAINED BY THE COUNCIL OF THE TOWN OF BLUEFIELD, VIRGINIA that Donald R. Harris, the Mayor of the Town of Bluefield, Virginia, shall execute this ordinance on behalf of the said Council, and Kim Hernandez, the Town Clerk of the Town of Bluefield, Virginia, shall attest the same.

IT IS SO ORDAINED BY THE COUNCIL OF THE TOWN OF BLUEFIELD, VIRGINIA on this 9th day of June, 2020.

TOWN MANAGER'S REPORT

Resolution to appoint a Town Attorney, Motion to Approve, ROLL CALL VOTE (attached at end of minutes)

Mr. Watson stated that in council's packet was a resolution to appoint a Town Attorney for part time appointment.

Mr. Holt made a motion to approve the Resolution to appoint a part time attorney. Mr. Presley seconded the motion.

Vice-Mayor Trigg:	Yes
Councilmember Presley:	Yes
Councilmember Bailey:	Yes
Mayor Harris:	Yes
Councilmember Jones:	Yes
Councilmember Holt:	Yes

The motion passed unanimously by Roll Call Vote.

Evening Shade

Mr. Watson stated that Evening Shade sponsored by the Kiwanis would kick off June 12th. He stated that they would be practicing social distancing, etc.

COUNCIL COMMENTS

Mr. Holt stated that it was a good meeting and a lot of business owners were concerned and he understood their frustration. He stated that it was a hard time to be on council but that they were in their corner.

Mr. Jones stated that they had accomplished a lot of business.

Mr. Bailey stated that he was glad that Melanie came out and spoke on behalf of Small Businesses and that this new normal was not popular. He stated that it was good to have a full board and he was glad to see Mr. Jones back.

Mr. Presley stated that they needed to have a meeting concerning Melanie's request.

Mayor Harris stated that they needed to make sure the attorney was available.

Mr. Presley gave a shout out to the Police Department, Kim, BJ, Rachel and staff for all that they did for the Town. He stated that they needed to start preparing for next year's budget.

Mr. Trigg stated that everything seemed to be going along good and asked his fellow councilmen to be patient.

Mayor Harris had nothing.

Mr. Watson asked council when they would like to meet again.

Mr. Presley suggested next Thursday.

Mr. Holt suggested that the recess until Thursday.

ATTORNEY REPORT

None.

ADJOURN

Mr. Holt made a motion to recess the meeting at 9:21 pm. until Thursday, May 28, 2020 at 6:00 p.m. Mr. Presley seconded the motion. The motion passed unanimously by voice vote.

Vice-Mayor Trigg:	Yes
Councilmember Presley:	Yes
Councilmember Bailey:	Yes
Mayor Harris:	Yes
Councilmember Jones:	Yes
Councilmember Holt:	Yes

Don Harris, Mayor

Kim Hernandez, Town Clerk

The Bluefield, Virginia Town Council reconvened the May 26, 2020 Town Council Meeting on Thursday, May 28, 2020 at 6:00pm in the Council Chambers of the Town Hall located at 112 Huffard Drive, Bluefield, Virginia.

PRESENT

Don Harris, Mayor
Jarrod Bailey, Councilmember
Chuck Presley, Councilmember
Ron Holt, Councilmember
Anglis Trigg Jr., Vice-Mayor

ALSO PRESENT

Mike Watson, Town Manager
Kim Hernandez, Town Clerk
Alan McGraw, Interim Town Attorney
Billie Roberts, Comm. Dev. Coordinator
Rachel Looney, Administrative Asst.
1 Member of Public

ABSENT

Jimmy Jones, Councilmember
Shane Gunter, Police Chief

CALL TO ORDER

Mayor Harris reconvened the May 26, 2020 Council Meeting at 6:00 p.m.

COUNCIL DISCUSSION

Allowing all Town Businesses to reopen, ROLL CALL VOTE

Mr. Watson stated that council had asked to recess the last meeting to give a couple of days to gather information concerning opening up small businesses. He stated that he had expressed his concern that council was putting themselves at risk.

Mayor Harris stated that the attorney expressed the same opinion.

