Regular Council Meeting
August 16, 1999
7:30 p.m.

The regular meeting of the Elkton Town Council was held August 16, 1999 at 7:30 p.m. in the council chambers with the Mayor Millard L. Dearing presiding. The roll call was as follows:

PRESENT

F. A. Bennett
R. C. Davis
C. E. Dean
B. B. Horne
W. E. Printz
R. L. Snow

Gerald Monger, Town Manager, Dale Davenport, Attorney, Robert Marshall, Chief of Police, Kenneth Flick, Director of Public Works and Julia Smith, Treasurer/Clerk were also present.

Mayor Dearing opened the meeting reading Section 16 of the Town Charter. The Mayor read as follows: The Mayor shall be the chief executive officer of the town and it shall be his duty to see that the bylaws and ordinances thereof are fully executed, and he shall preside over the meetings of the town council, voting only in case of a tie.

Mayor Dearing asked if there was anyone present who had a problem with the Mayor executing section 16 of the charter.

Councilwoman Horne offered the Invocation.

The Pledge of Allegiance was recited.

Mayor Dearing stated that he would like to personally apologize to Mrs. Mildred Shifflett and Mr. Goodman for the conduct of the council at the public safety committee meeting that was held on August 5, 1999. Mayor Dearing stated that as chairman of that committee it was his responsibility to keep control of the meeting and he failed to do that.

CITIZENS COMMENTS

Frank Melinski - 604 N. Stuart Avenue - Mr. Melinski stated that since the mayor was elected last year many bad things have happened to the mayor, the town and especially the council and police department. Mr. Melinski commented that with careful analyzes of this will show that each and every problem that has occurred can be attributed to the facts that there are four members of the council whose agenda has been to obstruct the mayor instead of doing the job they were elected to do. Mr. Melinski stated that the four council members were not elected to campaign to hinder the mayor from doing the job the people of Elkton elected him to do. Mr. Melinski stated that this coalition immediately pushed the outgoing mayor into a council seat, thereby creating an unbeatable coalition

whose purpose seemed to have been to get revenge for the new mayors winning the election. Mr. Melinski stated that by trying to decrease the mayors power of the police department the coalition has undermined the ability of the mayor to direct the police department. Mr. Melinski commented that this is the direct cause of the altercation between the police chief and the mayor. Mr. Melinski stated that our town attorney, who appears to be in the coalition, has made matters worse with his contradictory interpretations of a very simple description of the mayors powers. Mr. Melinski stated that he read the charter and the words were so simple and straightforward that there can be no confusion of what it says or means. Mr. Melinski commented that the town attorney himself, with a letter written by him, interpreted the wording as saying that the mayor is over the police department and can delegate some of his powers to someone other than himself if he so desires. Mr. Melinski stated that the town attorney wrote this a couple of years ago before our current mayor was elected. Mr. Melinski stated the people of the town paid for that determination just as they will pay the $2,500.00 our attorney is currently stating the cost will be to review this again by request of the coalition. Mr. Melinski stated that at the present time the coalition seems to want the police to be self regulated and subject to no civil authority at all. Mr. Melinski stated that this is absurd and the issue should have never been brought up. Mr. Melinski commented that all this has accomplished is wasted time of the mayor, other members of the council and the people of Elkton. Mr. Melinski stated that in reference to all of the above the towns interest is not being served by our town attorney and suggest that town immediately start looking for a new attorney. Mr. Melinski stated that he hopes the people of Elkton can see that circumstances he had described all flow from the decision of the coalition to get back at the new mayor for being elected by the people of the Town of Elkton. Mr. Melinski commented that he hoped the citizens of Elkton know what has to be done to get their town back and work to get it done.

