Regular
Council Meeting
January 19, 2004

The regular meeting of the Elkton Town Council was held on Monday, January 19, 2004 in Council Chambers with Mayor Wayne E. Printz presiding. The following Council members were present:

PRESENT
J. T. Dean
C. H. Murphy
T. Pence
L. Sigafoose
R. L. Snow
P. Workman

Town attorney Nathan Miller, Faye Vickers, Treasurer, Richard Pullen, Chief of Police, Todd McCoy, Director of Public Works/Zoning Administrator, and Richard Carey, Clerk of Council, were also present.

Council member Dean offered the Invocation.

The Pledge of Allegiance was recited.

CITIZEN COMMENTS

Hazel Crider, 114 Hillside, spoke regarding the new trash pick-up schedule. Many people do not receive ***The Valley Banner*** and she wondered if there was a better way of informing citizens of such changes. Her suggestion was to include information on the utility bills. She would like Council to study and consider placing "Children-at-Play" signs in appropriate areas of Town. Mrs. Crider understood with recent changes in VDOT policy that we may now qualify for a STOP light at the intersection of Stuart Avenue and Rockingham Street.

Ralph Dean, 527 Virginia Avenue, owns approximately 34 acres of land and was confused by the annexation map, which showed some of his property still located in the County. Mr. McCoy took Mr. Dean to his office to look at Mr. McCoy's map. If corrections were needed, they would be made.

MINUTES

The following corrections were made:

Special Council Meeting, December 22, 2003
Ordinance for Annexation - Second Reading

"Another plus to the Annexation Agreement, according to Council member Snow, was the Town was able to delay the project for six years, well beyond Phase II when the Town will annex other business property."

Amended to read ***...was the Town has six years to complete the project...***

Regular Council Meeting, December 15, 2003

Reference was made that Mayor Printz appointed Welty Hensley and Lynn Meadows as members of the Economic and Community Development Committee.

Vice Mayor Murphy commented that Council appoints members of committees.

Council member Snow moved, second by Council member Sigafoose, and carried to approve the minutes of the Committee Meetings of December 10, 2003, the Work Session of

December 15, 2003, the Public Hearing of December 15, 2003, the Regular Council Meeting of December 15, 2003, and the Special Council Meeting of December 22, 2003, as amended.

YEAS: J. Dean, C. Murphy, T. Pence, L. Sigafoose, R. Snow, and P. Workman

Motion carried (6 - 0 voice vote)

DEPARTMENT HEAD REPORTS

Chief of Police

Chief Pullen presented his report. Rainy was in-service in Weyers Cave on January 6, 2004 and assisted in the apprehension of burglary suspects. Rainy was again active in Elkton on January 11, 2004 when a fugitive was apprehended.

Director of Public Works/Zoning Administrator

Mr. McCoy presented his report. February 2, 2004 will be the first trash pick-up day in the annexed area.

Council member Workman asked Mr. McCoy if the digital camera would enhance his inventory files. Mr. McCoy embraced the suggestion.

Mayor Printz offered that he has a commitment from Norfolk Southern Railroad to repair the crossing on Shenandoah Avenue as soon as blacktop becomes available. Attempts are also being made to have Norfolk Southern Railroad property across 5th Street from the laundromat converted into a parking lot.

Treasurer

Mrs. Vickers reported an ending ledger balance for General Government for December 2003 of $399,624.14 with available cash of $379,663.77. The Bond Account for the same period had an ending ledger balance of $55,127.24.

Vice Mayor Murphy moved, second by Council member Pence, and carried to approve the Treasurer's report.

YEAS: J. Dean, C. Murphy, T. Pence, L. Sigafoose, R. Snow, and P. Workman

Motion carried (6 - 0 voice vote)

Vice Mayor Murphy noticed that Street Maintenance was overspent. Mr. McCoy attributed the overtime paid due to weather conditions as the culprit. Mrs. Vickers added that the next VDOT allocation of $53,000.00 will arrive in April.

COMMITTEE REPORTS

Electric

Council member Sigafoose will take the need for a pole light at the post office to committee.

Finance

Council member Snow did not observe any "glaring discrepancies" in the audit report which was presented at the last committee meetings.

Council member Snow moved, second by Council member Dean, and carried to accept the audit report as presented.

YEAS: J. Dean, C. Murphy, T. Pence, L. Sigafoose, R. Snow, and P. Workman

Motion carried (6 - 0 voice vote)

Personnel

No report.

Public Health, Public Safety, and Ordinances

Council member Dean recommended that the Council as a body contact VDOT, the Board of Supervisors, and other responsible persons to support a 45 miles per hour flashing light at Elkton Middle School. Council member Dean recalled an earlier study of the area and the result was that the amount of traffic did not justify such a system. Council member Dean questioned if two recent deaths in the area were justification enough.

