



COMMISSION ON OPEN AND TRANSPARENT GOVERNMENT

21 Main Street

Monday, June 23, 2025 at 6:30 PM

MINUTES

AN OPEN MEETING OF THE COMMISSION ON OPEN AND TRANSPARENT GOVERNMENT OF WARRENTON, VIRGINIA, WAS HELD ON JUNE 23rd, 2025, AT 6:30PM

Work Session

PRESENT

Councilman and Vice Mayor William Semple, Chair; Mr. Kenneth Alm, Vice Chair; Councilman Eric Gagnon, Secretary; Mr. David Norden; Mr. Mike Kokoszka; Mr. Patrick Corish, Town Attorney, Mr. Whitson Robinson, Special Counsel Mr. Chap Petersen, Town Attorney

ABSENT

N/A

The minutes laid out below will be a brief recap of the agenda items. For more in-depth information, please see recorded video at: [\[LINK HERE\]](#)

I. CALL THE MEETING TO ORDER 6:30 PM

The meeting opened at 6:31 PM by Chairman Semple who declared a quorum present.

APPROVAL OF THE AGENDA.

Motion was put forth by Chairman Semple to amend the proposed agenda to add a presentation from the Town Manager to discuss the town's efforts to increase transparency.

Commissioner Gagnon suggested adding a discussion and vote approval of the Commission's Town Records Review Plan to the agenda.

The motion to amend the agenda was made by Commissioner Alm.

The motion was seconded by Chairman Semple

The vote was as follows:

Ayes: Semple, Gagnon, Norden, Alm, Kokoszka

Nays: None

Abstention: None

Absent: N/A

APPROVAL OF MEETING MINUTES

March 27th, 2025, Meeting of the Warrenton Commission on Open and Transparent Government

Motion put forth to approve the March 27th, 2025 meeting minutes by Commissioner Alm.

Seconded by Commissioner Kokoszka.

The vote was as follows:

Ayes: Semple, Gagnon, Norden, Alm, Kokoszka

Nays: None

Abstention: None

Absent: N/A

BUDGET REVIEW

Chairman Semple made introductory remarks, indicating that the Town Council had appropriated \$60,000 to underwrite the Special Counsel's investigation, including the retention of an IT expert, with \$50,000 of this amount to be applied to the Special Counsel's work, and \$10,000 to be applied to the work of the IT expert.

Chairman Semple indicated that the Town had received invoices to date from the Special Counsel totaling approximately \$22,500 through the end of April, further indicating that no invoices had yet been received for May and June, and asked the Special Counsel, Whit Robinson, to provide more information.

Special Counsel Robinson responded by saying that he had not billed for May and June because he had unexpectedly encountered issues preventing him from obtaining IT access to Town records, which caused him to suspend his billing, but he said believed those issues had been resolved. Mr. Robinson indicated he he could move forward with his work within the budget allowed, including the time he donated.

Chairman Semple asked Special Counsel Robinson if he still believed that he could complete his tasks as Special Counsel within the amount allocated, and Mr. Robinson replied that this was certainly his intent, and if necessary he would come back to the Commission and Council, but indicated that, outside of court costs, he would continue to dedicate his time to Commission matters and stay within the budget.

Commissioner Alm asked if there were invoices from May or June that already existed, and Mr. Robinson replied that no charges were billed, but he was keeping records of non-billable time spent on Commission matters.

Commissioner Alm asked Mr. Robinson if the IT expert retained by Mr. Robinson had billed any charges, and Mr. Robinson replied that the IT expert had billed for his work, but those charges were significantly under the amount budgeted.

Chairman Semple asked Mr. Robinson if he would continue to record and disclose his non-billable time spent, and Mr. Robinson said he would continue to do so.

