SPECIAL
COUNCIL MEETING
May 20, 1980

A special meeting of the Elkton Town Council was held May 20, 1980 at 7:30 P.M. in the council chambers with the Mayor Charles E. Dean presiding. The following council members were present: R. R. Dean, S. P. H. Flick, H. D. Flory, B. B. Holt, L. C. Life and C. A. Schumacher. Charles Lawhorne, Chief of Police, Norma Leap, Clerk, Gerald Monger, Superintendent and Bruce Wiles, Attorney were also present.

Miss Ruth Pritchett of 529 W. Spotswood Trail was present to speak for the neighbors in her area regarding the proposed "Homes for Adults". Miss Pritchett stated that they had asked some questions at the public hearing which there were no answers to. The residents in her area have met and made a list of four questions which they would like a definite answer to. Each member of council and the Mayor were given a copy of these questions ahead of time so they would have time to consider them. Mayor Dean told Miss Pritchett that either Mr. Wiles or some member of council would reply to the questions later on in the meeting.

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Mrs. Sheila Babb came in support of the police department. Mrs. Babb reported that she had taken a survey with the intention of helping to preserve our police force as we now have it. She feels we have an excellent police force and an excellent Chief of Police and urged the council and all citizens to support our police force. She stated that the police budget is high but felt we are all worth it. She further stated that we get the protection we pay for and asked council to approve the police budget and then work to stay within this budget.

Mrs. Shirley O'Byrne stated that she felt Mrs. Babb made a bad statement against the new council. She was sure that none of these men had promised anything to anybody to get elected and that is definitely a slam against their character. Mayor Dean stated that Mrs. Babb did not say this and would not allow any debates. He instructed Mrs. O'Byrne that if she would like to make a general comment she could, but not about anything Mrs. Babb said.

Mrs. Sandra Loker who lives at 106 Hillside Avenue in the Elkwood Subdivision also spoke in support of the police force. She pointed out that most people do not realize the extensive amount of knowledge and skill needed by a police officer. He is required to make split second decisions. She knows of no other job which requires such an extensive amount of knowledge. She feels that $8,100.00 is a small amount of money to pay for this service. She also asked Mr. Monger if they would be finding out something about street lights in Elkwood in the next few days and he stated he hopes to receive something on this shortly. She asked if the residents were going to be required to share in the installation costs and Mr. Monger stated he did not know as this has not been discussed at all.

Councilman Holt stated that the last time they discussed "Homes for Adults" there were some questions council could not answer so they had asked someone from the Welfare Department to come down and explain this. He asked if council would like to hear from this person at this point. Mayor Dean felt they should have the second reading on the ordinance first so Councilman Holt read the proposed ordinance for the second time.

Councilman B. B. Holt moved, seconded by Councilman R. R. Dean to approve on Second Reading an amendment to the zoning ordinance of the Town of Elkton to permit "Homes for Adults" in A-2 Residence Districts.

Councilman Holt introduced Mrs. Jean Wright of the State Department of Welfare. Mrs. Wright presented to council some printed statistical information on "Homes for Adults" and reviewed this information. Some of the areas she touched on were, one, who can go into a home for adults. She explained that those eligible are adults who are aged, infirmed or disabled and needing special care and attention but not needing nursing care. They must be basically ambulatory and cannot require the support of a wheelchair, walker or cane. Two, she pointed out that there are very strict requirements on these homes and that she goes into the homes regularly once a year for inspection and makes at least one unannounced visit a year. These homes are also inspected immediately upon receiving a complaint. Local health officials, fire departments and the State Fire Marshall are also involved in inspections.

Mayor Dean asked Mrs. Wright to comment on "Item O" in her information as this is one of the questions on the list Miss Pritchett had presented to council. The question was if the State Welfare Department places people in "Homes for Adults". Mrs. Wright stated that the State Welfare Department does not do placement. The licensee is responsible for obtaining the residents for their facility. She pointed out that her department only does the licensing and approve the facility. The licensee obtains residents through referrals from hospitals, social workers, private individuals, etc.