Streets and Sidewalks

Council member Workman stated the pending curb and gutter ordinance will go back to committee for some fine tuning.

Water and Sewer

Council member Dean deferred to New Business.

Recreation

Council member Pence noted the Recreation Commission did not meet in December.

Planning Commission

No report.

Cemetery Commission

No report.

Charter Revisions Committee

No report.

Economic and Community Development Committee

Council member Workman moved, second by Council member Snow, and carried to appoint Council member Workman, Welty Hensley, and Lynn Meadows as members of the Economic and Community Development Committee (ECDC).

The issue of how Mr. Meadows would be compensated for his role on ECDC will be decided at the committee level, or in closed session if necessary. Vice Mayor Murphy stated that Mr. Meadows would receive time-and-a-half pay for any time worked over 40 hours per week.

Mayor Printz declined Council member Workman's offer to withdraw his motion, until the second was first withdrawn. Council member Snow remained silent, as he and the other Council members supported the concept of ECDC.

YEAS: J. Dean, C. Murphy, T. Pence, L. Sigafoose, R. Snow, and P. Workman

Motion carried (6 - 0 voice vote)

UNFINISHED BUSINESS

Card Reader System

Vice Mayor Murphy requested that a card system for Bear Lithia like the one used in Town for water haulers be discussed in committee.

Meals Taxes

Council member Snow asked Mrs. Vickers to follow-up with the businesses which remit their meals taxes to the Town as a result of annexation. Mrs. Vickers responded to Council member Snow that eight new businesses were gained from this annexation phase. COUNTRYSIDE MARKET was not included on the survey map in this phase of annexation. The error is being corrected.

NEW BUSINESS

Transfer Cemetery Funds - Second Reading

Following a question by Vice Mayor Murphy, Attorney Miller determined a second reading would be appropriate.

Council member Snow moved on a Second Reading, second by Council member Dean, and carried to approve the transfer from the Cemetery Perpetual Care account for the uncollected four years of expenses of the Cemetery at a rate using the average of the last two previous years of Cemetery expenses.

Vice Mayor Murphy asked what dollar amount was decided. Mrs. Vickers answered approximately $140,000.00.

Council member Sigafoose understood that the Council could not spend the money in the Cemetery's Perpetual Care account. Council member Snow responded that the money was for the upkeep of the Cemetery and the Council could access that account for that purpose.

Council agreed with Vice Mayor Murphy that this transfer should be automatic in the future. Mrs. Vickers agreed it could be done, following the final audit report.

YEAS: J. Dean, C. Murphy, T. Pence, L. Sigafoose, R. Snow, and P. Workman

Motion carried (6 - 0 roll call)

Abatement of $253.07

Council member Snow moved, second by Council member Dean, and carried to abate a $253.07 utility payment due to personal bankruptcy.

YEAS: J. Dean, C. Murphy, T. Pence, L. Sigafoose, R. Snow, and P. Workman

Motion carried (6 - 0 voice vote)

Economic and Community Development Funding - First Reading

Vice Mayor Murphy moved as a First Reading, second by Council member Snow,

and carried to approve $2,000.00 to be used at Council member Workman's discretion for expenses related to ECDC.

Council member Workman ascertained the $2,000.00 would be available from the Economic Development line item.

Introduced without a vote.

Purchase Life Well - First Reading

Attorney Miller stated the contract is in draft form. Mayor Printz desired to continue with a First Reading and the final contract could be accepted by committee prior to the Second Reading.

Council member Dean moved as a First Reading, second by Council member Snow, the following:

CONTRACT FOR SALE AND PURCHASE OF WELL AND ADJACENT LAND

THIS AGREEMENT (the "Agreement"), made as of the 30th day of December 2003, by and between the **TOWN OF ELKTON, VIRGINIA,** a municipal corporation ("Purchaser") and **GRANVILLE E. LIFE** and **RUTH B. LIFE,** husband and wife ("Seller").

WITNESSETH:

1. Property. Seller agrees to sell and Purchaser agrees to purchase the water well located within the area known as Monger Hill and One Thousand (1,000) square feet of land in the shape of a One Hundred (100) foot by One Hundred (100) foot square centered on the well (the well and the land are hereinafter referred to as the "Property"). Seller represents that it holds clear title to this property and there are no easements, contracts or agreements that prevent the transfer of this property to Purchaser. Furthermore, Seller agrees to indemnify Purchaser from and against any claims by third parties concerning title to the Property.

