

**Town of Bluefield  
Town Council  
Work Session  
September 10, 2019**

The Bluefield, Virginia Town Council held a Work Session on Tuesday, September 10, 2019 at 5:30 p.m. in the Council Chambers of the Town Hall located at 112 Huffard Drive, Bluefield, Virginia.

**TOWN COUNCIL PRESENT**

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

**ALSO PRESENT**

Mike Watson, Town Manager  
Kim Hernandez, Town Clerk  
Matt Freedman, Town Attorney  
Billie Roberts, Comm. Dev. Coordinator  
Rachel Looney, Administrative Asst.

**ABSENT**

Jimmy Jones, Councilmember

**CALL TO ORDER**

Mayor Harris opened the Work Session at 5:41 p.m.

***Charter Amendments***

Mr. Watson gave council a copy of the surrounding areas below that included the mayor's vote and council size:

<b>Town/City</b>	<b>Voting</b>	<b>Council Size</b>	<b>Population</b>
Tazewell	Mayor shall only vote in case of a tie, but shall have no veto power.	Mayor and 6 Council members	4,240
Richlands	Mayor shall only vote in case of a tie, but shall have no veto power.	Mayor and 6 Council members	5,823
Pocahontas	Mayor shall have no vote except in case of a tie.	Mayor and 4 Council members	362

Cedar Bluff	Mayor shall vote only in case of a tie, but no veto.	Mayor and 6 Council members	1,137
Bluefield, VA	Mayor shall have a vote and voice in the proceedings, but no veto.	Mayor and 5 Council members	5,444
Grundy	Mayor shall have the veto power, but any by-law or ordinance may be enacted over the mayor's veto by a vote of 2/3 of the members of council.	Mayor and 6 Council members	929
Galax	Mayor shall have the same right to vote and speak therein, but shall have no veto power.	Mayor and 6 Council members	7,042
Chilhowie	Mayor shall have no vote except in case of a tie.	Mayor and 6 Council members	1,781
Abingdon	Mayor shall have the same right to speak therein and shall have a vote but no veto.	Mayor and 4 Council members	8,191
Bristol	Mayor shall have the same right to vote and speak therein, but shall have no veto power.	Mayor and 4 Council members	17,750
Bluefield, WV	Mayor shall have a vote.	Mayor and 4 Council members	9,869

Board of Supervisors for counties generally elect a chairman and all vote.

Mr. Presley stated that it looked like most had 6 council and a mayor.

Mr. Holt stated that it was helpful having enough votes not to have a tie and that most Towns in Tazewell County, the mayor only voted for a tie. He stated having another seat would be helpful.

Mayor Harris stated that he was accessible to the citizens and that he had a lot of residents who came in to his shop and that he also received a tremendous amount of phone calls and would like to be able to vote.

Mr. Holt stated that the concern was not only for the mayor now but for the future mayor. He stated that the mayor acted on behalf of the council and that it was contrary to a strong form of government for the mayor to have a vote. He stated that they have had a 3-3 vote several times before and that the motion died which was not a good form of government. He stated that all the Towns in Tazewell County besides us did not have a voting mayor.

Mr. Presley suggested they take away the mayor's vote or to add a seat.

Mayor Harris stated that it did not matter to him because he did not plan to seek reelection but it would be for the next person seeking election.

Mr. Bailey asked if he felt the other mayors in the surrounding communities would feel the same way about not having a vote.

Mayor Harris stated that he was speaking on his own personal experience.

Mr. Presley stated that the mayor spoke for council.

Mayor Harris stated that this would involve a charter change that may not pass and for those with 3 years left that they should look ahead to the future.

Mr. Holt suggested they follow with the other Tazewell County towns.

Mr. Bailey asked when it would take effect.

Mr. Watson stated July 1<sup>st</sup>.

Mr. Presley stated that he agreed with Mr. Holt.

Mr. Holt stated that if they had another seat then that would help in the absence of Mr. Jones.

Mr. Freedman stated that right now 4 could meet and they have a quorum to vote unless it was a disposition of real estate which required  $\frac{3}{4}$  of the board.

Mr. Presley asked if he won the Eastern Board of Supervisors and had to resign his seat and they had a tie vote then what.

Mr. Freedman stated once it was vacated the board would have to nominate and fill the vacancy.

Mr. Bailey asked what would happen if it were a tied vote. He stated that right now they had 5 members attending who could vote but once Mr. Presley took the position he could no longer vote.

