

## **Minutes for the Special Called City Council Meeting**

101 W. First Street, Lowell, North Carolina 28098

February 28, 2024, 3:56 PM - February 28, 2024, 5:12 PM

**Roll Call:** *(The following members were in attendance)*

- **DeWayne Chitwood**, Councilmember
- **Phil Bonham**, Councilmember
- **Travis Smith**, Councilmember
- **Shane Robinson**, Councilmember
- **Scott Bates**, Mayor Pro Tem
- **Larry Simonds**, Mayor

### **1. Call to Order**

---

Mayor Simonds called the meeting to order at 4:00pm. City staff present were City Manager Scott Attaway, City Attorney John Russell, Police Chief Moore, Police Asst. Chief Harrison and City Clerk Cheryl Ramsey. A quorum was determined at the beginning of the meeting. The meeting was not teleconferenced on YouTube; however the agenda and meeting materials were made public on the city's website as well as in person. Members of the public were also in attendance.

### **2. New Business**

---

#### **2A. Per Councilmembers Smith and Bonham, To Discuss the Role of the Council in Requesting Information About Personnel Matters and other Department Requests- 4:00 PM**

Councilmember Bonham discussed why the meeting was called by him and Councilmember Travis Smith. He said [primarily to the City Attorney] that there were concerns with how certain members of council addresses city staff and city positions and he wanted to know if there are any legal ramifications for doing so. He said there are also procedural matters on where council exists as it relates to personnel matters and the legal consequences regarding that. He said there were also some things that had been funded that are now being paused and he wanted an understanding of the repercussions for them, i.e. the K-9 program and the security checkpoint in the lobby. He said he wanted to navigate through all of this and get the attorney to explain what needs to be done in open session vs. closed sessions.

John Russell said that anything that relates to the form of government, how the council functions and the relationship between each other [councilmembers] is all open session. He said the meeting request listed a request to consult with the attorney regarding personnel matters. He said there is a closed session agenda item if anyone would like to make a motion to do so to discuss. Questions about risk or discussions about liabilities can be done in closed session under Section 3 of the Closed Session statute to consult with the attorneys. General policy, form of government, communications, relationships among council is all open session.

Councilmember Bonham asked Mr. Russell to explain our form of government and how we operate. Mr. Russell first reminded council that his role is strictly to provide legal advice. He said he does not want to get into policy as he would want council to handle that. He then said "the city is under a Council-Manager form of government, which in general means that communications on how to run a city, how to do the affairs of the city, the day-to-day operations, are done by the City Manager with some direction from council as to how you [council] want the city to operate using the policies that you are elected to do. So there is a bit of a gray area there because there is obviously some of what the city does is policy based and that's for you all to decide but generally the day-to-day is run by the City Manager through the department heads. When there are issues of how you want the city to function, how you want the City Manager to act. The general rule Council-Manager form of government is communications to the [City] Manager and instructions to him as to what information you all need to make decision on policy levels, in other words the information that is coming back to you all and then some direction to him in respect with specific policies you've adopted. That is a very high level definition and I hope I've answered any questions you had." Councilmember Bonham said "I get it." Councilmember Chitwood said "it answered mine [questions]."

Councilmember Bonham then asked "under this form of government, what are the draws of council and mayor? I mean, you've kind of explained it there but what are our limitations. What can we do, what can't we do?" Mr. Russell said "the roles of council and mayor is defined in the rules and procedures. There is not like a handbook or statutory guidelines that says 'here is what everybody does', so there needs to be some consensus of council on 'how do we operate, how do we communicate together, how do we communicate to the manager' in a way that is functional and works. Then presumably get that communication back from the manager to each of you letting you know 'here's what I'm doing, this is how I'm attempting to implement the directives you're giving me to run the city, if that's wrong or if there's an issue let me know so I can do that better.' Some lines of communication there. As far as the roles, it's obvious that it is the role of

council to set policy, to make decisions on spending, where you want to set priorities, that's absolutely the role of the council to do. There is a little bit of a gray area, obviously as elected officials you want to be responsible to members of the community and the constituents who elected you. There is some appropriate and necessary [accountability to the public]." He continued, "you all can't control people contacting you, when you have your emails published on the website, people are going to see you out whether you want them to or not and that's certainly appropriate. So you all need to decide a reasonable agreement once you get that information, what do you do with it. How do you direct those people to the City Manager, do you take that upon yourself to discuss with the City Manager... All these things...there's not a specific set of criteria in your rules and procedures or in the state statutes that is going to cover each thing and that's why there has to be some communication amongst yourselves on how you're going to operate. Also some expectations from the City Manager both in terms of what he'll hear from you and what you need to hear from him with respect to whether it is spending issues, policy issues, personnel issues, citizen complaints, all those things fall into the realm of communications under the idea that you all hire the City Manager to run the city as you all vote to run it."