Councilwoman Life referred Mrs. Wright to another item on her information sheet which answered another of Miss Pritchett's list of questions. The question was who may be cared for in a "Home for Adults". Mrs. Wright answered that any adult who is over eighteen years old who needs help with the daily routine of living because he or she is aged or infirmed or has a disability of mind or body but do not need nursing care. They are able to walk on their own, get around on their own, but need to be supervised. They cannot be left alone.

Councilman Flory asked Mrs. Wright what she means when she says deinstitutionalized. He asked if this meant that the patient has been in an institution and is now rehabilitated and in a position to go into a "Home for Adults". Mrs. Wright explained that in 1972 the State of Virginia Mental Health Institutions were mandated to deinstitutionalize and the people they were referring to were those who should probably never have been there in the first place. People who have been determined by the social worker for discharge and the mental institution as being able to be on their own basicly but needing supervision. Councilman Flory repeated his question as he still was not clear as to what was meant. He wanted to know if the next step after rehabilitation would be a "Home for Adults". Mrs. Wright stated yes, but in a great number of cases of deinstitutionalizing, rehabilitation would not apply as the person should not have been in an institution in the first place.

Councilman Flory's next question was if there is any support in any form or fashion that the State gives or the Federal Government gives or the churches give or any anonymous group gives to help support a patient in a "Home for Adults". Mrs. Wright stated that there are auxiliary grants to help with funding for those that are eligible. Councilman Flory's concern was that when you have residents in the home from the immediate area and they have families who care for them, then the families make sure their loved ones are well taken care of but what happens where there are residents placed in homes away from their families with the help of auxiliary funding. They have no families to make sure they are well cared for. He was also concerned when you increase the number of residents from three to ten or more. He feels the town should have some authority, but it appears they will not have any authority to place mandates that do not go along the guidelines of zoning and these people who live in the area in question are not talking about zoning.

Councilwoman Life asked Mr. Wiles it if were true that the town could not do any type of mandating on their own. Mr. Wiles stated that this is a little broad. He indicated that the conditions on a special use permit have to be related to the purposes of the zoning ordinance. Mr. Wiles read the purposes of the zoning ordinance as set out by the statutes. He pointed out that you cannot attach arbitrary conditions, or conditions which have no relation to the purposes of the zoning ordinances, to the special use permits. Some of the concerns he has heard expressed are concerns which arise from other activities in "Homes for Adults" and there are other statutes that can control these. A person in the community that is a danger to others, a violent person who is mentally ill, etc., can be committed to Western State whether he is in a "Home for Adults", a boarding house, hotel or a private home. Where there is danger to the public, there are methods to deal with those dangers.

Councilman Flory asked Mr. Wiles if council, after they pass this ordinance, could mandate to any operator of a "Home for Adults" that they cannot have any financial support from any other visible means other than the family or the person who is a resident themselves and Mr. Wiles said no. He could see no relationship there at all to the purposes of the zoning ordinance.

Councilman Holt felt there was ways that the town could set conditions which would allow the council to revoke a permit. The proposed ordinance states that "any such special permit granted shall be based upon a finding that such permitted use will be in harmony with the general intent and purposes of the Elkton Comprehensive Plan and the Zoning Ordinance, is compatible with other

permitted and existing uses in this district, and consistent with good zoning practices generally. Among matters to be considered in this connection are traffic congestion, pedestrian and vehicular safety, parking, sanitary and health facilities, and the effect upon the development, use, and value of adjacent land and buildings." He feels that the town can make some sort of written agreement with the operator of a home that if the operation of this home should patently decrease the value and use of the property adjacent to it and create a nuisance to the town then the permit could be revoked. Councilman Holt stated that he and Mr. Wiles do not quite see eye to eye on this but he feels this is a legitimate approach and way that the interest of the people and the interest of the town can be protected.

Councilman Flory felt there are some problems which are not completely ironed out regarding mandates and would like to have time to give this more throught. After some further discussion, Councilman Holt withdrew his motion provided action on this ordinance would not be taken unless he was present at the time.