Mr. Freedman stated that a split in vote in that circumstance would be a failed vote and if a member was not chosen in 30 days then it would go into the Circuit Court for them to choose but it was likely that they would probably want a recommendation.

Mr. Holt stated that since he had lived in town that it had never required an ordinance or resolution to fill a vacant council seat that it was done by majority vote and asked if that was correct.

Mr. Freedman stated that it was his experience since he had been there that the seats were filled by oral motion vs. an ordinance/resolution.

Mr. Holt asked if there was established precedence for that.

Mr. Freeman stated that historically the Town acted by oral motion but the language in the charter stated that it had to have a resolution or ordinance to act and that matters of a big deal should act with a resolution or ordinance vs. a voice vote for smaller items.

Mayor Harris asked what council would like to do.

Mr. Presley stated that the easiest thing would be to take away the mayors vote.

Mr. Holt stated that was the most functional around the County.

Mr. Trigg stated that thus far there had not been any problems but would go with whatever council decided.

Mr. Holt stated that they have had motions die because of this and it was a problem and that the people deserved a functional town.

Mr. Bailey asked if before it was a 5 council voting and the mayor as a tie.

Mayor Harris stated that also the mayor then only had a 2 year term.

Mr. Holt stated yes and the 2 year term which was changed to a 4 year term because 2 years was not enough.

Mayor Harris asked if they wanted to vote on it in open session.

Mr. Holt suggested they do a straw vote first.

Mr. Freedman reminded them that before any wording could be changed that it would require a Public Hearing and since a charter change was a big deal that he would recommend it being done by a resolution so that they could enunciate specifically what was going to be amended and published in the paper for public review.

Mr. Holt asked if the charter specifically required that.

Mr. Freedman stated no.

Mr. Holt asked if they could not act by majority of the board for it to move forward.

Mr. Freedman stated that he was not aware of anything at this time in the VA Code that spoke to the requirements of an ordinance or resolution for the purpose of a charter change but that he would recommend it as more of a practicality so that everyone was on the same page as to what was being asked of the Legislature.

Mr. Holt stated that it was not a requirement correct.

Mr. Freedman stated not that he was aware of.

Mr. Holt stated the majority of the board could move it forward.

Mr. Freedman stated yes after a Public Hearing but they wanted to make sure their motion was specific enough to enunciate exactly what was being changed and redacted.

Mr. Bailey said the motion would be to go to Public Hearing.

Mr. Holt stated yes and for the charter changes.

Mayor Harris stated that would have to be done in an open session.

Mr. Holt asked if they were all in agreement on that so far where it cleared up some of the charter changes.

Mr. Freedman stated that there were two parts and asked if everyone was in agreement on the one already proposed.

Council was.

Mr. Freedman suggested doing it in two parts and stated that he would do a resolution on this.

Mr. Holt stated that the only problem he saw was that it needed to be consistent and that he did not think you did a charter change in two parts or did you. He stated that in his opinion it would not look good on the Town.

Mr. Freedman stated that his two cents was...that it would be hard to present two separate votes to the Legislature for two different charter changes.

Mr. Trigg suggested that they do some research and come back with all of the changes.

Mr. Freedman stated that he did not understand what he would specifically look over that it was his understanding that council was ok with one charter change but there may be some that were not ok with the other. So if there was a unanimous group, he would rather get that passed and if there was an issue that the Legislature had with a non-unanimous vote or how it was done specifically by oral motion that we dealt with it that way. He stated that it was council's vote and presentation, he was just giving a recommendation as to how to address two separate votes/motions on this particular issue. He stated that he was confident that a resolution was what the Legislature was going to want.

Mr. Bailey asked if they did them all in one was there a chance that certain parts of it would not pass.

Mr. Freedman stated sure that it depended on what they wanted to enact as special legislation and that it was up to them.

Mr. Bailey asked if they could pick and choose and come back with only one.

Mr. Freedman stated that he would find it hard to believe (unless they asked for something crazy) that if they were a unanimous board asking for reasonable changes allowed by the Virginia Code that they would not pass them.

Mr. Bailey stated that if a complete packet were submitted it would need to be a complete yes or a complete no.

Mr. Freedman stated that was why he would rather do it in two parts because they knew they wanted these type of amendments and it was a unanimous vote and then they could deal with the other one separately.