Cathy Murphy - 110 N. Stuart Avenue - Ms. Murphy commented that last July, a year ago, she stood before this council and spoke to them about new beginnings for Elkton. Ms. Murphy stated that the first two months after Mr. Dearing was elected meetings were tense due to an obvious power pull. Ms. Murphy commented that after those two meetings amazingly the council pulled together. Ms. Murphy stated that meetings were focused, professional and productive. Ms. Murphy stated that today over a year later the group seems to be back at square one. Ms. Murphy stated that once again we see a power struggle over the question regarding what power the mayor has, particularly over the police department. Ms. Murphy stated that four council members are adamant to squander tax dollars on an opinion that we have already paid Mr. Davenport to provide for us. Ms. Murphy stated that the issue is not the position of mayor but who the mayor is. Ms. Murphy stated that it was obvious at the public safety meeting that no one seemed to know who is over the police department. Ms. Murphy commented that Mr. Monger was waiting on the council to tell him what to do as far as overseeing the police department. Ms. Murphy stated the Mayor Dearing asked the council members present what to do about problems and she heard no answers. Ms. Murphy stated that right now with the mayor being legally restrained from performing his duties it appears we have an unsupervised police department and this is unacceptable. Ms. Murphy commented that even when a group of employees performs a duty in a perfect manner someone still has to oversee these employees. Ms. Murphy stated that we not kid ourselves, our police department has problems, it is not perfect and is not even close to being perfect. Ms. Murphy commented that if any of the council felt otherwise then they are not doing the job they were elected to do. Ms. Murphy commented that council could have no social conscious if they allow these problems to continue with no concern, investigation or reprimands. Ms. Murphy stated that she realizes she is just an average citizen but feels she can speak for a lot of other citizens. Ms. Murphy asked Mr. Davenport if he could honestly state that he is working for the best interest of Elkton. Ms. Murphy commented that sitting in the audience meeting after meeting it has become clear to us all that Mr. Davenport has lost his objectivity in giving legal advice. Ms. Murphy further commented that the advice given, both orally and in written form, has been contradictory and biased. Ms. Murphy stated that we are not paying Mr. Davenport to show allegiance to certain people but to give this town sound legal advice. Ms. Murphy stated that the town has not received their money's worth from Mr. Davenport and something is drastically wrong. Ms. Murphy asked that the council accept the charter as it was intended and use our tax dollars on projects that really are in the best interest of Elkton.

Lucky Sigafoose - 112 Rockingham Street - Mr. Sigafoose presented a copy of the GTE telephone directory to the council and noted that the police department telephone number is not listed. Mr. Sigafoose stated that interpretation of the charter should come out of the council members pocket not the taxpayers.

Hazel Crider- Elkwood Subdivision - Ms. Crider thanked council and citizens for attending the Neighborhood Watch National Night Out. Ms. Crider reported that the turnout was good. Ms. Crider stated that anyone wishing to attend the meetings should come on the fourth Tuesday at 7:00 P.M.. Ms. Crider next referenced the special council meeting held July 1, 1998. Ms. Crider stated that this meeting was to strip Mayor Dearing of his power. Ms. Crider stated that this was started before Mayor Dearing had a chance to even take over as mayor. Ms. Crider stated that Mr. Davenport verified in February 1998 that the mayor's powers were written clearly in the Town Charter. Ms. Crider stated concern over conflict of interest because Mr. Davenport supposedly represents some council members in personal business. Ms. Crider stated that she believes there is a lot of conflict of interest and corruption. Ms. Crider commented that the citizens voted for Mayor Dearing to go into office and that decision stands. Ms. Crider asked that Mr. Davenport start doing as the people ask him to do. Ms. Crider commended that the in which Mr. Davenport stated the mayors power dated February 1998 should stand on record.

Mildred Shifflett - Ms. Shifflett presented a petition to leave the Town Charter as is. Ms. Shifflett asked Chief Marshall why he has made no comment on all the allegations made against his department. Ms. Shifflett asked if we had to pay Mr. Davenport for all his mistakes. Ms. Shifflett stated that it doesn't seem we can get past the "good ole boy" network.

Jeremy May - Mr. May asked what happened to the government of the people, by the people, for the people. Mr. May stated that the power belongs to the citizens not the council.

Councilman F. A. Bennett moved, seconded by Councilman R. L. Snow and carried to approve the minutes of the Regular Council meeting held July 19, 1999.

YEAS: F. A. Bennett, R. C. Davis, C.E. Dean, B.B. Horne, W. E. Printz and R. L. Snow

The motion was carried (6-0)

DEPARTMENT HEAD REPORTS

Chief of Police

Chief Marshall offered to answer questions on his monthly report.
Mayor Dearing asked that Chief Marshall respond in writing within 30 days to Ms. Shiffletts question. Councilman Printz asked why parking by Tastee Freez was blocked during the parade. Chief Marshall stated that disabled parking was made available at the town offices.

Director of Public Works

Mr. Flick offered to answer questions on his report.
Councilwoman Horne asked when the Spotswood project would be completed. Mr. Flick stated that as soon as the pipe comes in they could finish up. Mr. Flick stated that the pipe should be here within the week. Mayor Dearing asked for a potential completion date on Clark Avenue. Mr. Flick stated that this should be done within the month.

