Special
Council Meeting
February 18, 2004

A special council meeting was held on Wednesday, February 18, 2004 in Council Chambers with Mayor Wayne E. Printz presiding. Mayor Printz stated the purpose of the meeting was a second reading of option to purchase land and a second reading to expend funds for a survey and topographical information. The following Council members were present:

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

Town Attorney J. Burns Earle, 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.

CITIZEN COMMENTS

Mike O'Neill, 425 East Rockingham Street, was disturbed by a Council member's decorum while in session with the Cemetery Commission and with the same Council member's exchange with the Town Treasurer. Mr. O'Neill has worked and argued with the Treasurer and found her to be a competent, go-by-the-book employee. Mr. O'Neill believed the motion that led to the "verbal assault" against the Treasurer was improper and illegal.

Mr. O'Neill questioned why so much Town business was being conducted at numerous special meetings, outside the scope of regular meetings. Mr. O'Neill was unsure if he was opposed to anything because Council operates "behind closed doors." He questioned how to get "our house in order" so citizens would be better informed of what issues were before Council and the strategy of Council to resolve the issues.

He was sure, however, that Council continuously fails to follow procedures thereby "violating the citizens of our rights."

Mr. O'Neill resubmitted a Letter of Request on his wife's behalf under the Freedom of Information Act.

Lee Dearing, 124 North Street, requested a copy of the mid-year expenditure report. Regarding the second reading of the Kite land option, Mr. Dearing noted that if the Town eventually declined the option that water and sewer would be installed to the property. He wanted to know the cost to do that.

Mary K. Hutton, 515 Chestnut Avenue, discussed semantics with Council. The words for which she sought definitions were "prospective" and "client." Mr. Earle was directly asked to define "serious." If Mrs. Hutton had had a desire to become a "client" of the Town of Elkton to purchase land, what would have been the procedure to have been placed on the client list?

Kite Property Option

Council member Snow moved on a second reading, second by Council member Workman, and carried to approve the agreement for option of sale of real estate, the Joseph Hiram Kite, Jr., property.

AGREEMENT FOR OPTION AND SALE OF REAL ESTATE

THIS AGREEMENT is made as of the 30th day of January 2004, between **JOSEPH HIRAM KITE, JR.,** the "Seller" and **THE TOWN OF ELKTON, VIRGINIA and THE ELKTON PARK AUTHORITY,** the "Purchaser," either of whom may exercise the option created by this ("Agreement").

1. ***Description of real estate.*** Seller grants to Purchaser the irrevocable and exclusive right and option to purchase the following real estate:

All that certain lot or parcel of land containing 116.010 acres, more or less, together with the improvements thereon and all rights, privileges, appurtenances, easements and rights of way thereunto belonging or in anywise appertaining, situate on the north side of U. S. Route 33 and north State Route 623, just east of the Town of Elkton, Stonewall District, Rockingham County, Virginia, being more particularly described in that certain deed dated March 9, 1989 and recorded in Deed book 954, page 527.

2. Term of option; method of exercising. The option to purchase shall expire at midnight on June 1, 2005. The option may be exercised within the option period by giving written notice to Seller, which may be hand delivered or mailed, and if mailed, the date of depositing such notice in the United States mail, postage prepaid, shall constitute the date of exercising the extension of the option period. The notice shall be given to Seller's attorney, Jack F. Depoy, Esquire, 1692 Country Club Road, Harrisonburg, Virginia 22802.

3. Option renewal.

The Purchaser shall have the right to extend the term of the option until midnight on December 30, 2005 by giving written notice to Seller's attorney as provided in paragraph 2. Of this agreement and payment of Fifteen Thousand Dollar ($15,000) in cash to Seller, which payment shall be applied to the unpaid portion of the final payment remaining due after the eleventh (11th) year, if the option is exercised and closing is made on the real estate purchased.