Mr. Bailey asked if he was saying that they would come back and ask us why this was done via voice vote and not via a resolution.

Mr. Freedman stated that they could ask that but their question would probably be should we pass it if there is a split board (3-2) and done by oral motion vs. resolution or ordinance.

Mr. Presley stated that by doing two, they would know what was unanimous and what was not.

Mr. Freedman stated yes and if they knew one was unanimous they would more than likely roll with it and argue the other one out in committee.

Mr. Holt asked if they did a straw poll vote would it put them in violation of anything.

Mr. Freedman stated no.

Mr. Holt asked for some type of consensus as to which way they were going. He stated that he was in support of a 6 councilmember board and the mayor as a tie vote.

Mr. Bailey stated that he would like to see it go to Public Hearing and see what the residents thought.

Mr. Holt stated that they also needed to add the mayor had a voice in the meetings.

Mr. Freedman stated that they already had similar language.

Mr. Bailey stated that they needed to have all of the language spelled out before the Public Hearing.

Council agreed.

### ***Companion Animals***

Mr. Watson stated that if feeding any type of animal became a problem then the person could be prosecuted.

Mr. Holt stated that they needed to articulate facts on why it was a public nuisance.

Mr. Freedman stated that it was two parts and that he may work on the 2<sup>nd</sup> part and put unsafe or unsanitary which would be a way to distinguish. He stated the 1<sup>st</sup> part was if someone was feeding animals to the extent that it was a filth, disease, etc. then it would fall under a public nuisance. The 2<sup>nd</sup> part was biting scratching, attacking, etc. which could not be defined with animals inside of the home. He stated that running at large would be considered more of a public nature and that was what the courts would look at.

Mr. Holt stated that they already had something with dogs.

Mr. Freedman stated that he could strike out the entire sentence and just leave it as unsafe/unsanitary which would address it in a better way.

Mr. Watson asked that he define unsafe/unsanitary.

Mr. Freedman read the following from the draft: Any companion animal that creates unsafe or unsanitary conditions within the corporate limits of the town shall constitute a public nuisance. Any companion animal, without provocation, that bites, scratches, attacks, or in any way harms or injures any person, who is not the owner of such companion animal, within the corporate limits of the town, shall constitute a public nuisance. Any person who creates or encourages the existence of a public nuisance described in this section shall be guilty of a Class 4 misdemeanor. In lieu of the criminal penalty set forth in this section, a violation of this section may be punishable by a civil penalty of \$50.00. Each day a violation of this section exists shall constitute a separate and distinct offense.

Mr. Watson asked if feeding cats was the problem.

Mr. Freedman stated no that it was feeding so many that it was filthy.

Mr. Watson stated that the problem was if a person moved or died they had someone coming back to feed them.

Mr. Freedman stated that if it created a colony, soiled yards or there were bites then it could be regulated.

Mr. Holt stated that in the situation he knew about he found 6 dead kittens.

Mr. Freedman stated that it created a risk of disease, etc.

Mr. Holt stated that the ACO would be able to determine if it were a nuisance or not and they could use their own discretion.

Mr. Freedman stated that one cat was not going to create the problem.

Mr. Bailey asked if he was going to take out the one sentence.

Mr. Freedman stated yes and leave unsafe/unsanitary. He stated that he would bring back a final draft and that a Public Hearing was not required but they could make the public aware to stop feeding to the extent it would create a problem.

### ***Political Signs***

Mr. Holt stated that he was in favor of getting rid of political signs.

Mr. Watson stated that a Public Hearing would be needed.

Mr. Presley agreed.

Mr. Holt stated that Todd Day had told them that VML was coming up with different language regarding the sign ordinance.

Mr. Freedman stated that may be true and that the localities were revisiting the idea.

Mr. Holt stated that he was in favor of repealing it and going to Public Hearing.

Mr. Presley agreed.

Mayor Harris stated that he was not in favor of it for the simple reason that for the past 10-20 years the 45 day time frame had been honored besides one candidate and that they needed to take into consideration that the citizens did not want the town cluttered with political signs.

Mr. Holt stated that right now he knew of 5 separate candidates whose signs were up in the Town and that it was not one particular candidate that it was both sheriffs, both commonwealth attorneys, a candidate for commission, 2 for board of supervisors and that was a total of 7.

