**REGULAR**
**COUNCIL MEETING**
**October 15, 2001**

The regular meeting of the Elkton Town Council was held Monday, October 15, 2001 in the council chambers with the Mayor M. Lee Dearing presiding. The following council members were present:

PRESENT
J. T. Dean
C. H. Murphy
M. S. O'Neill
T. Pence
W. E. Printz
L. Sigafoose

Nathan Miller, Attorney, Raymond Clary, Town Administrator, Richard Pullen, Chief of Police, and Richard Carey, Administrative Assistant, were also present.

Councilman O'Neill offered the Invocation.

The Pledge of Allegiance was recited.

Mayor Dearing presented Certificates of Appreciation to Debbie Madden of the Hair Gallery, Jack Hensley, Commander of Veterans of Foreign Wars Post 9292, Chancellor Lough of the Elkton Ruritan Club, and Wayne Printz accepting for Monica Lucas, for their deeds of patriotism following the terrorists attacks against the United States on September 11, 2001.

**CITIZEN COMMENTS**

Mildred Shifflett

Mildred Shifflett of 112 West Spotswood Avenue, Elkton, posed questions regarding Donna King Smith who was the administrator and executive director of Victorian Haven when Mr. George Thomas Reed was killed on Route 340. Mrs. Shifflett stated that the State of Virginia cited Victorian Haven several times and issued the facility a provisional license. She questioned how Ms. Smith can run the facility now when she could not do so before. Ms. Shifflett's concern was that in six month's time the facility will be in worse shape than it was before. Mrs. Shifflett stated her preference was to be shot and put into a hole rather than be placed in Our Shenandoah Home, the former Victorian Haven. She stated that with the same administrator in place, the facility would not improve.

Mayor Dearing responded that a Public Hearing would be held on Our Shenandoah Home on November 19, 2001. An invitation was extended for interested persons to attend the Public Hearing and voice their concerns or support.

Hazel Crider

Hazel Crider of 114 Hillside Avenue, Elkwood, expressed concern regarding current procedures in the handling of negotiations regarding the purchase of Our Shenandoah Home. She stated she learned that Waterfront Properties had met with Mayor Dearing, Town Administrator Ray Clary, and Councilwoman C. H. Murphy. Mayor Dearing affirmed that was correct. Mrs. Crider concluded from the minutes of that meeting that Waterfront Properties was more or less assured that there would not be too much of a problem being granted a Special Use Permit. She questioned how Council could make such a guarantee when proper procedure had not been followed. It was her understanding that the proper approach was through the Planning Commission. She did not understand the hurried action on this matter.

Mayor Dearing responded that the Town Administrator and members of council meet with

business people every day. These are not meetings but a way of encouraging business people to come to Elkton. When the potential buyers of Victorian Haven appeared before committee, they did so with a signed contract to purchase the property. The council listened and advised the buyers that there was a court case pending and that there was a Special Use Permit in place until December 12, 2001 when Mr. Weaver would go to court. September 29, 2001 was the closing date of the purchase. Council instructed the buyers that they, Council, would not grant a Special Use Permit, that they, the buyers, would have to follow procedure. Council withdrew the initial resolution which eliminated the Special Use Permit. The new owners would still have to go before the Planning Commission and request a Special Use Permit. The Planning Commission will approve, not approve, or make no recommendation to Council. Council did not give the new owners its blessing. The new owners must follow procedure and appear before council and justify why they should be granted a Special Use Permit.

Councilman O'Neill stated he had talked with another party who was interested in purchasing Victorian Haven. He felt council should not hide behind bureaucracy, and the Planning Commission is bureaucracy. It should not be up to the Planning Commission to negotiate the terms of the Special Use Permit at this time. The facility already exists and no one is trying to change the use of the property. The council has good knowledge of how the property has been used in the past. Councilman O'Neill tried to communicate to the buyers the terms under which he would support a Special Use Permit. Councilman O'Neill foresees more stringent terms than now exist. The buyers were willing to renegotiate a new Special Use Permit in order to eliminate a bad permit, according to Councilman O'Neill. Councilman O'Neill stated there was no unethical behavior and that all parties were treated equally in the best interest of the Town and the residents of the facility.

Councilman Pence stated he felt the council acted wrongly. The Planning Commission told Kip Jenkins to come before them with an application for a Special Use Permit. That was what he did. Councilman O'Neill stated it was his understanding that Mr. Jenkins was not interested in a Special Use Permit. Councilman O'Neill questioned Councilman Pence as to whether he should have refused to work with Mr. Jenkins and refused all contact until he came before the Planning Commission.