Treasurer

Ms. Smith did not present a financial report this month due to the audit.

Town Manager

Mr. Monger offered to answer questions on his monthly report.
Councilwoman Horne asked if the well was being checked weekly. Mr. Flick responded that the well is being checked every week. Mayor Dearing stated that the town is possibly looking at putting in a second well.

COMMITTEE REPORTS

Electric

Councilman Davis asked where we stand as far as the HEC credit being shown on the utility bills. Ms. Smith responded that this is going to require a major program change. Ms. Smith stated that Southern Software is evaluating this and will report a price and time frame for the electric committee to review.

Finance

Councilwoman Horne stated that we have $18,000.00 in the budget that we will not be spending due to the closing of EDRC. Councilwoman Horne reported that we have some unfinished work to be done by Shen-Valley Drywall. Councilwoman Horne reminded everyone that we still need a software update for the police department. Mayor Dearing stated that we also have an outstanding invoice payable to the engineers for the Clark Avenue project.

Personnel

Councilman Dean stated that he has nothing at this time.

Public Health & Safety

Mayor Dearing stated that he has nothing at this time.

Streets and Sidewalks

Councilman Printz stated the committee discussed the parking problems on Wirt Avenue.

Water and Sewer

Councilman Bennett stated that he has nothing at this time.

Cemetery

Mayor Dearing stated that there was nothing for the cemetery at this time.

Recreation

Councilman Snow stated that there was nothing at this time.

NEW BUSINESS

Resolution Voluntary Water Conservation Program

Councilman F. A. Bennett moved; second by R. L. Snow and carried to adopt the following resolution.

YEAS: F. A. Bennett, R. C. Davis, C. E. Dean, B. B. Horne W. E. Printz and R. L. Snow

Motion carried (6-0)

Due to the drought condition that currently exists, all Town of Elkton water users are urged to initiate water conservation measures to reduce consumption and thereby reduce demand on water supplies. Some suggested measures for conserving water are:

1. Water plants and gardens in the early morning hours only when needed. Watering during the day only increases consumption due to evaporation. Lawn watering is not recommended due to the large amount of water used. For example, in one hour a five gallons per minute lawn sprinkler uses 50% more water than flushing the toilet 10 times, taking two 5-minute showers, washing two dishwasher loads, and washing a full load of clothes.

2. Repair any leaks or faulty fixtures as soon as possible.

3. Operate washing machines and dishwashers only when full.

4. Take shorter showers, turn off the water while soaping or shampooing. Reduce the amount of bath water used.

5. Only wash vehicles if absolutely necessary and when doing so limit the amount of water wasted by turning off the hose when not in use.

6. Keep a container of drinking water in the refrigerator rather than letting the faucet run to obtain cool water.

Farms experiencing water shortages are urged to contact the U.S. Department of Agriculture - Farm Services Agency at 433-9126 to inquire about possible financial assistance.

Action on Establishment of a Fire Marshall

Councilman C. E. Dean moved, seconded by Councilman R. L. Snow and carried to request the use of the County Fire Marshall as appointed by the Board of Supervisors.

YEAS: F. A. Bennett, R. C. Davis, C. E. Dean, B. B. Horne, W. E. Printz, R. L. Snow

Motion carried (6-0)

Action on Elevator Inspections

Councilman W. E. Printz moved, seconded by Councilman R. C. Davis and carried to permit the Fire Marshall to inspect any elevators within the town.

YEAS: F. A. Bennett, R. C. Davis, C. E. Dean, B. B. Horne, W. E. Printz, R. L. Snow

Motion carried (6-0)

Motion on Attorney General Study of Power of the Mayor

Mayor Dearing stated that he had a few comments before this matter was turned over to council for discussion or a vote. Mayor Dearing stated that this council over the past decade has made many serious decisions based on the opinion of town attorney Dale Davenport. Mayor Dearing commented that in a letter by Mr. Davenport, dated March 1997, and presented to the council, Mr. Davenport stated "Section 45 specifically gives the mayor control of the police force. In my view the mayor can delegate substantial administrative authority over the police force through the town manager." Mayor Dearing stated that he bases his position as mayor on the above quoted decision. Mayor Dearing asked that if this decision is wrong how many other decisions are wrong based on Mr. Davenports interpretation. Mayor Dearing stated that the controversy that has disrupted this council since his election as mayor has been caused by Mr. Davenports inability to advise this council and the town without personal bias. Mayor Dearing stated that therefore as Mayor he asked that Mr. Davenport resign as Town Attorney and we actively seek a new attorney.