Mayor Harris stated that it was all candidates and all signs that he was talking about and that they had never had a complaint as long as they have had the 45 day ordinance. He stated that the first complaint he had received was from a lady who lived out in Fincastle Estates and she came in and chewed him out real good about why the signs were out and said to council that it was not because of opinions on the candidates that it was the citizens who did not want the town cluttered up with political signs.

Mr. Watson stated that there were other ways to keep the signs down if the constitutionality was what council was worried about and that they could for instance say you could only have one sign in your yard no matter the content up to 6 sqft. in a residential district.

Mr. Holt stated that people did not want others telling them what they could and could not put in their yard as long as it was reasonable. He stated that he understood if it were creating a public hazard or if it affected the property value but if someone worked hard to keep up their home and wanted to put up a Trump or Clinton sign in their yard then we did not have any business telling them that they could or could not.

Mayor Harris stated that it had worked for the past 15-20 years.

Mr. Presley stated that it had worked but people had never realized that it was not enforceable.

Mr. Bailey stated that it was not working because we were not enforcing it.

Mr. Presley stated that if the Town told him that he could not have guns, then he would not give them his guns and that was what he was saying that if you have something on there that could not be enforced and was not constitutional then why even have it. He stated that it could create a lawsuit if we were to try and enforce it.

Mr. Holt stated that he was not as involved as Mr. Watson but he did not know of any occasion where someone had complained about it but maybe Mr. Watson did.

Mr. Watson stated that he had received a call about one today.

Mr. Holt asked before this election and before one of our board members ran against someone for the Board of Supervisors that it was never an issue that he knew of. He stated that he knew it had been insinuated by a few people on that board that they were protecting one of our board members and that was crazy.

Mr. Presley stated that the problem with the whole situation was his signs were put up and other signs were put up months before any of his were like in March or April.

Mr. Holt asked if there were any complaints prior to Mr. Presley's.

Mr. Presley stated that when he put his signs up, it became the biggest problem in the whole world.

Mr. Bailey stated that he fully agreed with the ladies complaint form Fincastle Estates because you either have to enforce it or get rid of it and that turning your head did not fix it.

Mr. Holt stated that Mr. Freedman had a reasonable solution and if the majority of the board could come up with one resolution that said we encouraged candidates not to put out political signs prior to 45 days to the election. That it would say to them this was our suggestion and ask them to respect our Town.

Mr. Trigg stated that the people who were running had to go register and we sent out a notice asking them to wait 45 days. He stated that if they did not wait then we did not enforce it but asked them.

Mr. Presley stated that if someone asked him for a sign then it was their freedom of speech along with his freedom of speech.

Mr. Trigg stated that he had someone call and ask him about the signs and he told them he would obey the 45 days even though he knew he really did not have to do so.

Mr. Presley stated that was a different issue and if someone gave him a sign to put in his personal yard that he paid taxes on that it was infringing on his rights to express his 1<sup>st</sup> Amendment.

Mr. Bailey stated that he could put a sign in his yard that said he hated Chuck Presley and there was nothing that could be done about it.

Mr. Holt stated that the bottom line and all it boiled down too (and he was not there for one candidate or another) but it created an issue before the elections and he did not believe for one second that the complaint was sincere about “trying to obey the 45 day ordinance”. He stated that no other candidates had complained about it and that he has had people to tell him that it was one of the dumbest things they had ever heard. He stated that while they were sitting there trying to figure out ways to bring people into our town that they were buying a golf course and adding an asset to the town and all the other important things that they were doing and here they were talking about signs. He stated that was what he had heard from citizens who had talked to him about it all.

Mr. Presley stated that it was a political stunt and he was undermining this whole council and making them look like the board was letting him do whatever he wanted and not obey the law. He stated that he was coming in to fix them was what a lot of the people were now talking about and it was the truth and he knew it.

Mayor Harris asked Mr. Watson if we sent out notices to all the candidates.

Mr. Watson stated not this year.

Mayor Harris asked in the past had they been sent out.

Mr. Trigg asked who told him not to send them out.

Mr. Watson stated council that they had talked about it in May when they saw the first sign go up.

Mr. Freedman stated that they would also have the option to simply go to Public Hearing on the issue.

Mr. Holt asked if it were a matter of a Public Hearing when they knew that it could not be enforced and all they would hear would be no, I do not like it or yes I do. He stated that the bottom line concern was if we could not enforce it then why keep it on the books.

Mr. Watson stated that he wanted them to understand that they had to have an open hearing for changes.

Mr. Holt stated that he understood that.