4. Purchase price; Seller financing.

(a) Seller agrees to sell the herein described real estate to Purchaser and to finance the payment of the sale's price for a period of twelve (12) years from closing date pursuant to the following schedule:

(i) The Purchase Price, including interest for the twelve (12) year period shall be a total of Eight Hundred Fourteen Thousand, Sixty-five and 00/100 Dollars ($814,065.00) ("the Purchase Price")"

(ii) At closing, Seller will be paid three percent (3%) or Twenty-four Thousand, One Hundred Twenty-one and 95/100 Dollars ($24,121.95) of the Purchase Price; and

(iii) Thereafter, Purchaser shall pay to Seller the Purchase Price according to the following schedule:

One year from date of closing	3% = $24,121.95
Two years from date of closing	3% = $24,121.95
Three years from date of closing	3% = $24,121.95
Four years from date of closing	5% = $40,203.25
Five years from date of closing	7% = $56,284.55
Six years from date of closing	8% = $64,325.20
Seven years from date of closing	10% = 80,406.50
Eight years from date of closing	10% = 80,406.50
Nine years from date of closing	10% = 80,406.50

Ten years from date of closing	10% = 80,406.50
Eleven years from date of closing	10% = 80,406.50
Twelve years from date of closing	Remainder = $154,731.70

(b) The purchase price shall be secured by a first Deed of Trust lien on the herein described real estate.

(i) The Seller shall be paid a release fee of Four Thousand One Hundred Fifty-three and 39/100 Dollars ($4,153.39) per lot at the time each lot is sold.

The release fee shall be calculated by first applying the per lot release fee against all sums paid or payable to Seller as of the date of closing of the lot(s) sale pursuant to paragraph 4(a)(iii). At such time as the aggregate lot sale release fees earned shall exceed the yearly payment amount paid under paragraph 4(a)(iii) any such lot sale release fee payable to Seller shall be applied against the next scheduled yearly payment due pursuant to paragraph 4(a)(iii).

(ii) Seller agrees to execute all documents required to release his security interest in each lot or parcel sold at the time of closing of the sale of said lot or parcel.

*5. **Option fee.*** As consideration for Seller executing this Agreement the Town of Elkton agrees: (a) to extend the Town water and sewer mains to the property line of Seller at no cost to the Seller. The Town of Elkton agrees to complete the extension of the water and sewer mains to the property within three (3) years from the date of the execution of the Agreement; and (b) in the event the Purchaser does not exercise the option to purchase the property, the Town of Elkton and Seller agree to commence such actions as are necessary to have the subject real estate annexed into the Town by a boundary line adjustment in order to place the property within the Town limits for the purposes of extending the water and sewer services to the property line pursuant to the terms of this Agreement. This action shall be initiated within one (1) year from the date Purchaser notified Seller that Purchaser has elected not to exercise the option or three (3) years from the date of execution of this Agreement, whichever shall first occur.

*6. **Subordination of security interest.*** It is understood between the parties that Seller shall subordinate any security interest (first Deed of Trust lien) he has on the property to any security interest required by the Purchaser to obtain financing for the express purpose of improvements, construction or development (financing) on the subject property described in this agreement. The Seller agrees to subordinate his security interest in the property for an amount in the aggregate not to exceed Two Hundred Ten Thousand Dollars (4210,000) for the enumerated purposes.

Purchaser upon request shall furnish Seller copies of the basic construction plans and any non proprietary cost estimates for the intended project relating to the subject property.

*7. **Title.*** In the event Purchaser desires to exercise this option and gives notice of the intention so to do, closing shall be contingent upon Purchaser receiving good and marketable fee simple title to the property. Good and marketable shall mean that there are no actions or proceedings under way or threatened against Seller to condemn all or any part of the real estate; the real estate is 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 reveals facts that constitute valid title objections or affect the marketability of title, Purchaser shall have the option to terminate this contract unless Seller, at his expense, cures the title objections within a reasonable time. Obtaining a commitment from a title insurance company operating in Virginia for title insurance, without exception as to the defect claimed, shall constitute compliance with the marketable title requirements. If the title

objection is substantial enough, in the written certification and opinion of counsel for Purchaser (concurred in by Seller's attorney), that counsel cannot certify the same but the title company will insure the same, then Seller shall pay the premium for title insurance, or, if Seller refuses to pay the premium, Purchaser, at its option, may terminate the contract. Nothing shall prevent Purchaser in such a situation from electing to pay the premium and continuing with the contract.

8. No broker; survival of provisions.

(a) The parties hereby represent that no real estate agent or broker was involved in this transaction and each agrees to hold the other harmless from any claim for a commission by reason of any action on their part.

(b) The provisions in this Agreement shall not merge with the Deed conveying the property, but shall survive the execution and delivery of the Deed.

9. Warranty of title. The deed shall convey the real estate with General Warranty and English covenants of title subject to the covenants, conditions, restrictions, and reservations of record.