Mayor Dearing stated that this matter has been to the committee and they did not have enough for a majority vote and it was decided that council would decide what action to take at tonights meeting.

Councilman W. E. Printz moved, seconded by B. B. Horne to leave the Town Charter as is in regard to the mayors power.

YEAS: **B. B. Horne and W. E. Printz**

NAYS: **F. A. Bennett, R. C. Davis, C. E. Dean and R. L. Snow**

Motion failed (2-4)

After much discussion and debate the following motion was made.

Councilman F. A. Bennett moved, seconded by R. C. Davis to have the town attorney through one of our state legislatures to request the attorney general's opinion of the mayoral power.

YEAS: **F. A. Bennett, R. C. Davis, and R. L. Snow**

NAYS: **C. E. Dean, B. B. Horne and W. E. Printz**

Motion failed (3-4) Mayor Dearing broke the tie with a Nay vote.

Mayor Dearing stated that he has a public safety committee that has been virtually inactive. Mayor Dearing stated that he wants to meet with public safety and Mr. Monger. Mayor Dearing stated that he wants to give Mr. Monger some problems that he has with the police department. Mayor Dearing stated that he wants this council to look at the mistakes in the charter and make changes that make sense.

Councilman R. L. Snow moved, second by C. E. Dean and carried to authorize and instruct the personnel committee to work with the town attorney on articles of clarification in the Town Charter.

YEAS: **F. A. Bennett, R. C. Davis, C. E. Dean, B. B. Horne, W. E. Printz, R. L. Snow**

Motion carried (6-0)

Subdivision of Property 515 E. Rockingham Street

Councilwoman B. B. Horne moved, second by W. E. Printz and carried to approve for Cheryl Hutchens at 515 E. Rockingham Street to subdivide the lot as recommended by the Planning Commission with the conditions set forth.

YEAS: F. A. Bennett, R. C. Davis, C. E. Dean, B. B. Horne, W. E. Printz, R. L. Snow

Motion carried (6-0)

Mayor Dearing set committee dates as follow:

Tuesday, September 14, 1999 at 6:00 P.M. - electric, water/sewer and streets/sidewalk

Thursday, September 16, 1999 at 6:00 P.M. - finance, personnel and public safety

Closed Session

Councilwoman B. B. Horne moved, seconded by Councilman R. L. Snow and carried that council go into Closed Session for the purpose of discussion of personnel matter regarding the job performance of a town employee.

YEAS: F. A. Bennett, R. C. Davis, C. E. Dean, B. B. Horne, W. E. Printz, R. L. Snow

Motion carried (6-0)

Councilwoman B. B. Horne moved to go from Closed Session back into Regular Session and that each member, to the best of his knowledge, certifies that only public business matters lawfully exempted from an open meeting requirement under Chapter 21 of Title 2.1 of the Code of Virginia were heard, discussed or considered. The motion was duly seconded.

YEAS: F. A. Bennett, R. C. Davis, C. E. Dean, B. B. Horne, W. E. Printz, R. L. Snow

Mr. Davenport reported that he called the prosecutor today that was named to the police department. Mr. Davenport reported that the investigation is complete but the prosecutor has not reported his findings to the judge.

Councilman Printz stated that we need to get this over with. Councilman Printz stated that there is no excuse to keep dragging this out.

Councilman Printz stated that he compliments Ms. Crider and Mr. Sigafoose on the Neighborhood Watch National Night Out. Councilman Printz also stated is appreciation for the beautiful parade and a job well done by the Jr. Order.

Councilman C. E. Dean reported that Mr. Larry Baugher has resigned from the Planning Commission.

Councilman Snow asked Mr. Davenport if there would be any downside to placing ads for lifetime memberships and private investment for the golf course. Councilman Snow stated that no promises would be made to anyone, just wants to check the interest in the area.

Mr. Davenport stated that there is concern with the Federal Securities Law. After further discussion Councilman Snow asked if anyone had any objections if Mr. Davenport looks into this for the town.

As there was no further business the meeting was adjourned.

MAYOR: M Lee D
M. Lee Dearing, Mayor

RECORDER: Julia M. Smith
Julia M. Smith, Clerk