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Mr. Wiles commented that the zoning laws, particular in special use permits, are a growing area and are not entirely and completely well defined as to what you can do, but some general principles are clear. He stated that he did not feel he was in that much disagreement with Mr. Holt. Mr. Wiles said that the town can put conditions on these permits but they have to be related to the purposes of the zoning ordinances. If you can relate it to an activity that creates a nuisance in a community, fine, but if you are trying to relate it to an activity on the basis of it creating a nuisance and there is no reasonable relationship between the activity and the nuisance you are trying to prevent then it won't stand. He further commented that our existing ordinance for A-2 Residence District Uses permits three or more families or housekeeping units, or apartment houses, dormitories, lodging houses, boarding houses and clubs; including restaurants accessory to any of the foregoing, hotels, lodges and fraternal, social, recreational and community center organizations. It also permits any use in A-1 which would be hospitals, sanitariums and various other activities. The point he was trying to make was that there is a substantial question as to whether or not the town in attempting to prohibit this activity can establish that it is different from any of these which we have already permitted. If the town could not show this, then whatever the council does tonight, if someone wants to take the town to court, the town would have to defend this position; that this is a reasonable prohibition. You cannot arbitrarily deny to one person the use on a particular land that you permit to someone else unless you can distinguish the nuisance. If what is being asked for here is really not substantially different from a boarding house, or dormitory, lodging house, sanitarium or others, we have problems right now.

Councilman Flory agreed with Mr. Wiles but he still felt that there was an apprehension in the community and council should still give this more thought. Maybe they can come up with something that will make it more agreeable to both sides.

Mr. Wiles stated he had been asked at the last meeting about putting a time limit on the permit, but this also would have to relate to the purposes of the zoning ordinance and he personally feels that this kind of situation does not call for a time limit.

Councilman Dean stated that he has lived across from Mrs. Tschiniak for about a year and a half. She has a home for three adults and there has never been any trouble. Councilman Dean said he feels there is a need for a "Home for Adults" in Elkton whether it is in this area or somewhere else. He further stated that if people cared enough for each other, there would be very few "Homes for Adults" anywhere in the State of Virginia; we would take care of our own. Councilman Dean withdrew his second to the motion.

Councilwoman Life asked if she was reading the information sheet from Mrs. Wright correctly in that the Welfare Department does the licensing but does not do the placing of residents and Mrs. Wright said that this is true. The owners of the "Homes for Adults" have the right to choose their own residents. Councilwoman Life asked Mrs. Tschiniak that if the area should be rezoned to allow a "Home for Adults", how many residents does she plan to accomodate. Mrs. Tschiniak stated that she plans to have ten residents. Councilwoman Life stated that up to this point they have heard nothing but good reports on Mrs. Tschiniak. She has catered to the local people of Elkton and Councilwoman Life asked if this is Mrs. Tschiniak's intent for the future and Mrs. Tschiniak stated that it is. Councilwoman Life asked Mrs. Tschiniak that if she has ten beds

and she can only fill them with seven or eight local people, does she intend to apply through the Welfare Department to take in other residents for her home. Mrs. Tschiniak replied that she will not mix people from Western State or any mental facilities with older people. She has never said she intended to take people from a mental institution and she would be willing to take any stipulation saying she will not take residents from any mental institution.

Councilman Flory asked Mrs. Tschiniak if she plans to be incorporated and she stated that she would be. Mrs. Tschiniak further pointed out that the administrator is the one licensed by the State for a home, not the corporation.

Councilman Flick asked Miss Pritchett if everyone in her area was opposed to the home and she stated yes.

Mrs. Tschiniak asked the residents of the area in question if they would be opposed to a home for the elderly and they said they would not. What they were concerned about was her taking in other than the elderly.

Councilwoman L. C. Life moved, seconded by Councilman H. D. Flory to approve the following ordinance to close and vacate an alley:

AN ORDINANCE CLOSING AND VACATING AN UNNAMED ALLEY
ON THE EAST SIDE OF MORGAN AVENUE IN
THE TOWN OF ELKTON, VIRGINIA

WHEREAS, Ludwig W. Davis and Lucille S. Davis have petitioned the Town Council of the Town of Elkton, Rockingham County, Virginia, to close and vacate an unnamed alley situate in the Town of Elkton, which alley is 10 feet wide and 125 feet long, extending from the east side of Morgan Avenue in an easterly direction approximately 125 feet, adjoining Lot 5, Block 54, Section 3 on the north and Lots 6, 7, 8, 9 and 10, Block 54, Section 3 on the south, all of said lots being shown and designated upon a plat of The Elkton Improvement Company in the Clerk's Office of the Circuit Court of Rockingham County, Virginia, in Deed Book 75, page 603, which said alley is bounded by the properties of Ludwig W. Davis and Lucille S. Davis on the north and Garner H. Downey and Mae Frances Downey on the south, and