INVESTIGATION UPDATE

Special Counsel Robinson provided the investigation update. Reading from a written statement, he opened by stating that while he previously said he believed his investigation process would be completed in a relatively short time, he did not anticipate the delays encountered in gaining access to the Town servers. Mr. Robinson said he believed the plans currently before the Commission would now work. The review of the town's files would include all files and correspondence in accordance with the plan. Robinson thanked Stephen Clough, Town Clerk, for working diligently with Mr. Sammons [the IT Expert] for his efficiency and professionalism.

Mr. Robinson described his research into data center projects in Prince William County. He said he focused on Prince William County because he found overlap between personnel and procedures between that jurisdiction and Warrenton.

Mr. Robinson stated that records request letters would be sent to outside entities and individuals requesting information, but if they were not cooperative, he would discuss the legal ramifications with the town attorney to determine how best to move forward with subpoenas and depositions, if at all. Robinson said it would be necessary to review Town server records before sending these letters.

Mr. Robinson said at the end of the process would produce a report describing proposed changes to Town zoning processes based on his findings. He provided a few examples, including suggestions to prevent Town Council members from meeting with developers ahead of the developer's submission of plans to the Town, interfering with the Planning Commission process, and respecting the Town staff's role in evaluating new applications.

Mr. Robinson also stated that personal e-mails were also being used by Town elected officials to conduct Town business, instead of government e-mails, and Town elected officials were sending e-mail messages to other elected officials while excluding others.

Mr. Robinson stated for the record that he would not use his position to target any member of the Town staff, and said the person or persons who may be creating this impression must stop doing so.

Commissioner Alm asked Mr. Robinson to further expand on his remarks concerning his prior 2016 statement on the matter of developer relationships with Town Council and Town Staff, and Mr. Robinson provided this prior written statement to the Commission.

Report from the Town Attorney

Town Attorney Chap Petersen provided the Town Attorney's Report. Mr. Petersen indicated that the discovery process had gotten off to a bit of a clunky start in the review of the Town's records, for which perhaps he would take some of the blame. He stated that the Town owns its own records, and has a presumptive right to view these records, subject to FOIA restrictions, [that is] whether they have to do with personal business, criminal records, tax records, things of that nature, attorney client privilege. There has to be a way to exclude and exempt those.

Mr. Petersen stated that there had been issues with Town staff concerning protocols that they wanted to see observed that might lead to complications if we just allowed a wholesale turnover of e-mail messages. He stated that everyone has been struggling to find a balance to accomplish this effort, and hopefully at the end of the meeting, everyone would get there.

Mr. Petersen provided additional remarks concerning Mr. Robinson's statement on developer interaction with Town elected officials and staff, and indicated that guidelines could be developed to address this issue. He said that citizens had a first amendment right to petition their government, but there should be a process that is more transparent.

Commissioner Alm provided suggestions for additions to these proposed guidelines. Mr. Petersen in response stated that it's a question of how one can protect the town, balancing the understandable human nature to get to know people, but still having the procedural guidelines in place.

Chairman Semple pointed out the differences between developer relationships in a small town compared to larger jurisdictions. He pointed to procedures in place, such as the Town's Code of Ethics, as a mechanism. He also mentioned the significant support from the Virginia Municipal League regarding the behavior that leads to a strong governing model.

Mr. Robinson commended the Commissioners for this discussion and expressed hope that these suggestions would be made part of future guidelines.

Discovery Plan Review

Commissioner Gagnon presented an overview of the Commission's proposed Discovery Plan and Town Records Review Plan, from a printed presentation provided to the Commission. In discussing the Discovery Plan, he noted that the presumption was, as the Town Attorney had indicated, that the Town had a right to review its own records, with public release subject to Freedom of Information Act and state and federal laws as applicable.

Mr. Gagnon stated that in the event of a dispute over whether one piece of information would be included or not, the town attorney shall determine whether the information would be included as part of the Commission's work produce and discovery process. The ultimate arbiter of any dispute would be the Town Council, who would also be subject to FOIA, state and federal laws.

All information gathered and processed by the Special Counsel would be reviewed by the sitting commission, council members and the town attorney and forwarded to the commission for review, disclosure and use in the Commission's final report.