10. Zoning. Purchaser agrees to accept the property with its present zoning.

11. Settlement. In the event the option is exercised, settlement shall be made within 60 days thereafter. The time may be extended by mutual agreement.

12. Closing costs. Closing costs shall be paid as follows: real estate taxes for the then current year shall be pro rated as of the settlement date. Seller shall pay for preparing the deed and the grantor's recording tax. Purchaser shall pay for title examination and other deed recordation costs. All other closing costs shall be paid by purchaser.

13. General provisions. 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 there are no collateral or oral agreements or understandings related to the subject matter hereof; it shall not be modified except in writing signed by all the parties and shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties.

14. Recording. This contact must be recorded in the office of the Clerk of the Circuit Court of Rockingham County, Virginia in order to protect Purchaser from the claims of subsequent purchasers or other persons claiming an interest in the real estate, or from the claims of judgement creditors, if any of the Seller.

15. Assignment. The Purchaser may assign its interest in and to this Agreement, however such assignment shall not release the Purchaser of its obligations to the Seller as set out in this Agreement.

16. Attorneys' fees and costs on default. If either party defaults under this Agreement, the defaulting party shall be liable for expenses incurred by the nondefaulting party, including attorneys' fees incurred in attempting enforcement of the Agreement.

17. Liability. Upon the execution of this Agreement Purchaser shall have access to the property. However, during the option period, the Purchaser shall be liable for any damage caused to the property or person of a third party caused by the action of Purchaser's agents or employees.

_____
JOSEPH HIRAM KITE, JR.

Purchaser

THE TOWN OF ELKTON, VIRGINIA

By_____
WAYNE E. PRINTZ, MAYOR

THE ELKTON PARK AUTHORITY

By_____
RANDELL L. SNOW

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF_____

This foregoing instrument was acknowledged before me this_____day of _____,2004 by **JOSEPH HIRAM KITE, JR.** (Seller)

My commission expires:_____.

_____
Notary Public

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF_____

This foregoing instrument was acknowledged before me this_____day of _____,2004 by_____on behalf of the **TOWN OF ELKTON, VIRGINIA** (Purchaser).

My commission expires:_____.

_____
Notary Public

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF_____

This foregoing instrument was acknowledged before me this_____day of _____,2004 by_____on behalf of **THE ELKTON PARK AUTHORITY** (Purchaser).

My commission expires:_____.

_____
Notary Public

Vice Mayor Murphy could not recall the Elkton Park Authority being a party to any other Town land purchases. Mr. Earle's understanding was the Town wanted to, primarily, insulate itself from potential liability. Secondly, was the Authority's ability to obtain tax-exempt bonding.

Vice Mayor Murphy continued by saying if the Town declined the option, water and sewer would still be run to the property. She did not see the Park Authority in a position to "buffer" the Town from that expense and liability.

Mr. Earle responded that once the property is "potentially developed and sold and what kind of financing is done with the prospective purchaser, that is when that would be able to be done. I think it adds protection. I don't know how to explain in any more detail. I think it does potentially insulate the Town, which was what I understood was what the Town wanted. I think that was the purpose for the creation of the Park Authority."

Mayor Printz wanted to know if the Town found a buyer for the property if the Park Authority would have to approve. As a party to the contract, as noted by Mr. Earle, the Park Authority would have to approve any sale; however, Council has the power to dissolve the Park Authority.

Council member Sigafoose favored "deleting" the Park Authority from the contract. Mr. Earle explained if that were to happen, a new contract would have to be submitted.

YEAS: J. Dean, C. Murphy, R. Snow, and P. Workman

NAYS: L. Sigafoose

Motion carried (4 - 1 roll call)

Vice Mayor Murphy voted in the affirmative because this was an option as opposed to a purchase, which she stated she would not have supported. Looking at the future Council who would be serving when the option expired, she hoped they would vote no if nothing had been done with this project.

Topographical Survey

Council member Snow moved on a second reading, second by Council member Workman, to instruct the Park Authority to survey the Kite property and get topographical information on a map, and to survey the Wrangler property and get that information on the same map. The money the Park Authority has available will be expended and the Town will pick up the difference.

As the total expense of the survey was not known, the issue was tabled when Council member Workman withdrew his second and Council member Snow withdrew his motion.

As there was no further business, the meeting adjourned.