Councilmember Bonham asked "so there is a hierarchy. There is a council-mayor, then City Manager, and everything filters to the City Manager and down from there. We stop at the City Manager, correct?" Mr. Russell said that is one way to look at it. "If you put it a corporate setting, you are the Board of Directors, the City Manager is the CEO, with the qualification as I was trying to say, that as elected officials, it's absolutely appropriate and expected that you all will hear and need to communicate with the people that elected you...There is not a line that says your role stops at the City Manager." Councilmember Bonham asked "in a best practices scenario and I'm speaking to a taxpayer, my next course of action is to speak with the City Manager and let the City Manager handle it and not circumvent and go to a department, is that your interpretation?" Mr. Russell said that is generally how a council-manager form of government would function. He said in that scenario, you [council] would advise the taxpayer to contact the City Manager or council can contact the City Manager and ask him to contact the taxpayer but communicate back to council on the result. He said there will be exceptions to that but as a general practice that is how the School of Government and most commentators would interpret the Council-Manager form of government. Councilmember Chitwood asked "so you're saying it's not illegal or against the law to do that, if somebody had done that?" Mr. Russell said "correct, there's not any statute that says that they violated something. There is, in general, for you all to decide how to operate, work together to do that." Councilmember Bonham asked about best practices and what does council need to do to maintain the integrity of our form of government and if they need some guidelines

to follow." Councilmember Chitwood added "or is that something we have to make up as a council." Mr. Russell said "you're starting to get outside of what I think is a legal opinion and I don't think it's appropriate for me to tell you beyond 'here's the basics' and you all need to decide within these general confines of council-manager form of government and how you want to..." Councilmember Chitwood mentioned the Rules of Procedures was adopted when Councilmember Robinson last served on council. Councilmember Bonham asked what is it [policy] as it relates to speaking with staff during an open meeting and how they are addressed at the podium? He asked if there were legal ramifications for belittling them? Mr. Russell said he feels the latter question should be in closed session when legal questions arise. He said the other question and how to address staff falls under council asking itself what is the council-manager form of government and for you all to decide your best practice on if you have an issue with staff and when to take it to the City Manager. He elaborated further. Councilmember Bonham asked if it was best practice that if there was an issue about a city employee that that be discussed offline with the City Manager and not address the employee publicly in front of a City Council meeting. Mr. Russell said it is not up to him to tell council best practices and council has to decide that. He said "as it relates to the council-manager form of government that would be the common way to do it but beyond that again that is for you all to decide."

Mayor Simonds said 'he's listened to what he [Mr. Russell] has said and when you have them boys in the City Council chambers, and a question comes up, I don't see anything wrong with asking questions. I think the City Manager should take care of his employees and if they get out of line he should say 'listen, don't be insubordinate' and that's the way it should be. If you have a problem with that, he's the City Manager, I'm not.' (Inaudible sentence). He went on to say if you have employees that get out of hand in public open meetings then that is for the City Manager to address not come to council and express their opinions. He discussed this further stating that things come up and if he has a question he's going to ask it and also allow the public to talk about it too. Councilmember Chitwood mentioned that he has mentioned to the Mayor in the past about sticking to the agenda and not having meetings for 3+ hours. He said we shouldn't talk about stuff unless it's on the agenda. He agreed disciplining someone should be behind closed doors. He then said "this meeting, today, was totally uncalled for and could have waited until Friday at the work session or March the 12th [council meeting]. This could've waited. As we've stated before, when Mr. Simonds called that meeting [Special meeting on January 3, 2024], and I agree that meeting shouldn't have been called for a special meeting, this one shouldn't have been called [either] because we are wasting tax payers money to get the attorney in here. It could've waited." Councilmember Smith asked "how would you expect us to have this in a City

Council meeting, where we are letting Larry talk for over 3 hours and doing an hour of business." Councilmember Chitwood said they've talked about that and how they would correct that. Mayor Pro Tem Bates said Councilmember Chitwood just addressed that and says they are all in agreement to stick to the agenda.