Mr. Gagnon then reviewed the town records review plan, designed to be an addendum to the Discovery Plan. The intention was to provide for the widest possible access to all town records responsive to the Commission, Special Counsel and designated IT Expert requests.

Mr. Gagnon stated that full access to town records was required to ensure a thorough discovery process and final work product that maintains public confidence in the Commission's work.

Mr. Gagnon stated that initially, open access to all town records as described would be provided and selected based on their relevance to one of the three land use applications. Mr. Gagnon then discussed in detail the actual review process, which would be a two-stage process. The first stage would be the review process, preferably by the IT expert, or alternatively by the town clerk, who is the custodian of the town records.

The IT expert would then conduct a review of all the emails that were selected either by him or by the town clerk. This review would include individual emails, batch collection of emails, and automated text search of large bodies of emails. There would be a lot of emails to go through, and there would be a variety of ways of doing that. The IT expert would only select those emails that were relevant to the three land use applications,

Mr. Gagnon then described additional records, including town server backups, call logs, voicemails, text messages and other information, e.g., town personnel records.

Because these are potentially sensitive, review of those types of records would be subject to prior review and approval of the town attorney as well as additional town records as needed. And those would also be subject to prior approval by the town attorney

Commissioner Norden had a couple of questions. He said that he wanted to make sure on the record that, discussing the previous FOIA controversy involving improper withholding of Town e-mails, the council and the town attorney were part of a process to make sure that they're determining what has to be withheld..

In other words, Mr. Clough would not have to be the person responsible for saying whether he thinks [a particular document] was protected under FOIA, but that it would be reviewed by Council, Special Counsel, and the Town Attorney as part of the process, and they make the final determination as to what can be seen and what cannot be seen.

Mr. Petersen stated that he thought that was correct, but drew a distinction in that FOIA had to do with public disclosure, adding that FOIA protections govern public release of documents, and whether or not records were exempt from FOIA, the Commission could review those records if they were relevant.

Mr. Semple asked for clarification regarding what queries could be made of the database. He stated that the queries themselves had to be related to the land use applications.

Special Counsel Robinson agreed,, stating that he was not interested in finding information that was not relevant to the scope of the Commission, and if there were a question of relevance for a Town record, then Mr. Robinson and Mr. Petersen would decide the issue, and in a worst-case scenario the issue could be taken back to the Commission or the Council for a decision. He stated that Mr. Clough [the Town Clerk] and Mr. Sammons [the IT Expert] appear to be working well together.

Commissioner Norden stated, in clarification to his earlier question, that he wanted to make sure the Town Clerk would not be the one making decisions as to inclusion or relevancy of Town documents.

Mr. Petersen replied that both he and Mr. Robinson would be the ones making these decisions, and not the Town Clerk.

Town Manager Frank Cassidy noted that this has been a learning process for the Town staff. He described the compliance requirements for accessing Town records and expressed concern over the volume of records involved in this process. Mr. Cassidy stated that if there was a doubt about an issue related to Town records, he would expect that the Town Attorney, working with the Special Counsel, would make sure that whatever was distributed, it would be relevant to the case.

Mr. Cassidy discussed one request that encompassed somewhere around a quarter of a million emails. So how those emails are accessed, how one manages were some of the questions.

Mr. Cassidy stated that the town has policies and procedures in place to do exactly what [the Commission] was trying to accomplish. And that is transparency, truth, honesty, ethical behavior. He was not going to violate any aspect of those. He asked that the Commission respect the Town's processes and policies. But if there were a question, then the staff would involve the town attorney.

Commissioner Gagnon stated that the intent of the proposed Town Records Review Plan is to provide the IT expert with open and complete access to Town e-mails, and that once the IT expert has received these e-mails, he would then be able to conduct keyword searches.

Mr. Cassidy replied that unfettered access to Town e-mail records was not possible without breaching Town IT security systems, but he indicated that the Commission did have full access to these records, provided the Commission's IT expert worked with the Town's IT director. Mr. Cassidy said that it was just the idea that the Town hand everything over that was part of the contention.