Mr. Watson stated on the other sign ordinances if they were to get technical they had to be kept back from the roads and out of the right-of-ways. He stated that there were signs when you got to the entrance of an intersection that were blocking sight and staff was afraid to take the signs down or move them unless council directed him to do so and then we would do it.

Mr. Presley stated that he made sure that his were not blocking anything.

Mr. Holt stated that 10 ft. back from his house was his house but if it were blocking the intersection then that was common sense and creating a traffic hazard. He asked why they would not move a political sign.

Mr. Watson stated that the question he would have would be why they would want us to.

Mr. Holt suggested taking a picture before it was taken down and if anyone came and said anything about it, then council could obviously weigh in on it.

Mr. Watson stated that we were not touching any election signs at all or real estate signs put out in the neighborhoods unless we maintained it we left them alone. He stated that was how staff was handling all signs.

Mr. Presley stated that was the reason for the Public Hearing.

Mr. Watson stated that was the interpretation that he had from the last council.

Mr. Holt stated that it did not come out of his mouth to not take a sign down if it were creating a traffic hazard and asked council if it came out of any of their mouths.

Mr. Bailey stated that was going back to one person's interpretation and one person's idea if it were a traffic hazard.

Mr. Freedman stated that if it were in the right-of-way then we could.

Mr. Watson stated that the right-of-way on some roads was 20, 50, 100 ft. and unless you went out and surveyed the property and that the sidewalk on Mountain Lane was not in the right-of-way it was 2 ft. inside everyone's property.

Mr. Holt asked if there was any particular sign causing a traffic hazard right now.

Mr. Presley stated that if it were one of his to tell him and he would go and take it down.

Mr. Holt asked again if there was one.

Mr. Watson stated that he would bring back one at a later time but if you had to pull up to an intersection and had to pull up 3ft. to see past a sign.

Mr. Holt stated that he would love to get a picture of this particular sign and would start a motion to repeal that ordinance.

Mr. Presley stated that he would second it.

Mayor Harris stated that the 45 days had worked for 15 years.

Mr. Trigg asked Mr. Watson how many times he has had to go out before because of the 45 days.

Mr. Watson stated that he does not remember ever having to pull a sign out of the ground.

Mr. Bailey asked unless he was requested.

Mr. Watson stated that he had contacted people with oversized signs before and told them they had to move them back out of the road and he had never had anyone to argue with him besides one person who said that it was their property and was allowed to do whatever they wanted. He stated that he sent the same letter to the candidate and told him to move it.

Mr. Bailey asked if that was the end of the problem.

Mr. Watson stated that it was in Brierwood in someone's yard prior to the 45 days.

Mr. Bailey stated that they needed to enforce it 100% or get rid of it but not doing anything was not helping either way.

Mr. Watson stated that if council wanted to repeal the ordinance then that was ok but the enforcement of it and going to Public Hearing was assuming other things.

Mayor Harris stated that notices were sent out in the past and there was only one issue before the 45 days.

Mr. Watson stated that the Zoning Administrator was the one who sent out letters to state where they could and could not be put out signs. He stated that we received a list of candidates when we found out who was on the ballot and if we saw a sign, we would send an additional letter to the property owner. He stated that it was true, it was not enforceable but he would not recommend council to say pull up the signs and if they did not want all of the signs everywhere then they should not repeal the ordinance.

Mr. Holt stated when they talked about going to a Public Hearing, it was a hoopla with the media coming in and interviewing people about it. He asked how many people had showed up at a council meeting and that he did not anticipate a lot showing up if they went to Public Hearing that would feel strongly about it one way or another.

Mayor Harris stated that he knew of one person who would come.

Mr. Holt asked if it were a resident of the Town.

Mayor Harris said yes.

Mr. Freedman stated the way he understood the way it was currently being enforced was by sending letters to the candidates and the fact that there was no enforceability to the ordinance sounded like more along the lines of an informal request.

Council agreed.

Mr. Freedman stated that his two sense on it was if it was not legally enforceable as written then it could still have the same effect by repealing the ordinance and passing a suggestive resolution and then every year just sending out that resolution to the candidates or to the people that were cluttering their yards with signs. He stated that it would have the same effect and would be a reminder especially if staff would take the position that it was unenforceable as it was written.

Mr. Trigg asked what VML was trying to change.

