Public Hearing
December 14, 2004
Phase II Annexation

A Public Hearing to receive comments regarding Phase II Annexation was held on Tuesday, December 14, 2004 in Council Chambers with Mayor Wayne E. Printz presiding. The following Council members were present:

PRESENT
J. Dean
C. McDaniel
T. Pence
R. Snow
P. Workman

Town Manger Dennis R. Donachy, Chief of Police Richard Pullen, and Clerk of Council Richard Carey were also present.

Bill Davis, 409 Monger Hill Road, stated he had spoken to some members of Council and to Supervisor Mike Breeden and discussed that the deed to his home was separate from the deeds he has for the business and rental property. He wanted assurance that his home was not included in Phase II, even though he had no real objection to being annexed.

Mayor Printz stated the Town Attorney would arrive soon and Mr. Davis' situation would be reviewed.

Council member Workman believed all the property "that touched the road" was in the annexation plan to avoid a confusing configuration of boundary lines.

There was discussion if the Town complied with terms of the Agreement with Rockingham County as applied to Pentecostal Hill. Council member Workman believed the Town had responded properly because "before you can do any construction, you have to get drawings, blueprints, and surveys. That's all part of construction, in my opinion."

Mayor Printz read the following letter:

ROCKINGHAM COUNTY

December 13, 2004

VIA FACSIMILE: 434-7832

Nathan H. Miller, Esquire
Miller & Earle, PLLC
560 Neff Avenue, Suite 200
Harrisonburg, VA 22801

Re: Status of Water and Sewer Improvements to
Phase ID Under Annexation Agreement

Dear Nathan:

This letter is a follow up to the meeting held on December 9, 2004, between representatives of Rockingham County and the Town of Elkton regarding the status of the water and sewer improvements to Phase ID, commonly known as Pentecostal Hill, annexed by the Town on January 1, 2004. We understand that the Town would like to annex Phase II under the Annexation Agreement and has scheduled a public hearing on that annexation issue for this week.

To restate the concern of the Board of Supervisors with regard to annexation of Phase II by Elkton, Section 4 of the Annexation Agreement between the Town and Rockingham County provides that the Town may annex Phase II if the Town is not in default of its obligations under the Annexation Agreement. Section 6 of the annexation Agreement requires the Town to begin construction of water and sewer utilities to service Phase ID within one (1) year of the date of annexation. While the Town has secured engineering plans for this construction, construction itself will not begin until considerably later than January 1, 2005.

Additionally, the Town has requested that it be allowed to take in a parcel of land containing just over one hundred sixteen (116) acres, commonly known as the Hiram Kite property, using a boundary line adjustment.

As discussed during the meeting on Thursday, December 9, 2004, and subject to final approval by the entire Board, the Board will allow the annexation of Phase II to continue as planned by the Town, and will cooperate in a boundary line adjustment to allow the Town to take in the Hiram Kite property, conditioned on the following:

1. Blackwell Engineering, PLC has prepared a Phasing Plan dated December 10, 2004 for constructing water and sewer lines for Pentecostal Hill. The Phasing Plan designates five (5) different phases for providing water and sewer to the Pentecostal Hill area, with Phase 1 designated in red. The Town agrees to issue a request for bid for construction of water and sewer lines and services for a minimum of Phase 1 as outlined on the Phasing Plan no later than December 31, 2004.

2. A bid will be awarded by the Town and construction of Phase 1 water and sewer lines will begin no later than June 30, 2005.

3. Phases 2 through 5 as shown on the Phasing Plan shall be completed within six (6) years of the date of initial annexation (January 1, 2004), as required by the Annexation Agreement.

4. If the Town fails to issue a request for bid by December 31, 2004, or construction on Phase 1 water and sewer lines does not begin by June 30, 2005, a sum equal to all taxes, including real estate, personal property, BPOL, and meals taxes assessed by the Town of Elkton on that property located in Annexation Phase II will be paid by the Town to Rockingham County. At the County's option, such amount may be offset against the outstanding balance of the $250,000.00 grant to be provided by Rockingham County to the Town in connection with the water and sewer services.

I believe this letter sets forth what was discussed at the meeting last Thursday. Again, the provisions in this letter are subject to final approval by the Board of Supervisors of Rockingham County. If we feel it prudent, after the tentative agreement is approved by the governing bodies of both localities, we can reduce this agreement to a formal amendment to the Annexation Agreement.

Thank you for your attention to this matter. If you have any questions or concerns about anything contained in this letter, please do not hesitate to contact me.

Sincerely,

G. Chris Brown
County Attorney

GCB/tsg

cc: Board of Supervisors
Joseph S. Paxton

Council member Dean commented: "When we sat down and had this out with the County, Nathan sat here and said that taking in the second phase was no big deal, that the County understood we were waiting for second phase so that we would have the revenue to do the Hill over here. That's exactly what the man told us."

Council member Workman stated: "I'm not an attorney but it seems like to me that any court would agree with us that getting the surveys and stuff like that ahead of doing construction is all part of the construction process, and that is what we have been doing for the last six or seven months. This was never brought up. This was never mentioned. I've sat in 15 meetings and never heard this."

Mayor Printz spoke: "That is exactly correct. The problem is I have a problem on the table." Referring to the fact that construction must begin within one year, he stated, "I hate that and I was very upset about it, but we are gonna move on and try to work with this thing." Mayor Printz concluded by saying, "We will get the bids out before December 31, 2004."

Council member Workman expressed his displeasure. "I don't like it at all. They give us no credit for trying to get something done. This is basically a threat. They are going to take away money. They are going to fine us, basically. Yet, 70% of the people in our recreation services pay the same fee as Elkton residents and we don't say a thing to Rockingham County. But, yet, they come up with a word technicality in the contract and they are going to fine us and they think there is no faith in us to get anything done. Combine that with a letter in the paper today about putting a community center in McGaheysville and I am thoroughly disgusted with Rockingham County and the support they give the Town of Elkton."

Mayor Printz recognized it was a "painful" position but encouraged Council to add the letter as an amendment to the Annexation Agreement.

Council member Workman spoke again and stated, "Don't we have an attorney? What I'm getting at is does our attorney read this sentence the same as their attorney?"

Mayor Printz responded, "Our attorney reads it the same."

Council member Workman: "He reads it that we are wrong? Why did he let us set here for a year and be wrong? Two hundred and fifty dollars an hour to be wrong?"

Attorney Miller advised Mayor Printz that if Council was in agreement with the amendment, tonight would be a First Reading. There was confusion regarding Mr. Miller's advice.

Vice Mayor Snow moved, second by Council member Dean, and carried that the letter become an amendment to the Phase II Annexation Agreement as a First Reading, or a Final Reading, or whatever it has to be.

YEAS: J. Dean, C. McDaniel, T. Pence, R. Snow, and P. Workman

Motion carried (5 - 0 roll call)

As there were no additional comments, the meeting was adjourned at 6:20 P.M.

Mayor: _____
Wayne E. Printz, Mayor

Recorder: _____
Richard D. Carey, Clerk