REGULAR
COUNCIL MEETING
September 14, 1981

The regular meeting of the Elkton Town Council was held September 14, 1981 at 8:00 P.M. in the council chambers with the Mayor Maurice W. Lough presiding. The following council members were present: V. L. Cook Jr., S. P. H. Flick, T. G. Hulings, L. C. Life and R. L. Snow. R. E. Davis was absent. Noah Helsley, Acting Chief of Police, Gerald Monger, Superintendent and Dale Davenport, Attorney were also present.

Mayor Lough opened the meeting with prayer.

Mr. Dabney Overton Jr. was present, representing Mr. Tim Haden, to present a proposal concerning the Tim Haden property and the adjoining town property on Rockingham Street and Old Route 33. Mr. Haden has recently had his property surveyed and found it almost impossible so far to locate the town's line between Mr. Haden and the town. Mr. Overton presented a letter to council from Mr. Haden's surveyor giving the surveyor's opinion on how to clear up this boundary problem. The surveyor felt it to be the clearest and the most economically sound, in terms of land to both parties, for Mr. Haden to convey to the town a portion of land containing approximately 94 feet of frontage on Old Route 33 from property he has recently purchased known as the Old Mill Race and the town to convey to Mr. Haden a portion of land involving approximately 65 feet of frontage on Rockingham Street and there being a straight boundary from Rockingham Street to Old Route 33 between Mr. Haden and the town. These are estimate figures according to Mr. Overton.

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Mayor Lough stated that in order to make a move of this sort the state law requires council to make an ordinance and an ordinance requires two readings. A first reading could be held tonight which would not require a vote but the second reading would require a 75% vote to pass. The Mayor suggested that this matter be referred to the Planning Commission and as there will be a special council meeting in about two weeks the matter be brought up at the special meeting.

Councilwoman Life stated this could be constituted as a First Reading and after the Planning Commission makes their recommendation the council could act on the Second Reading. Mayor Lough stated that this would constitute a First Reading on the proposal.

Councilwoman Life questioned the minutes of August 10, 1981, page 6, paragraph 3 in which she had referred to Section 22 of the town code. She felt the clerk had not elaborated on Section 22 and felt her question of over $500.00 being paid without a vote by council motion and vote taken should be in there for further reference. She agreed that if this was elaborated in these minutes that Section 22 of the town code states that anything exceeding $500.00 would be a motion and vote by council she would be willing to approve the minutes of the regular meeting August 10th. and the special meeting September 8th.

Councilwoman Life reported that the Public Safety Committee met about two weeks ago and that at this point and time they are not advertising for a Chief of Police. Sergeant Helsley is going to take the responsibility of this position for an undesignated period until council sees fit to hire a Chief. The Public Safety Committee would like a motion made that as long as Sergeant Helsley is handling the functions of a Chief he retain the title that he has but he be compensated with the same amount of salary as the Chief of Police until he steps down and that responsibility is taken over by a new person and at which time he will go back to his old salary.

Councilwoman Life moved, seconded by Councilman V. L Cook Jr. that Sergeant Helsley's salary be increased to the Chief of Police's salary until such time as that position is filled permanently. This salary rate will begin with the first pay period in September. The vote was recorded as follows:

Cook	-	yea	Hulings	-	yea
Flick	-	yea	Life	-	yea
			Snow	-	yea

Councilwoman Life reported that Officer Hess is not back on duty as yet. He is going to school this week and will go back to the doctor on October 8th. Workmen's Compensation is taking care of two-thirds of his salary and the town will pick up the additional one-third.

Councilwoman Life reported that it was a recommendation by the Planning Commission a few months ago and was brought to several of our Chief's attentions about the property known as the Landmark Restaurant. Councilwoman Life stated they feel like safety wise and health wise it is on very shakey ground. Sergeant Helsley is taking steps to declare this a public nuisance as set forth in Section 9-2-1 of the Elkton Town Code. The owners are being so notified so they can be present at the next council meeting to voice their objections. They will be notified that the hearing will be at the next regular council meeting October 12, 1981.

Councilwoman Life stated she felt everyone was aware that there is a new doctor in town. This doctor was helped to locate in this community by the Virginia Council on Health and Medical Care Inc. They are a volunteer organization and are privately supported. Councilwoman Life stated she felt they all wanted to thank Dr. Miller for his great years of service and his forthcoming years, but realizing he did need help this council did help in this area. Councilwoman Life made a motion that council make a donation to the Virginia Council on Health and Medical Care Inc. of $100.00 for their help in having a physician locate in this area. Mayor Lough suggested this be referred to the Finance Committee and it be brought back to the next council meeting. Council was in agreement with this suggestion.

Councilman Flick reported that he had hoped to present the audit report at this meeting as they were suppose to have it ready but he has a letter from them stating that it will not be available. One of the people who is in charge of the report is out of town and could not be here. Hopefully the committee will have it between now and the next meeting.