Mr. Freedman stated that he was not sure if it was particularly with this ordinance but he knew in the past that all of the litigation that was happening regarding the sign ordinance on the local government attorney's perspective they were proposing a model sign ordinance for all localities to meet the requirements of the Gilbert Case which was the one basically controlling what was happening here. He stated that it was not necessarily because of political signs but the reason there was a problem with the constitutionality of the ordinance was that it was discriminating amongst signs in this case and limiting the types of signs and their message which was happening with our ordinance. He stated that if the limitations of the ordinance applied to all signs then you would probably not have a problem but it was the fact that civic and religious signs were permitted for whatever number of days but the political signs were not and that was the danger in having this ordinance.

Mayor Harris asked if he could put up a sign in his yard that said Graham Jewelry 30% off.

Mr. Watson stated no that you could not put a sign in your own yard stating that you were selling something.

Mayor Harris asked where they drew the line.

Mr. Freedman stated that was something they may need to address as to why you could not put up a sign in your own yard with whatever message was wanted on it.

Mr. Trigg stated that they kept bringing up all of these things that were working and wanting to change it all.

Mr. Freedman stated that it had been out for years.

Mr. Bailey asked if this was something new.

Mr. Freedman stated that this case was from 2015-2016 and he remembered seeing it when he first started at the Town.

Mr. Bailey asked how they could find a general sign code.

Mr. Freedman stated that he had it being a member of the LGA and could certainly bring it back to council if they wanted him too. He stated that it addressed all signs and that the crux of all of this was that some messages were permitted and other messages were not which was where localities were getting into trouble. He stated that he sympathized with what Mr. Trigg was saying that it had not been an issue for years but the thing was, laws evolve and it changed people who wanted to sue then all of a sudden you had a new precedence for what the laws had to be. He stated that the danger with local governments was not necessarily that it was actually being enforced but what could be enforced and that was how the courts looked at the local government risk. He stated that they knew they did not have to actually enforce it for someone to have it definable against them especially if they wanted to challenge it.

Mr. Bailey stated that if he had no intention of putting up a sign in his yard for anything that he could still sue the Town for having the ordinance on the books.

Mr. Freedman stated that he was not sure because the Town would claim that we had no standing for injury but it could be that the courts would say it was the risk of the enforcement against it. He stated that it was a prohibited act preventing them from doing it even when they had no cognizable injury so we would try and challenge it. He stated that the fact that it was on the books and what Mr. Bailey was saying was that it prevented those that wanted to exercise their right, it was not the fact that it was 45 days but in fact the message which was being limited in the statute.

Mr. Trigg asked for a copy.

Mr. Freedman stated that he would make it part of the packet next time for discussion in a Work Session.

Mr. Trigg stated that in WV they did not allow you to cut down your own Christmas trees and there were fines and penalties if you did but people still did it because it was not enforced and it was kept on the books.

Mr. Holt stated the problem was that nobody had said anything until this time and it was not an issue before now. He stated that was the part he worried about was when it did become an issue and that he had a candidate not mentioning names that did it prior to the 45 days and told him that the Town of Bluefield took down his signs. He stated that he told this person that was something we would not do but this person stated that we did. He asked what message was being sent.

Mr. Bailey stated that they needed to either enforce it or it held a different precedence for others, so either support what the charter said and what you believed in or change it.

Mayor Harris asked whether they wanted to go to a Public Hearing on the matter.

Mr. Trigg stated that he did not agree on changing it and would vote against it.

Mayor Harris stated that it would be 3-2 (Trigg-No, Presley-Yes, Bailey-Yes, Harris-No, Holt-yes) and they would have to hold a Public Hearing.

Mr. Freedman suggested that during the meeting someone would make a motion and they would vote to repeal this specific ordinance. He stated that he would draft an ordinance that repeals that particular section and we would have a Public Hearing on that particular ordinance then when the time came we would do the 1<sup>st</sup> and 2<sup>nd</sup> Readings, motions and vote to repeal it. He stated that if it ended up passing it did not mean they could not continue to try and do the same thing they had been doing just with a suggestive resolution without that particular language on the books. He stated that there was always a way to try and address the concern within the terms of the constitution and they could try some new things.

Mr. Watson stated that he would like to go back just a little, he stated that if he was not mistaken that you had 30 days to challenge an ordinance and then after passing it, it took 30 days after that to go into effect. He stated during those 30 days if you did not have someone fighting you on it, there may be a way to get back and pass something where the codes did not have to be changed.