Mayor Dearing read from the Code Book that no Special Use Permit will be granted except to the owner. Mayor Dearing stated Mr. Jenkins requested the property be rezoned to commercial because he was not interested in a Special Use Permit where he would be micro-managed by the Town. Mr. Jenkins had no contract to buy at that time. When council heard Waterfront Properties, they had a signed contract to purchase and did not seek rezoning. They asked for a Special Use and were told council would issue a Special Use if they would meet council's terms.

Kip Jenkins stood and introduced himself and his wife Lisa. Mr. Jenkins stated that he approached Mr. Wayne Weaver about purchasing Victorian Haven or going into partnership. At that time, he was unaware of Mr. Weaver's future problems. He understood that the Special Use Permit went with Mr. Weaver and not the property. Mr. Jenkins went to Zoning Administrator Todd McCoy and asked which direction he should go. Mr. Jenkins was at that time seeking a commercial rezoning because assisted living did not have a category. A nursing home and an assisted living facility are not the same. Mr. McCoy said he would have to go through proper procedure to find out how to do what Mr. Jenkins wanted to do. Mr. Jenkins filled out a zoning application in July and the Planning Commission did not see him until August 13, 2001. Mr. Jenkins was told he could not receive a rezoning nor a Special Use Permit because he was not a property owner. Chairman Weyrick told Mr. Jenkins he could purchase the property and take his chances with rezoning or a Special Use Permit, or have Mr. Weaver come in and ask for his Special Use Permit to be reinstated. Mr. Jenkins was aware that that would not happen. Mr. Jenkins went back to Mr. Weaver and told him he could not take a chance on a two million dollar deal because he was not a property owner and a rezoning or Special Use Permit would be contingent on that fact. He next went to Councilman O'Neill who asked Mr. Jenkins would he be

interested in something else - like an R-5 or R-6. Mr. Jenkins said he would be willing to do that, but did not want to find himself in the same situation as Mr. Weaver by having his Special Use Permit revoked at the drop of a hat. Mr. Jenkins stated Waterfront Properties bypassed all the procedures and went directly to Council. He felt Waterfront Properties had inside information that he did not have. Mr. Weaver told Mr. Jenkins that the Special Use Permit went with the property and not the owner. At a special meeting, Mr. Tom Miller, representing the Town, said if the Special Use Permit was reinstated perhaps the challenge or lawsuit would disappear.

Councilman Printz said for 12 years he thought the permit went with the owner. Councilwoman Murphy spoke and stated that when she was a private citizen, other citizens opposed Victorian Haven in that neighborhood. The group was assured at that time that the Special Use Permit went with the owner but that information was never recorded in the minutes.

Mayor Dearing said he was on council when Mr. Weaver brought his Victorian Haven Special Use Permit request before council. It was stipulated at that time that the Special Use went with the owner. Since then we have learned that because it was not noted as non-transferable, the Special Use went with the property. Under Virginia Code the Special Use goes with the property unless otherwise specified.

After much discussion of the events as Mr. Jenkins understood them and as council understood them, Councilwoman Murphy stated there was one big difference everyone was overlooking. When Mr. Jenkins appeared before the Planning Commission, he had no signed contract. When Waterfront Properties was seen by council, they had a signed contract, which showed that they were willing to take the chance of obtaining a Special Use Permit. Mr. Jenkins argued they did have a signed contract but did not go through the procedure he was required to go through to get to council.

Mayor Dearing stated council allowed Waterfront Properties to operate under Mr. Weaver's Special Use Permit until December 12, 2001. Waterfront Properties has now applied to the Planning Commission for a Special Use Permit. On November 19, 2001 there will be a Public Hearing regarding that request.