Councilmember Bonham said there were a couple reasons to have this discussion now. He said the attorney would not be at the next council meeting and based on the last meeting where the Mayor gave employees an undressing and he was not going to go through another meeting of that to address this. He said we are going to have an exodus coming and going to lose good people because of the results of this election. Given the reputation now, we are going to have a hard time filling those positions. He said "you can't recruit and retain if you've got city officials blowing you up at the podium, just trying to make a presentation, doing your job. Doesn't matter if you agree with the job or thinking if the position is working, that doesn't matter, you don't treat people the way that some people are treating these guys standing here just trying to do their job." Councilmember Chitwood said that he mentioned to Councilmember Bonham before that he couldn't hear what Mr. Simonds was saying because of the volume issues so he got aggravated listening to the meeting and cut it off. [Councilmember Chitwood was absent from the last meeting and there were technical issues during the council meeting. Please refer to the minutes]. Councilmember Bonham said it's not only that. He said "what button do you push, when again, this may be a closed session issue, but what are we setting ourselves up for? What is harassment and how many times can you call down here and do this and this and this before it gets out of hand. You can't just do that anymore, you can't get away with being a bully, so how are we exposing ourselves with this type of behavior and what are we going to see as a result of it." Mr. Russell said to answer that, regarding liability, would need to be in closed session.

Councilmember Smith asked how many applications there have been since the Parks and Rec employee resigned. Mr. Attaway said one in a little over 2 weeks. Councilmember Smith said he "feels that is a problem and people are not going to want to work for the city when they see how we have been acting and talking to our staff, just not a good look." Mayor Simonds asked what was stated to the Recreation Director. Councilmember Smith said he was speaking in general. Mayor Simonds said he's only "spoken with the Chief and the Zoning guy last meeting and the questions I asked were legitimate questions and I didn't think I did anything wrong. If you have ordinance that they were talking about doing, that ordinance should be upheld and if you don't have an ordinance for that, it shouldn't be allowed. That's just my opinion, and it's just my opinion. I don't know the law, ya'll do" Councilmember Bonham said to Mayor Simonds, "I think,

holding your opinion to yourself, in a public setting, given your position, is part of your responsibility. Secondly, when you sit there and tell a guy 'I don't even think we need this position' or "you need to do this or that" or calling up to City Hall four and five times a day saying 'I need, this, this, this, this.' If you really wanted the answer to stuff, get your (inaudible) together, make your list, call the City Manager and say 'hey, I'd like to make an appointment with you on whatever date you have available and I want to cover these things' so he can prepare and you sit down and do your deal instead of grandstanding here and showboating doing all the stuff that you do. You're running off good employees, you're not going to be able to retain..." Mayor Simonds asked who he has run off. Councilmember Bonham said you have two right now. Mayor Simonds asked who? Councilmember Bonham said "Sue [Lowe] and Tori [Dellinger]." There was a debate on when Ms. Lowe left (before or after the election). Mayor Simonds said the only thing he said to Sue was that she was a tremendous employee. Mayor Pro Temp Bates said he could address Sue. He said "Sue actually left, not because of the mayor, but because of her and employees that we have here. Councilmember Bonham said that is a different story that he got." Councilmember Chitwood said "it's funny how she talked to him [Mayor Pro Tem Bates] and that's the story she gave him." Mayor Pro Temp Bates agreed and said this was not from a third party but directly from her explaining why she was leaving and it had nothing to do with the election or the mayor. Councilmember Bonham said that was a different explanation than she gave him.

Mayor Simonds said "it's a shame and disgrace to have a good employee that can't be replaced with an Accounting degree and was never (inaudible) for having an Accounting degree. I think it's sad. That's just life and lack of communication. That's what this whole deal is about. I speak my mind and didn't run for a popularity contest. I ran to get this town back to where it needed to be where people can afford to live here. People that pay their taxes and live here and that's who we need to respect. Not the people that come here (inaudible) with something on their mind. I don't have a personal vendetta against no one. I think Scott and I...have I ever demanded you to do anything or you would get fired or try to fire you? Absolutely not. We have discussions but have you ever felt like I was harassing you by asking you serious questions about what we do, about what needs to be done every day? I ask you if you can do this, you say yes (inaudible). I can't make you do anything and I have not tried to." Mr. Attaway asked if the Mayor wanted a response. Mayor Simonds said yes. Mr. Attaway said "there have been instances where there have been a lot of requests and some redundant requests that have already been emailed or delivered. You've asked about your inquiries and yes sometimes there are a lot of inquiries with new boards. I welcome the communication and the requests for information is fine as public records are public records and that's fine but I think more of communication would help all the council members. As

I've stated before, a number of times, I have an open door policy and some exercise that where I get an appointment request and we go over a project or some of the things...there was a lot that happened last year, last couple years, and bringing you all up to speed on where things are, I welcome those communications and meetings." Mayor Simonds said "as far as coming out and physically attacking you, I always thought we had a good rapport as far as talking (inaudible). I just tell you the things that I need. I just ask a question. I know you don't have the right to set policy but when we are talking about different things...my question is like in anything, why didn't we take bids. I know we're working on the Community Center now, but to my knowledge I didn't see no bids. I think we'd ask for bids. I know we are the council manager council form of government but we need to answer to the public. Why are we paying so much money for this or why don't we...it's just common sense and common sense practices."