Councilman Flick reported he had read a letter at the last meeting from Mr. Roger Ritchie requesting payment of Mrs. Life's legal fees. He reported on a letter dated August 31, 1981 from our attorney, Mr. Davenport. The following portion of the letter was read:

> "I have come to the conclusion that Elkton cannot lawfully pay for Attorney Ritchie's fee. Municipal corporations (towns and cities) have only those powers given to them by the state and no others. Such powers can be granted in three ways. First, the powers can be granted by clear and expressed words of the charter of the town or city, or by the general statutes of the state. Secondly, a municipal corporation also has those powers necessarily or fairly implied which are incident to the expressed powers. Thirdly, a municipal corporation has those powers essential to the stated objects and purposes of the government, but powers in this category must be absolutely indispensable.
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> I find nothing in the charter of the Town of Elkton or the general laws of the state which grants to Elkton the power to pay attorney's fees for council members when they become involved in court cases relating to their official duties or positions. This is true despite the fact that the Town went against the opinion of the Town Attorney in the action which precipitated the court case and despite the fact that Mrs. Life won the court case. Also, I do not believe that the power to pay council members' attorney's fees is implied from any expressed powers and this power is certainly not essential to the stated purpose or object of the local government. Therefore, there would appear to be no authority for such payments under any of the three theories of authority."

In a further letter from Mr. Davenport dated September 8, 1981, the following section was read:

> "Since writing the letter I have come across a section of the State Code which would specifically permit the payment of Mr. Dwoskin's fee for representing members of the Council. A copy of this provision is enclosed for each of you.

> However, the existence of this statute would not alter my opinion concerning payment of Mr. Ritchie's fee since his services were not in the defense of a member of the Council.
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> This is a general section which applies to all governing bodies."

Councilman Flick read Section 15.1-19.2 of the State Code which Mr. Davenport has included in his letter. He stated that it seems council would be prohibited by law from paying these legal fees as requested by Mr. Ritchie.

Councilman Hulings reported that the Electric Committee met September 1, 1981. The Vepco rate increase has been passed through to the town.

Councilman T. G. Hulings moved, seconded by Councilman S. P. H. Flick to approve on Second Reading an increase in the town's electric rates of 31.4% effective September 1, 1981. This increase to be supplemented by a complete rate review which is now in process of being completed.

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Councilman Hulings stated the organizations the town belongs to intend to continue to fight this rate increase in court and he feels there is probably a good chance it will be reduced in the future. Vepco is charging more for their wholesale rates than their retail rates. The rate review which is being done for the town may result in a slight decrease in our actual rates.

The vote on the motion to increase the electric rates was recorded as follows:

Cook	-	yea	Hulings	-	yea
Flick	-	yea	Life	-	yea
			Snow	-	yea

Councilman Hulings reported on the Vepco refunds. There are two cases of Vepco increases that have been fought in court. The second one which went into effect January 14, 1981 has been settled and Elkton has been awarded a payment credit of $3,439.33. A good portion of that is the interest for their charges. The settlement of the 1978 case was judged in our favor but we are not expecting the refund until November. This refund will probably be a good deal larger. The refund of $3,439.33 has been transferred to the Elkton Electric Department Sinking Fund as was recommended and passed by council in July.

Councilman Hulings explained that about the only way to give refunds back to the consumer correctly is to go back through the old bills (every bill) to see who used how much electricity and what they paid for it. To do this we use up half of our refund money in expenses as we do not have a computer. The electric department has carried the town for years. Most of the profits have been going to the town rather than back into the system to help with needed upgrading and repairs. Some of the problems mentioned were old transformers and a bucket truck which is in very bad condition. The money from the first refund has gone into the Electric Department Sinding Fund and Councilman Hulings stated he would like to keep it there to make sure we can meet some of these electric department bills which have been put off. He also felt we should consider investigating the possibility of generating our own electricity to some degree.

Councilman Cook reported that there will be an Open House at the new Sewerage Treatment Plant Sunday, October 11th., from 2:00 P.M. to 6:00 P.M.

Councilman Hulings asked if we have heard anything from the State Highway Department regarding our request to go under the culvert at the lower end of town with sewer lines rather than tunnel the road. Mr. Monger reported that the Highway Department has gotten back to us. The Staunton District has approved this, but it has to go to Richmond after we draw them another map and put elevations on it.

Mayor Lough read a proclamation declaring October 4, 1981 St. Jude's Children's Research Hospital Day in Elkton.

Councilwoman Life commented on an electric rebate which was returned to the consumer in approximately the fall of 1978. This was quite a job to redistribute and she felt council members would find it very interesting if they went back to the minutes at that time.

Councilwoman Life stated that in answer to Mr. Flick's letter from Mr.

Davenport concerning the legal fees, she has talked with Mr. Davenport and explained that it is no reflection on him, but she has requested Delegate Kevin Miller to obtain an opinion from the Attorney General. She read a letter from Mr. Miller stating he has presented the request to the Attorney General and hopes to receive a prompt response.

As there was no further business, the meeting adjourned.

MAYOR: Maurice W. Lough, Mayor

RECORDER: Gerald K. Monger,
Acting Clerk