**MINUTES**

**Councilman O'Neill moved, second by Councilman Printz, and carried to approve the amended minutes of the council meeting held September 17, 2001.**

**Yeas: T. Dean, C. Murphy, T. Pence, W. Printz, L. Sigafoose, and M. O'Neill**

**Motion carried (6-0)**

**Councilman O'Neill, second by Councilman Printz, and carried to approve the minutes of the Public Hearing held September 17, 2001 for a boundary line adjustment for the Holtzman property.**

**Yeas: T. Dean, C. Murphy, T. Pence, W. Printz, L. Sigafoose, and M. O'Neill.**

**Motion carried (6-0)**

**Councilman Printz, second by Councilman O'Neill, and carried to approve the minutes of the Public Hearing held September 17, 2001 regarding the adoption of Chapter 4, Authorities, Article 1, Park Authority.**

**Yeas: T. Dean, C. Murphy, T. Pence, W. Printz, L. Sigafoose, and M. O'Neill.**

**Motion carried (6-0)**

**Councilman Printz, second by Council O'Neill, and carried to approve the minutes of the Public Hearing held September 17, 2001 regarding the adoption of Chapter 4, Authorities, Article II, Industrial Authority.**

**Yeas: T. Dean, C. Murphy, T. Pence, W. Printz, L. Sigafoose, and M. O'Neill.**

**Motion carried (6-0)**

**Councilman Printz, second by Councilman O'Neill, and carried to approve the minutes of the Public Hearing held September 17, 2001 regarding Annexation, 110-406.**

**Yeas: T. Dean, C. Murphy, T. Pence, W. Printz. L. Sigafoose, M. O'Neill.**

**Motion carried (6-0)**

**Councilman Printz, second by Councilman O'Neill, and carried to approve the minutes of a meeting with Waterfront Properties held on September 19, 2001.**

**Yeas: T. Dean, C. Murphy, T. Pence, W. Printz, L. Sigafoose, and M. O'Neill**

**Motion carried (6-0)**

**Councilman Printz, second by Councilwoman Murphy, and carried to approve the minutes of the Special Council meeting held on September 27, 2001 to discuss Victorian Haven's Special Use Permit.**

**Yeas: T. Dean, C. Murphy, T. Pence, W. Printz, L. Sigafoose, and M. O'Neill**

**Motion carried (6-0)**

## DEPARTMENT HEADS REPORTS

### Chief of Police

Councilman O'Neill expressed his appreciation for the police department's attention to speeders. Councilman Sigafoose thanked the Chief for the roster. Councilman Printz stated the principal at the Elementary School was extremely proud of his relationship with Chief Pullen and the Elkton Police Department.

### Director of Public Works/Zoning Administrator

Mayor Dearing informed council that Todd McCoy, Director of Public Works, was attending the Virginia Municipal League meeting in Virginia Beach.

The water line to Dr. Trabosh's building is complete and the crew is in the process of laying the sewer line. Some fire plugs were also updated. Councilman Printz stated that the truck signs on North Street were not targeted for water haulers. He will get back to council regarding the traffic pattern for tractor-trailer-type vehicles.

### Treasurer

Mayor Dearing gave the treasurer's report in place of Faye Vickers who was out due to a traffic accident.

### Town Administrator

Mr. Clary offered to answer questions regarding his report.

## COMMITTEE REPORTS

### Electric

Mr. Clary attended the Virginia Municipal Electric Association meeting in Richmond on October 11, 2001, at which time deregulation of electric power in Virginia was discussed. Our contracts with suppliers regarding peak generation and credit and rates should stay about the same in the foreseeable future.

### Finance

Councilman O'Neill had nothing to report.

### Personnel

Councilwoman Murphy reported the Personnel Committee met on Tuesday, October 9, 2001 and agreed to Personnel Policy 1.9, Other Leaves and would be presented under Old Business.

### Public Health and Safety

Mayor Dearing reported the Committee met and discussed dog complaints. The solution is to enforce the leash and animal ordinances. The Mayor and Chief Pullen have been looking at blight areas in town.

### Streets and Sidewalks

Councilman Printz thanked Mr. Clary, Mr. McCoy and VDOT for all the completed projects. He referenced the completed work at the railroad crossing; also Rt. 340 in front of the Elkton Pharmacy there were about two sections of bad sidewalk which were replaced. Paving continues in town and Councilman Printz will work on a new priority list.

### Water and Sewer

Councilman Dean will tour the sewer plant. A survey will be done regarding the plant's ability to treat waste and how close we are to capacity.

### Recreation

Councilman Pence had no report. Councilman Printz asked Council to research a walking track and a bicycle track.

### Planning Commission

Councilman Dean announced a vacancy on the Planning Commission. The Commission and Councilman Dean requested clarification by order of annexation. They also requested a map of the boundary lines at the Mary Elizabeth Kite property.