2. Access and Other Documents. Seller agrees to grant Purchaser unrestricted access to the Property. This right of access shall be evidence by an easement granted to Purchaser by Seller, which shall be recorded with the land records in the Clerk's Office of the Court of Rockingham County. Seller agrees to, without additional compensation, timely execute this deed of easement, along with any other documents that are required to evidence Purchaser's ownership interest and right of access to the Property.

3. Purchase Price. The purchase price of the Property is Twenty Thousand Dollars ($20,000.00). In addition, the Purchaser agrees to pay Seller the sum of One Thousand Ninety-Five and 30/100 Dollars ($1,095.30) for replacement of the well pump, which has been completed prior to the execution of this Agreement. Purchaser agrees to reimburse Seller for its legal expenses associated with this sale, up to One Thousand Dollars ($1,000.00).

4. Title. At settlement, Seller shall convey to Purchaser good and marketable fee simple title to the property by deed of general warranty containing English Covenants of title, free of all liens, encumbrances, and leases except for normal utility easements, or covenants and restrictions of record that are not now violated by existing buildings or use. In the event the title examination or survey reveals facts which constitute valid title objections or affect the marketability of title, Purchaser shall have the option to terminate this contract with no penalty, unless Seller, at

Seller's expense, cure the title objections within a reasonable time. Obtaining a commitment from a title insurance company operating in Virginia for title insurance at standard rates, without exception as to the defect claimed, shall constitute compliance with the requirements of title. If the title objection is substantial enough, in the written opinion of counsel for Purchaser, that counsel cannot certify the title but a title company will insure the same, then Seller shall have the option of either paying the premium for insurance, or, if Seller does not desire to pay the premium, Purchaser may terminate the contract if Purchaser so desires. In the event of Purchasers' termination, the deposit shall be returned. Nothing shall prevent Purchaser in such a situation from electing to pay the premium and continue with the contact.

In the event the property is taxed under land use assessment and this sale results in disqualification from land use eligibility, Seller shall pay any rollback taxes assessed. If the property continues to be eligible for land use assessment, Purchaser agrees to make application, at Purchasers' expense, for continuation under land use, and to pay any rollback taxes resulting from failure to file or to qualify.

5. Risk of Loss. Risk of loss or damage by fire or other casualty to the property or taking by eminent domain before settlement is assumed by Seller. In the event of such loss or damage, Purchaser shall have the option of either (a) terminating this agreement and recovering the deposit, or (b) continuing with the agreement in which event the Seller shall assign to Purchaser all of Seller's right under any applicable insurance policy and any condemnation of awards and pay over to Purchaser any sums received as a result of such loss or damage.

6. Warranties. Purchaser agrees to accept the property at settlement in its present physical condition, except as otherwise provided herein. Seller shall not alter the Property in any way between the date hereof and the closing date.

7. Settlement. Settlement shall be made at such place as the parties agree on or before _____, 2004, provided that this time may be extended by mutual agreement or if necessary to complete examination of title, prepare necessary documents, or correct title defects reported by the title examiner.

8. Possession. Possession shall be given to the Purchaser at the time of settlement.

9. Closing Costs. Seller agrees to pay the expense of preparing the deed, certificates for non-foreign status and Form 1099-S and the recordation tax applicable to grantors. Except as otherwise agreed herein, all other expenses incurred by Purchaser in connection with this purchase, including, without limitation, title examination, insurance premiums, survey costs, recording costs, loan document preparation costs and fees of Purchaser's attorney, shall be borne by Purchaser. All taxes, assessments, interest, rent and mortgage insurance, if any, shall be prorated as of settlement.

10. Attorney's Fees and Costs on Default. In addition to any other remedies available herein, if either party defaults under this agreement the defaulting party shall be liable for expenses incurred by the non-defaulting party, including attorney's fees incurred in attempting enforcement of the agreement.

11. Mechanic's Lien. Virginia law Section 43.1 *et seq.* Permits persons who have performed labor or furnished materials for the construction, r4emoval, repair or improvement of any building or structure to file a lien against the property. This lien may be filed at any time after the work is commenced or the material is furnished, but not later than the earlier of (I) ninety (90) days from the last day of the month in which the lienor last performed work or furnished material or (ii) ninety (90) days from the time the construction, removal, repair or improvements are terminated. An effective lien for work performed prior to the date of settlement may be filed after settlement. Legal counsel should be consulted.

12. No Broker. The parties acknowledge and agree that no brokers were involved in the

sale of this property and therefore no fees for any such services are due and owing in connection with this sale.

13. General Provisions.

(a) This contract shall be construed according to the laws of the Commonwealth of Virginia, excluding its conflicts of laws provisions; it represents the entire agreement between the parties and shall not be modified except in writing signed by all the parties; it shall be binding upon and inure to the benefit of the heirs, personal representative, successors and assigns of the parties.