WHEREAS, at its regular monthly meeting on April 15, 1980, said Town Council, after due notice as required by law, appointed five members of the Town's Planning Commission as viewers to go upon the alley described above which was petitioned to be vacated and report in writing whether, in their opinion, any inconvenience would result from vacating and closing it; and

WHEREAS, said viewers so appointed deliberated and recommended by a vote 4 to 1 against vacation and closing of said alley in a meeting on May 6, 1980; and

WHEREAS, said viewers made their written report as directed at the regular monthly meeting of the Town Council on May 13, 1980, and in said report recommended against the vacation and closing of said alley, said report having been received and considered by the Town Council; and

WHEREAS, upon further evidence presented to said Town Council and after deliberation, it appears to said Council that such closing and vacating will not inconvenience anyone and that no one will be adversely affected thereby and that it serves the interest of the public to vacate said alley described above so long as the Town reserves an underground utility easement over the southernmost 5 feet of said alley;

THEREFORE, BE IT ORDAINED this 20th day of May, 1980, that said unnamed alley 10 feet wide and 125 feet long extending from the east side of Morgan Avenue in an easterly direction 125 feet adjoining Lot 5, Block 54, Section 3 on the north and Lots 6, 7, 8, 9 and 10, Block 54, Section 3 on the south, as shown on the plat of The Elkton Improvement Company, of record as aforesaid, be and the same is hereby closed and vacated, and, as provided by law, fee simple title to the northernmost 5 feet thereof be and is vested in Ludwig W. Davis and Lucille S. Davis and fee simple title

to the southernmost 5 feet thereof be and is vested in Garner H. Downey and Mae Frances Downey; and

BE IT FURTHER ORDAINED that said vacation and closing is subject to the rights of the Town of Elkton in reserving an underground utility easement over the southernmost 5 feet of said alley and that the Davises may and hereby are permitted to erect a structure over the northernmost 5 feet thereof; and

BE IT FURTHER ORDAINED that an attested copy of this ordinance be recorded in the aforesaid Clerk's Office where deeds are recorded and indexed in the name of the Town of Elkton.

Councilman Holt stated that he was not a viewer, but he did go with the viewers to view the property and listened to their deliberation and felt that their reaction was reasonable. He felt that their reaction was in the best interest of the town. Councilman Holt stated he was sympathetic with the problems Mr. and Mrs. Davis have, but in all good conscience he could not support this conveyance. The reasons given by the viewers were it establishes a dangerous precedent and he is sure similiar alleys on that street will be requested to be closed within the next year or so. There is a need for the alley. Closing the alley removes all access to those lots Dr. Downey has now. Councilman Holt stated that he is becoming philosophically opposed to action such as this that directs council to convey town property free of charge to private citizens. He does not know what the legal aspects of this might be, but he recommends the next council might well consider an arrangement providing for some sort of purchase of such land from the town if someone desires to have an alley or street closed. It bothered him that people are getting windfalls by action of the council.

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The vote was taken on the motion and recorded as follows

R. Dean	- yea	B. Holt	- nay
S. Flick	- yea	L. Life	- yea
D. Flory	- yea	C. Schumacher	- yea

Action on the proposed Deed of Easement between ShenElk Associates and the Town of Elkton was postponed until the next meeting as Councilman Flory had been given the wrong document to review.

Councilman R. R. Dean moved, seconded by Councilman H. D. Flory to approve on Second Reading the following transfers and additional appropriations in the various department:

Additional Appropriation Land Acquisition	$ 2,670.00
General Government	
Transfer from Unemployment Tax to Legal	$ 1,000.00
Transfer from Council Expenses to Auto License	50.00
Transfer from Council Expenses to Repairs Town Property	150.00
Transfer from Insurance to Fuel Oil	650.00
Transfer from Misc. to Fuel Oil	750.00
Transfer from Supplies to Fuel Oil	1,000.00
Electric	
Transfer from Insurance to Supplies	$ 1,475.61
Additional Appropriation Wages	3,000.00
Additional Appropriation Current	120,000.00
Sewer	
Additional Appropriation Misc.	$ 3,111.00
Public Safety	
Transfer from Overtime to Wages	$ 160.00
Transfer from Jail Fees to Wages	50.00
Transfer from Radio & Radar to Wages	145.00
Transfer from Telephone to Wages	58.00
Transfer from Uniforms to Wages	95.00
Additional Appropriation Wages	2,066.00
Additional Appropriation Insurance	457.00
Additional Appropriation Vehicle Upkeep	2,785.00
Additional Appropriation Misc.	225.00
Additional Appropriation Supplies	530.00

Councilman Flory stated that the Finance Committee had met for two hours on this and it was a unanimous decision by the committee that there wasn't anything else to do as the obligations had to be met.

Councilwoman Life stated she wanted to thank Mrs. Loker and Mrs. Babb for their interest and she did not feel that anyone was questioning, at this point, the police department as such; just the money. She felt that Mr. Schumacher's survey upset Mrs. Babb, but Councilwoman Life felt he did rather well. The only thing Councilwoman Life had brought out in regards to the survey was that perhaps in the area of jail facilities might be a way to save money. Councilwoman Life pointed out that in Mrs. Babb's survey she had asked those surveyed how they felt about the $96,000.00 police budget; council had unanimously accepted the $96,000.00 budget, this was not in question. The problem now is a budget of over $103,000.00. Councilwoman Life stated that she works in Harrisonburg and she has also heard repercussions, but she was elected to sit on council and feels there is a talent in trying to oversee the money of the people of the town. She takes this seriously. She pointed out that she is a member of three committees and tries to know what is going on in each committee. She stated that they are all for upgrading salaries and she would be the first to say that salaries are low, but as Councilman Flory has often said, "you can't have a champagne taste on a beer pocketbook". Councilwoman Life suggested that when a committee is given a budget that they should try to uphold the budget and not wait until it is too late and you have to have additional appropriations. She stated that you have to have police portection but that this problem should have come to council before now and they should have taken the recommendation of the Fiance Committee and cut, then maybe they wouldn't be behind in this area.

Councilman Dean stated that Chief Lawhorne had originally asked for over $100,000.00 but it had been cut to $96,000.00. He felt things are high but he didn't know what else council can do if they want twenty-four hour police protection.

The vote was taken on the motion and recorded as follows:

R. Dean	- yea	B. Holt	- yea
S. Flick	- yea	L. Life	- nay
D. Flory	- yea	C. Schumacher	- yea

Councilman Dean reported that he had forgotten to discuss the bids on the audit at the Finance Committee meeting. The bids are as follows:

A. M. Pullen & Co.	$2040.
S. B. Hoover & Co. CPA	$1950.

Councilman S. P. H. Flick moved, seconded by Councilwoman L. C. Life to accept the low bid from S. B. Hoover & Co. CPA, not to exceed $1950.00, to do the town audit. The vote was recorded as follows:

R. Dean	- nay	B. Holt	- nay
S. Flick	- yea	L. Life	- yea
D. Flory	- nay	C. Schumacher	- yea

Mayor Dean - yea

Councilman Flory reported that the town has received two bids on a sludge truck to be used at the new wastewater treatment plant to haul sludge. The bids were as follows:

Ag-Chem	$58,300.	(this vehicle did not meet specifications)
Big Wheel	$64,989.	

Councilman Flory stated that 85% of this money will be funded from EPA. Mr. Monger recommended the vehicle from Big Wheel. EPA has already approved $55,000.00 and we will have to apply for the additional $10,000.00 from EPA. Mr. Monger felt this probably would not need a motion but Councilman Flory preferred council help make this decision.

Councilman H. D. Flory moved, seconded by Councilman B. B. Holt to accept the bid from Big Wheels in the amount of $64,989.00. The vote was recorded as follows:

R. Dean	-	yea	B. Holt	-	yea
S. Flick	-	yea	L. Life	-	yea
D. Flory	-	yea	C. Schumacher	-	yea

As there was no further business, the meeting adjourned.

MAYOR: Charles E. Dean
Charles E. Dean, Mayor

RECORDER: Norma R. Leap
Norma R. Leap, Clerk

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