Mr. McGraw stated that there was questions about these just being Executive Orders but in looking at the code the Governors Executive Orders in these situations had the force and effect of law. He stated that a councilmember was aware that violation of this order was a Class 1 Misdemeanor. He stated that in line with what the manager said, he did not think council had the authority to circumvent or step over those Executive Orders because they had the force of law. He stated that clearly municipalities in VA existed at the pleasure of the State so to speak and only had the power that the State had given to them. He stated that statements in the Constitution of VA said this and in the Code of VA there was a Supremacy Clause that things done by municipalities were low on the ladder and the State actions were above that. He stated that there was also the Dillon Rule that stated that they could not enact things that conflicted in anyway. He stated that any case law in VA was pretty clear that they would be starting on the bottom of a steep hill legally and unless they could appoint to a specific enabling provision then they would be out of luck. He stated that Mr. Holt talked about the Sanctuary City Ordinances and that they could be instructed but would suffer from the same problems even though council believed that the 2nd

Amendment was sacred, vital and fundamental that it was not council's prerogative to determine what was constitutional and what was not constitutional that it was up to the courts to decide that. He stated that if council were to enact an ordinance that would conflict with the Governor's Order that he said on Tuesday they would be on terribly thin ice but he did not think that they would be on thin ice but in deep waters. He stated that VA Code provided immunity for councilmembers for actions taken as councilmembers however immunity granted in this section would not apply to conduct constituting intentional or willful misconduct or gross negligence. He stated that he did not think this would be considered gross negligence but if council were to enact an ordinance in essence that aided and abetted or encouraged commission of a Class 1 Misdemeanor then he felt that it would be a strong case that council engaged in intentional or willful misconduct so if someone were to take the Town to court then council would have no immunity to civil liability. He strongly encouraged them to use extreme caution in undertaking something like this.

Mayor Harris stated this morning that the well-known Fox News attorney referred to the mandates put on by the Governor's and that the General Assembly was the only one who could make those mandates.

Mr. McGraw stated that he had to respectfully disagree with his characterization on one reason and that was that the General Assembly enacted the emergency power session of the VA Code which empowered the Governor to issues these orders. He stated that he had spoken with another attorney in Town regarding the same comments and he felt that the stay at home orders were unconstitutional. He stated that was all well and good but this particular judge was not sitting in a VA Courtroom or in a US District Courtroom and while he had quite a bit of weight he was not a sitting judge who had the authority to speak the law.

Mr. Presley stated that the Washington County Board of Supervisors had approved something like this.

Mr. McGraw stated that he understood that but had not looked at what they did but felt pretty certain that the same analysis would apply to any action. He stated that counties were slightly different but in the Supremacy Clause he talked about they were below the State. He stated that he doubted very seriously that they were able to effectively overturn, override or circumvent a state action such as these Executive Orders. He stated that it may have been Mrs. Melanie who had questioned the Executive Order status and he thought that was an interesting point but looking at the code, it clearly stated that the Code had the force and effect of law.

Mr. Holt stated that he was correct and the Governor was certainly talking out of both sides of his mouth and a lot of things were unclear which was what was so frustrating. He stated that he felt they were getting good legal advice and that he had personally called and talked to several attorneys and that what our attorney was telling them was correct. He stated that they did need to be cautious but there were some things that they could do and he was the one who had brought up litigation which was something well within their rights to do and they could sue the Northam Administration (not alone) because what was being done was overly burdensome. He stated that they were in a unique situation because we bordered a state that was opening up which would impact our citizens. He stated that there were things that they could do that would not put council

or the town in a precarious situation or in litigation. He encouraged them to pass a Resolution or send a letter to Northam or go in the route of litigation.

Mr. McGraw stated that his expertise was in laws, regulations and the analysis of them so larger policies were the board's prerogative. He stated that there was strength in numbers and the cost of litigation could be substantial. He stated that they would be looking at \$500/hr. for a high powered civil litigation such as this and it was inconceivable for a municipality to do on their own.

Mr. Holt agreed that they would need to talk with the other Towns, etc.

Mayor Harris stated that what he was hearing was that they could adopt a resolution to send to the Governor encouraging him to consider opening up SWVA.

Mr. McGraw stated that he did believe that would be appropriate and would not get them into deep waters. He stated that the deep waters he was talking about would be the board taking actions in any way that would aggravate, supersede or circumvent the Governor's Orders. He stated in the case of Sanctuary Cities that several of the resolutions passed that the Attorney General's opinion was that it did not involve action but was a Resolution of Council's beliefs.

Mr. Holt stated that 98% of the Commonwealth responded which provided them isolation.

Mr. McGraw stated that the belief was the 2nd Amendment was inviable and would not be the same as us contravening the Governor's Orders.

Mr. Bailey stated that in reading the Washington County Resolution legally to encourage someone to do something vs. allowing them would be two separate things in court of law.

Mr. McGraw stated that it may or may not be. He stated that many things in law were arguable.