(b) This agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterpart together shall constitute but one and the same instrument.

(c) Any and all notices, designations, consents, offers, acceptance or any other communications provided for herein shall be given in writing and shall be deemed properly delivered if given in person, or four business days after it is sent by registered or certified mail, return receipt requested, postage prepaid, or one business day after it is sent for next business day delivery via a reputable nationwide overnight courier service, in each case to the intended recipient at the addresses of the parties specified below:

If to Seller:
Name:_____
Address:_____
_____
_____
Telephone:_____
Facsimile:_____

If to Purchaser:

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

Telephone: (540) 564-1555
Facsimile: (540) 434-7832

(d) This Agreement may be amended or modified except by an instrument in writing signed by each of the parties hereto. No waiver of any provision of this Agreement shall be valid unless in writing and signed by the party granting the waiver. The waiver by either party of any breach or violation of any provision of this Agreement shall neither operate nor be construed as a waiver of any subsequent breach or violation.

(e) Wherever required by the context of this Agreement, the singular or plural case and the masculine, feminine and neuter genders shall be interchangeable.

(f) Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

(g) Seller and Purchaser warrant and represent that they have not entered into any contract, agreement or understanding in conflict with this Agreement.

(h) If any provision of this Agreement or the application thereof to any person or

circumstance shall be found to be invalid, illegal or unenforceable to any extent by a court of competent jurisdiction, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

With the intent to be bound by the terms set forth herein, the parities execute this Agreement as of the date first set forth above.

Seller:

_____(SEAL)
Granville E. Life

_____(SEAL)
Ruth B. Life

Purchaser:

THE TOWN OF ELKTON, VIRGINIA

By:_____
Wayne E. Printz
Mayor

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____

The foregoing instrument was acknowledged before me this _____day of _____, 2004, by _____by Granville E. Life.

My commission expires_____

_____
Notary Public

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____

The foregoing instrument was acknowledged before me this _____day of _____, 2004, by _____by Ruth B. Life

My commission expires_____

_____
Notary Public

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF_____

The foregoing instrument was acknowledged before me this _____day of _____,2004 by **WAYNE E. PRINTZ** for and on behalf of **THE TOWN OF ELKTON, VIRGINIA (Purchaser).**

My commission expires:_____

_____
Notary Public

105 Warren Street

Council member Dean brought to Council's attention a blocked sewer line at 105 Warren Street. Mr. McCoy advised that if a cleanout does not exist on the property, then the Town does not go inside the building. In this instance, there was no cleanout so Mr. McCoy could not determine if the blockage was in the Town line.

Council member Dean moved, second by Council member Snow, and carried to pay Roto Rooter $180.00 for services at 105 Warren Street, as the blockage was determined to exist in the Town's line.

Council member Snow asked for a chronology of the event. Mr. McCoy stated Mr. Gooden approached the Town with this problem and, because a cleanout was absent, he was told he would have to contact Roto Rooter to locate the problem. Mr. Gooden did and the service men found the problem in the Town's line.

Vice Mayor Murphy asked how many other locations in Town could pose this problem. Council member Dean answered that a cleanout was installed at this location. Mayor Printz added, to his knowledge, there are no other areas where the Town does not have access to the lines.

YEAS: J. Dean, C. Murphy, T. Pence, L. Sigafoose, R. Snow, and P. Workman

Motion carried (6 - 0 voice vote)

Steve Kite

On a recommendation from Council member Snow, Mayor Printz stated that he would welcome a meeting with Steve Kite, Kenny Kite, the Dentons, Attorney Miller and anyone else who could offer solutions for Mr. Kite's drainage problem.

Barry Ecroyd

Mr. Ecroyd was told his home business was grandfathered under the Annexation Agreement. He would, however, be required to obtain a home occupancy permit. He discussed speeding and parking issues with Council.

Vice Mayor Murphy moved, second by Council member Snow, and carried to go into closed session under Virginia Code 2.2-3711 to discuss prospective business.

YEAS: J. Dean, C. Murphy, T. Pence, L. Sigafoose, R. Snow, and P. Workman

Motion carried (6 - 0 roll call)

Vice Mayor Murphy moved to go from closed session back into regular session and that each member, to the best of his or her knowledge, certified 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. Council member Snow duly seconded the motion.

YEAS: J. Dean, C. Murphy, T. Pence, L. Sigafoose, R. Snow, and P. Workman

Motion carried (6 - 0 roll call)

As there was no further business, the meeting adjourned.

Mayor: _____
Wayne E. Printz, Mayor

Recorder: _____
Richard D. Carey, Clerk