Councilmember Bonham said "part of that too is we are working now and trying to find direction through the budget process on what you want to do with the Boys and Girls Club and how you want to attack this and at the same time, we've got someone grabbing the Fire Chief to a piece of dirt that the city is required...and talking to him about it and taking that over and building a new fire department. You have no idea what's going on there and the process of bringing that back, I think is extremely premature and taking things by just "oh, I want to do it." He continued "you talk about communication, there is no communication. It's 'I want to do this, this is what I want and I don't give a (expletive) on what anybody else says, I'm just going to push this thing through.' It takes a phone call, 'how does this work, what is the procedure of even trying to accomplish things, lay this out for me', and you're sitting out there looking at a piece of property saying 'we can do this.'" Mayor Simonds said that is the most outrageous biggest lie that has ever been told. He said "the Chief [Fire] contacted me about wanting to find a piece of property where they could build a new fire department and they needed a new fire truck and they were trying to put that together. I told him the only piece of property that the Town of Lowell owned was the property beside the Presbyterian Church. He came up and looked at it, yes, but I can't make a decision."

Councilmember Bonham said no, you can't. Councilmember Chitwood said he "thinks we are getting off the subject and this can be put on the agenda if you all want to discuss this fire department or next months agenda. Mr. Attaway said that was to be the fire tax district discussion during the budget meeting. He said that is the first item on the agenda. Councilmember Chitwood asked Mr. Attaway if the deed had a restriction by the church saying that it was a City Hall/Police and that was it. Mr. Attaway said "yes, the contract signed with the church specified that it was to be a City Hall and or Police Complex built on the property. There was a concern from them, the City buys their property, then we sell it because we changed our mind, and back out, then

something else goes there that is not desirable to them. There is a parking agreement with them too so they can occupy some parking spaces." Councilmember Bonham said "so a phone call would have helped?" Mayor Simonds said that was good to know since we don't anything about anything you've bought. He mentioned other projects the previous council voted on but that they [current council] don't know anything.

With nothing else to discuss in open session, Councilmember Bonham made a motion to go into closed session to discuss the legal ramifications from staff harassment and potential liabilities for eliminating the security checkpoints and any financial obligations we may have on terminating the K-9 program. Mr. Russell said all of this would fall under consulting with the attorney under 143-318.11 Section 3. It was seconded by Councilmember Smith. The vote was carried with Councilmembers Bonham, Smith and Robinson voting yay and Mayor Pro Tem Bates and Councilmember Chitwood voting nay.

**The item was motioned Convene into Closed Session by Phil Bonham and seconded by Travis Smith with a passing result 3-2-0-1 Opposed by Scott Bates, DeWayne Chitwood**

### **3. Closed Session**

---

#### **3A. Closed Session to Discuss Personnel Matters Pursuant to NCGS 143-318.11(6)- 4:34 PM**

There was a discussion of respect to employees and interfering with their jobs and whether staff should attend the upcoming budget retreat. There was also discussion regarding keeping the K-9 unit or not as the previous budget and council voted to have one. Lastly, the security checkpoints were discussed and the legal ramifications or liability if there was not one.

#### **3B. Closed Session to Consult with the City Attorney Pursuant to NCGS 143-318.11(3)- 5:01 PM**

See notes above.

**The item was motioned ReConvene into Regular Session by Travis Smith and seconded by Phil Bonham with a passing result 5-0-1-0 Abstained by Larry Simonds**

### **4. Open Session**

---

#### **4A. Possible Action after Closed Session- 5:11 PM**

No actions/motions took place.

**The item was motioned To Accept by Travis Smith and seconded by Phil Bonham with a passing result 5-0-1-0 Abstained by Larry Simonds**

***Motion to adjourn***




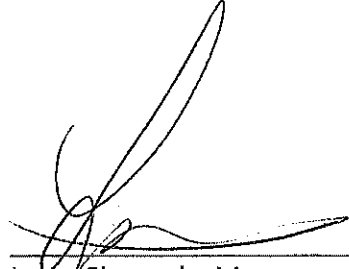
**5. Adjourn**

---

The meeting adjourned at 5:11pm

ATTEST:

  
\_\_\_\_\_  
Cheryl Ramsey, City Clerk

  
\_\_\_\_\_  
Larry Simonds, Mayor