Mr. Bailey stated that he was just wondering if that was they their "out".

Mr. McGraw stated by them saying they were not encouraging.

Mr. Bailey stated by them saying to reopen in a safe manner.

Mr. McGraw urged caution and stated that they may step over the line by actively encouraging.

Mr. Presley suggested they do something similar/more vague.

Mr. McGraw stated that he would like to see it because it may be subject to violation and that many have been carefully lawyered.

Mayor Harris stated that being a bordered Town that our residents were forced to go to WV to eat.

Mr. McGraw stated that it may not be legally relevant.

Mr. Presley stated that they were watching WV reopen.

Mr. Watson read the Washington County Resolution:

WHEREAS WASHINGTON COUNTY, VIRGINIA SEEKS TO SUPPORT A DIVERSE ECONOMY CHARACTERIZED BY THE PRESENCE OF ENTREPRENEURS, SMALL BUSINESSES, AND LARGE EMPLOYERS; AND

WHEREAS THE 2020 COVID-19 GLOBAL PANDEMIC CREATED AN INTERNATIONAL PUBLIC HEALTH CRISIS THAT GENERATED AN UNPRECEDENTED PERIOD SOCIAL AND ECONOMIC UNCERTAINTY; AND

WHEREAS THE NUMBER OF PERSONS CLAIMING UNEMPLOYMENT IN WASHINGTON COUNTY MORE THAN DOUBLED DURING A SIX-WEEK PERIOD OF APRIL TO MID-MAY; AND

WHEREAS AT LEAST 3,023 INDIVIDUALS WERE SUDDENLY IMPACTED BY TEMPORARY OR PERMANENT JOB LOSS SINCE MARCH 14, 2020; AND

WHEREAS WASHINGTON COUNTY CITIZENS AND BUSINESSES CONTINUE TO EXPERIENCE ONGOING FINANCIAL LOSS ATTRIBUTABLE TO A DISRUPTION OF OPERATIONS AND SERVICES; AND

WHEREAS WASHINGTON COUNTY STRIVES TO BE BUSINESSES FRIENDLY AND WOULD LIKE TO OPEN BUSINESSES IN THE WAKE OF THE COVID-19 PANDEMIC; AND

THEREFORE BE IT RESOLVED THE WASHINGTON COUNTY BOARD OF SUPERVISORS ENCOURAGES ALL BUSINESSES AND HOUSES OF WORSHIP TO OPEN IMMEDIATELY.

Mr. McGraw stated that the last sentence may have gone too far.

Mr. Trigg stated that he felt that they should wait and see what the Governor did. He stated that he may change things next week. He stated that he could not worry about WV and it was tough going against the Governor's Orders no matter who they were. He stated that he did not want to go to Vietnam but he had too and that he did not like what the Governor was doing but did not want a big lawsuit.

Mayor Harris asked council what they would like to do.

Mr. Holt stated that he liked the Washington County Resolution but did not like open immediately and the last verbiage. He suggested they put responsible and safe manner. He stated that all of the business owners he knew would not harm the community and he trusted in their ability to do so.

Mr. Presley stated that he liked it.

Mr. Bailey stated that they could not do it for one specific type of business but it had to be for all and that they needed to be prepared that WVVA would broadcast their opening and it would hit the fan wide open.

Mr. Holt stated that he had talked to attorneys, board members, etc. and they were frustrated as well. He stated that the longer this went on the more frustrated everyone would become. He stated that patience for Small Business Owners was not easy because they were not getting paid. He stated that he did not want to do it against the Town and the threat of him personally being sued did not worry him because that it was part of his job. He stated that he did not want the business owners to get in trouble either and that Law Enforcement could use their own discretion with misdemeanors. He suggested once more that they include reasonable and safe manner.

Mayor Harris asked Mr. Watson to work with Mr. McGraw on a resolution to bring back at the next council meeting.

Council agreed.

Mr. Holt stated that they were close to the 911 transfer and that he would like to roll it out to the citizens at the next meeting with Chief Gunter and the Sheriff's Department to let them know why.

ADJOURN

Mr. Bailey made a motion to adjourn the meeting 6:27 pm. Mr. Presley seconded the motion. The motion passed unanimously by voice vote.

Vice-Mayor Trigg:	Yes
Councilmember Presley:	Yes
Councilmember Bailey:	Yes
Mayor Harris:	Yes
Councilmember Jones:	Absent
Councilmember Holt:	Yes

Don Harris, Mayor

Kim Hernandez, Town Clerk