Mr. Holt stated that he respected Mr. Freedman's opinion but asked what the charter said about it.

Mr. Freedman stated majority of members elected.

Mr. Holt stated majority elected council which would be 4. He stated that the spirit of it obviously was during the council meeting and if the spirit of the ordinance was that the requirements of the charter said the majority of council and if a member could not vote then he could not vote and that was a fact. He stated that he thought the majority of this board could pass the resolution and it was also his understanding that if the majority of this board said that it was sufficient then they could still carry true with that.

Mr. Freedman stated that they needed to keep in mind that with the charter language it could be considered void in the eyes of the law. He stated that a court did not need to act to consider something void.

Mr. Holt stated that was a very insufficient way if the argument could be made about that particular part of the charter language and asked who the majority would be to challenge it.

Mr. Freedman stated someone who was not happy with the outcome.

Mr. Holt stated at that point then the Town could direct him to defend the Town's position when the majority of the board decided to vote in the affirmative which was how he felt.

Mr. Freedman stated that he was having trouble. He stated that he knew what he was saying and guessed what he was having troubling accepting was that he did not understand why the charter would say the ordinance or resolution had to be passed by majority of the members elected then why would the board believe that the non-majority was sufficient to pass the ordinance.

Mr. Holt stated that the problem with them was the councilmember who was not there could not vote.

Mr. Freedman stated that he understood what he was saying but.

Mr. Holt stated that there was no way in any other Town that you could come up with how they operated under that code.

Mr. Freedman stated that the general rule as he had mentioned before was the majority present would vote and that was what passed and what they were looking into amending the charter to resolve.

Mr. Holt stated that our charter was efficiently made in the spirit of what Mr. Freedman was telling him and if the charter was questionable maybe they should refer to the state code instead. He said at first it was the majority of the elected board members present.

Mr. Freedman stated that they could only do that in the event that there was no conflicting issues.

Mr. Presley said he was saying that the charter said one thing then saying another.

Mr. Freedman stated that he did his best at providing the advice he could.

Mr. Holt stated that he was not trying to be argumentative but that it was aggravating to him that the majority of this board and in every other case around us was sufficient, then it would be sufficient here too. He stated that the spirit of the charter was clear and he thought there was code in the State of Virginia that the majority was sufficient and that was his opinion.

Mr. Freedman stated that 4 members would be a quorum of the board and they would have to have 4 members to meet and basically carry on actual business. He stated that the reason he was having trouble accepting at this point and he respectfully disagreed was the charter was a special act of the General Assembly and when the two conflicted he provided suggestions in his personal legal opinion. He stated that it was vague to the point that it was not clear and was necessary to adopt an ordinance or resolution. He stated that they were "even" as a board and it was up to them but to be careful and advised depending on what was passed if it did not meet the requirements of the law then it was considered void in the eyes of the law regardless of it being challenged it would have no legal efficacy if void.

Mr. Bailey asked if someone were to question it then would it be void.

Mr. Freedman stated yes because they acted outside the scope which was commonly referred to as the Dylan Rule.

Mr. Holt asked who would make the determination of whether it was void or not.

Mr. Freedman stated that it was hard to answer that question because it was just void and a court would have to say it was void and never had any legal efficacy. He stated that was a reason why you had bond council in a situation such as with the IDA and when there was an issue with the language and the minutes said passed unanimously when the Virginia Constitution required the vote to be detailed as to how it was voted and his opinion, it would be void. He stated that the IDA was never created so that was what he was getting at if it were truly void then there was never any real legal efficacy because it was outside the scope of what the board committed to do.

Mr. Holt asked if there was a timeframe for it to be void.

Mr. Freedman stated not that he was aware of but he could go back and look at it.

Mr. Holt asked if he could go back on a vote that he disagreed with that was passed and that he voted no on and challenge it.

Mr. Freedman stated yes.

Mr. Bailey asked if there was any statute to limitations.

Mr. Freedman stated none that he was aware of but there may be something for a particular type of issue but just concerning the IDA issue 10-11 years ago, it had to be redone and he was not saying these things to be difficult or to back up against someone but just wanted to make them aware of the circumstances when making a decision. He stated that he just wanted them to be advised and that he would do his best to help Council carry out the will of the board.

**ADJOURN**

Mayor Harris adjourned the Work Session at 7:12 p.m.

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Don Harris, Mayor

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Kim Hernandez, Town Clerk