## OLD BUSINESS

### Boundary Line Adjustment Holtzman Property

Mayor Dearing stated following the Public Hearing, we sent our recommendations to the County and the County has set a Public Hearing for October 24, 2001 at 7:00 P.M.

**Adoption of Personnel Policy 1.9**

Councilwoman Murphy requested that Personnel Policy 1.9 be adopted with conditional and unconditional leave being amended to read the Department Head in conjunction with the Town Administrator may grant either leave up to thirty (30) days. After thirty (30) days, the request would go through the Personnel Committee for council approval.

**Councilwoman Murphy moved, second by Councilman Printz, and carried to approve Personnel Policy 1.9, Other Leaves with changes as noted.**

**Yeas: T. Dean, C. Murphy, T. Pence, W. Printz, L. Sigafoose, and M. O'Neill.**

**Motion carried (6-0)**

**Our Shenandoah Home (formerly Victorian Haven)**

Mayor Dearing announced that on November 19, 2001 at 6:00 P.M., there will be a joint Public Hearing with the Planning Commission.

**Fire Department Donation Request**

The Elkton Fire Department requested the purchase of a thermal imaging camera. Mayor Dearing would like to table this request pending a search of the Internet for a free camera or the purchase of a used one at less cost.

**Second Reading of Electric Utility Increase**

**Councilman O'Neill moved, second by Councilwoman Murphy, and carried to approve the adoption of the following rate changes:**

**Residential per meter rate becomes $1200.00;**
**Business per meter rate becomes $2000.00;**
**All 3-phase connections become $5000.00;**
**All customers will pay a minimum of $100.00 per month for 3-phase service;**
**A $30.00 fee for both connection and reconnection where electrical service already exists.**

**The motion also contained a thirty (30) day notice to allow those with 3-phase service to switch without incurring the $100.00 minimum fee.**

**Yeas: T. Dean, C. Murphy, T. Pence, W. Printz, L. Sigafoose, and M. O'Neill**

**Motion carried (6-0)**

**NEW BUSINESS**

Mayor Dearing announced the annual Halloween trick or treat event would be Wednesday, October 31, 2001 from 5 to 7:00 P.M.

On November 11, 2001 at 2:00 P.M., a Veterans Day ceremony will be held at the flag pole in front of the Municipal Building.

Committees will meet on the 13th and 15th of November, 2001 with Personnel, Finance, and Sewer/Water on the 13th and Electric, Public Health, Public Safety, and Streets/Sidewalks on

the 15th.

Mayor Dearing asked Councilman Printz for an update on the Recreation Center. Councilman Printz stated locations are still being considered and that financial support and donations will be sought. A cost comparison will be made between purchasing an existing building or constructing a new one. Councilman Printz hopes to have some recommendations within the next 30 days.

Mayor Dearing sought council approval to protect our water system, considering the on-going threats of terrorists activities. Mayor Dearing suggested a cable to close access to the spring and giving public works and the police department the keys.

Due to a pending lawsuit, the town has not yet closed on the Kite property. Mayor Dearing is caretaking the property.

On October 29, 2001 at 7:00 P.M., attorney Nathan Miller will present a briefing to council and interested persons on how the bonds will work.

Councilman Printz expressed his displeasure with the phone system. He feels the citizens should hear a human voice when they call the various town departments. He hopes council can work together to solve the problem.

Councilman Printz feels council should solve the microphone issue, whatever it takes.

Councilman O'Neill asked about the Code book updates. Attorney N. Miller responded that General Code will update whenever we want it.

Mayor Dearing stated there was enough money in supplies to complete the purchase of Christmas decorations. There were no objections from council.

**Councilwoman Murphy moved, second by Councilman O'Neill, and carried that the Elkton Town Council be in closed session under Virginia State Code 2.1-344 to discuss pending litagation and annexation.**

**Yeas: C. Murphy, T. Pence, L. Sigafoose, M. O'Neill, W. Printz, and T. Dean**

**Motion carried (6-0)**

**Councilwoman Murphy moved to go from closed session back into regular session and that each member, to the best of his or her 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. Councilman O'Neill duly seconded the motion.**

**Yeas: C. Murphy, M. O'Neill, T. Pence, L. Sigafoose, W. Printz, and T. Dean**

**Motion carried (6-0)**

As there was no further business, the meeting was adjourned.

**MAYOR:** _____
**M. Lee Dearing, Mayor**

**RECORDER:** _____
**Richard D. Carey, Clerk**