Mr. Semple said that he thought all of these details had been worked out, and that the permission given was to be able to query the database, not to put it on a drive and take it up to Maryland. He said that he thought that point had already been established.

Commissioner Kokoszka pointed out that, given the complexity and diversity of the three land use applications being reviewed, it would be difficult for someone to determine relevancy of these records.

Chairman Semple replied that the purpose of the Commission was to produce a report to consider where processes broke down and the influences that were not consistent with an open process, and that the Commission should stay within its scope.

Commissioner Alm asked if all the parties involved in this process were on board with this plan.

Mr. Robinson replied that he agreed to the plan.

Mr. Cassidy replied that he was satisfied with the current status but could not guarantee that there would not be problems in the future that would need to be resolved.

Mr. Robinson asked for a vote on the proposed plans to solidify them.

Commissioner Gagnon moved for a vote to discuss and approve the Commission Discovery Plan and Town Records Review Plan as drafted.

Seconded by Commissioner Norden

Mr. Cassidy asked for a discussion with the Town staff to resolve security issues concerning the proposed Commission plans.

Mr. Robinson replied that the two plans were reviewed and vetted by the Town Attorney.

Chairman Semple proposed a substitute motion to divide the motion into a vote on the two Commission plans separately, with an initial vote on the Discovery Plan.

Commissioner Alm seconded the motion.

Chairman Semple stated that the members of the Commission had only just seen the plan documents.

Commissioner Alm asked if a decision could be made on the Discovery Plan, and for the Commission to meet in one or two weeks to vote on the Town Records Review Plan separately.

Commissioner Norden said he thought that the Commission should take only two days to consider the second plan. He stated that he had reviewed the plan, and he worked for a living. So he didn't know why it hadn't been reviewed, Mr. Norden asked Mr. Petersen if he had the opportunity to review the plan documents.

Mr. Petersen indicated he had no problems with the plan, except for the term "full access" used in plan, and would have used the term "access," but indicated that any issues in this regard could be worked out between him and Mr. Robinson.

Mr. Robinson replied that, if there were any issues, such as access to criminal records information, these could be worked out between him and Mr. Petersen. If there was a question of relevance, Mr. Petersen certainly could weigh in.

The vote to approve the Discovery Plan as a separate document was as follows:

Ayes: Alm, Norden, Semple

Nays: Gagnon, Kokoszka

Abstention: N/A

Absent: N/A

Commissioner Gagnon moved to vote to accept the Town Records Review Plan as drafted.

Seconded by Commissioner Kokoszka

Chairman Semple entertained a motion to postpone this vote pending another Commission meeting, either immediately, or in the next quarter.

The motion did not receive a second and failed.

Chairman then called for discussion on the main motion to vote on the Town Records Review Plan.

Commissioner Norden expressed support for the motion, indicating he wanted to see the process move along, and that if Mr. Petersen had heartburn over one word, they could work that out, Adopting the plan would just keep the ball moving forward, He stated that he didn't think there was enough with the document from what Mr. Petersen was say that any issue could not be worked out quickly and easily between him and Mr. Robinson

Commissioner Gagnon added that the Town Records Review Plan was the prerequisite to the external records request process from third parties, and that any delay in approval of this plan would mean a delay in this external records request step, and if there are any issues, those issues can be worked out between the Town Attorney and Special Counsel.

The vote to approve the Town Records Review Plan was as follows:

Ayes: Kokoszka, Gagnon, Alm

Nays: Semple, Alm

Abstention: N/A

Absent: N/A

UNFINISHED BUSINESS.

There was no unfinished business

ADJOURNMENT.

With no further business, this meeting was adjourned at 8:00 PM on Monday, June 23rd, 2025.

I hereby certify that this is a true and exact record of actions taken by the Town Council of the Town of Warrenton on June 23rd, 2025.

Eric Gagnon
Secretary

Attachments: