REGULAR
COUNCIL MEETING
December 13, 1976

The regular meeting of the Elkton Town Council was held Monday, December 13, 1976 at 8:00 P.M. in the Council Chambers with the Mayor, Maurice W. Lough presiding. The following council members were present: Mr. C. E. Dean, Mr. R. R. Dean, Mr. H. D. Flory, Mr. B. B. Holt, Mr. H. W. Leap and Mr. R. J. Lough. Mr. Charles Hammer, Chief of Police, Mrs. Norma Leap, Clerk, Mr. Gerald Monger, Superintendent and Mr. Bruce Wiles, Attorney were also present.

Mayor Lough opened the meeting with prayer.

Rev. Johnny Hensley came before council requesting the council to grant The Church of the Upper Room a variance allowing them to place a trailer beside the church to be used for Sunday School class rooms. This would be a temporary solution to solve their overcrowded conditions. This request was tabled until later in the meeting.

The council went into a Public Hearing regarding obtaining HUD grant monies.

Mr. Radigan of the Community Development Assistance Group explained the services his group provides in helping obtain HUD funds and gave brief explanations of the funds which are available from HUD. There would be no charge for their services unless we receive a HUD grant and then their fees would be included in the grant request and would not exceed 10% of the grant. After a tour of the town and reviewing possible projects which he felt HUD would favor, he presented the following for consideration:

1. Sewer Trunk Line on the lower end of town. In this area there are two twelve inch lines emptying into one twelve inch line. This results in creating sewer backups, during times of wet weather, in the homes in this section.

2. Two block area on Wirt Avenue (Boardwalk). This area has homes which would be considered substandard and funds could possibly be received for renovation of these properties.

   (a) Land for recreation use in this area.

   (b) Improvement of alley and storm drainage in this area.

3. Acquisition of two acres of land for expansion of the sewer plant.

4. Acquisition of land on which the Frazier Apartments are now located for the purpose of clearing the land for possible use at a later date for housing for the elderly.

Mr. Radigan reported that applications must be in to HUD by January 7, 1977 and the council would have to have another Public Hearing before applying. The first thing council must decide is if they want to obtain the services of Mr. Radigan's group and list the projects in order of priority.

After giving those present the opportunity to present views or ask questions regarding this subject, council went into regular session.

Mr. H. D. Flory moved, seconded by Mr. R. J. Lough to have Mr. Radigan of the Community Development Assistance Group represent the Town of Elkton in trying to seek HUD grant monies with the understanding that there will be no cost to the town for Community Development Assistance Group's services unless HUD approves a grant to the town and then the fees for services will not exceed 10% of the grant. Fees paid to Community Development Assistance Group will be for services rendered. This action will be subject to approval of the contract by the Town Attorney. The vote was recorded as follows:

C. Dean	- yea	B. Holt	- yea
R. Dean	- yea	H. Leap	- yea
D. Flory	- yea	R. Lough	- yea

The council listed the projects in order of priority as follows:

1. Acquisition of two acres of land for expansion of sewer plant.
2. Enlarging sewer trunk line on lower end of town.
3. Renovation of the two block area on Wirt Avenue, including recreation area, improvement of alley and storm drainage.
4. Acquisition of land on which the Frazier Apartments are now located.

The council set December 27, 1976 at 7:30 P.M. as the date for the next Public Hearing on the HUD grants.

Mr. R. J. Lough moved, seconded by Mr. H. W. Leap and carried to grant the Church of the Upper Room permission to place a trailer, for a period not to exceed one year, on their church property within the framework of the zoning laws.

The newly annexed citizens were welcomed. Mr. Ditman Flory, Mr. Gerald Monger, Mr. Bruce Wiles, Mr. Robert Lough and all those who worked behind the scenes for the annexation were commended on the fine job that was done.

Mr. Ray Smith stated that although he was not a citizen by choice, now that he would become a citizen January 1, 1977 he would work with the Mayor and Council to make Elkton grow and that he will be pleased to have Mr. Maurice Lough and the councilmen as his Mayor and Council. He expressed concern to Mr. Flory that he might be trying to act as mayor and councilman both and this was not right.

Mr. Carl Lee Smith stated that he also had not become a town citizen by choice but would work with the Mayor and Council in any way he could. He said he would like to see the council get along together, work together and stop their squabbling.

Mr. Richard Strickler also expressed his concern for the publicity the town is receiving because of the bickering among the Mayor and Council. He felt this should be stopped.

Mr. Flory pointed out that he had not gone after Liberty Heights but this had been a joint decision. He said he was happy to have the new citizens and felt they could work together for the good of the community.

The minutes of the regular meeting, November 8, 1976, and special meetings. November 15, 1976 and December 3, 1976 were approved as presented.

Mr. Holt reported that the Planning Commission recommends the Subdivision Ordinance with the following changes:

(1) Providing for lot size restrictions as suggested at the hearing.
(2) Deletion of references to responsibilities of the Highway Engineer as requested by Mr. Evans of the office of the Resident Engineer, Harrisonburg.
(3) Deletion of direct reference to extension of the ordinance authority to two miles beyond the town limits in order to be able to place the ordinance in effect by January 1, 1976 without county approval.
(4) Leave designation of the agent to council action rather than designating the Planning Commission as agent.
(5) Providing an opportunity for the council to approve, disapprove or modify any final subdivision action made by the Planning Commission.
(6) Several changes in phraseology to clarify meaning but without changing substance.

Mr. B. B. Holt moved, seconded by Mr. C. E. Dean to approve the Second Reading of the Subdivision Ordinance with the proposed changes. A copy of this ordinance is attached to the minutes. The vote was recorded as follows:

C. Dean	- yea	B. Holt	- yea
R. Dean	- yea	H. Leap	- yea
D. Flory	- yea	R. Lough	- yea

Mr. Holt reported that the next order of business for the Planning Commission will be the zoning of the newly annexed area.

The Fire Company has requested that the town paint the room where the Fire Company keeps their equipment. The Public Safety Committee was asked to have prices and recommendations for the next meeting.

Mr. Leap reported that the Electric Committee will have something on underground entrance rates ready for the next meeting.

Mr. R. J. Lough moved, seconded by Mr. C. E. Dean to approve the November Finance Report as presented. The vote was recorded as follows:

C. Dean	- yea	B. Holt	- yea
R. Dean	- yea	H. Leap	- yea
D. Flory	- yea	R. Lough	- yea

Mr. R. J. Lough suggested and council agreed to take $5,000.00 from the Elkton Electric System Fund and place on a ninety day savings certificate.

Mr. R. J. Lough moved, seconded by Mr. C. E. Dean to approve the Second Reading to enter into an agreement with The Michie Company to completely update the town code and charter at a cost of $4,200.00, to be broken down into three payments, 1/3 when the contract is signed, 1/3 at the conference and 1/3 upon completion. The vote was recorded as follows:

C. Dean	- yea	B. Holt	- yea
R. Dean	- yea	H. Leap	- yea
D. Flory	- yea	R. Lough	- yea

Mr. R. J. Lough moved, seconded by Mr. H. D. Flory to approve the Second Reading to pay $1,198.20 to James C. Wilkins & Associates, Inc. for the annexation survey. The vote was recorded as follows:

C. Dean	- yea	B. Holt	- yea
R. Dean	- yea	H. Leap	- yea
D. Flory	- yea	R. Lough	- yea

Mr. R. J. Lough moved, seconded by Mr. C. E. Dean and carried unanimously to approve the Second Reading of a resolution to permit Mr. Flory as the Government Finance Chairman to give Mr. Monger permission to apply to HUD for $10,000.00 to purchase land for the sewerage treatment plant.

Mr. R. J. Lough complimented Mr. Monger, Mr. Frey and Mr. Herring on the excellent job they did on the papers necessary for the annexation proceedings. He felt the hours spent to prepare the information needed was above and beyond the call of duty and recommended that Mr. Monger and Mr. Frey be given a bonus of $100.00 each and Mr. Herring a bonus of $25.00.

Mr. R. J. Lough moved, seconded by Mr. B. B. Holt to give a bonus of $100.00 each to Mr. Gerald Monger and Mr. David Frey and a bonus of $25.00 to Mr. Herring for service over and above the call of duty in connection with the annexation proceedings. The vote was recorded as follows:

C. Dean	- yea	B. Holt	- yea
R. Dean	- abstain	H. Leap	- yea
D. Flory	- yea	R. Lough	- yea

Mr. C. E. Dean moved, seconded by Mr. R. J. Lough to approve the Second Reading to amend Section 12 of the Elkton Electric System Schedule of Rules and Regulations to read as follows:

12. Service Connection Charges:

All service connection charges shall be included in the first monthly bill after the service is rendered. The charges shall be as follows:

(a) Regular Working Hours - A service connection charge of $5.00 per connection made during regular working hours will be assessed the customer.

(b) After Hours, Saturdays, or Sundays - A service connection charge of $15.00 per

connection made after hours, Saturdays, or Sundays will be assessed the customer.

(c) Holidays - A service connection charge of $25.00 per connection made on Holidays will be assessed the customer.

The vote was recorded as follows:

C. Dean	-	yea	B. Holt	-	yea
R. Dean	-	yea	H. Leap	-	yea
D. Flory	-	yea	R. Lough	-	yea

Mr. C. E. Dean moved, seconded by Mr. R. R. Dean to amend November 8, 1976 minutes to read as follows:

"Mr. C. E. Dean moved, seconded by Mr. R. J. Lough to approve and adopt on the First Reading, declaring that an emergency exists, the following ordinance."

The vote was recorded as follows:

C. Dean	-	yea	B. Holt	-	yea
R. Dean	-	yea	H. Leap	-	yea
D. Flory	-	yea	R. Lough	-	yea

Mr. Randal Dean reported that the town had received notice from the Miller sisters that they are selling Lot 12, Block 77, Section 2 which the town presently has leased and is using as a parking lot.

Mr. Randal Dean also reported that he had received word that the Board of Supervisors had voted to request the School Board to seek a new location for the proposed school by a vote of four to one abstaining.

Mr. Flory pointed out that one of the weak points in our annexation suit was that the town does not have a capital improvement program. Mr. Flory suggested we have Mr. Lawrence Wales of Municipal Advisors Associates come in and work with Mr. Monger a day or so to offer suggestions. Council agreed this would be a good idea.

Mr. Holt stated he felt a big vote of thanks was due Mr. Wiles for the job he did on the annexation case.

Mr. Holt reported that if the town feels there is still a need for the caution light on B Street at the Presbyterian Church, the State has instructed the town that they will have to place another light there also to meet state specifications. Council agreed to leave the decision to Chief Hammer.

Mayor Lough presented the following remarks:

"There is a problem of the area of responsibility over the Police Department within the town government. The problem is not one that was started in my tenure of office, but has been evident all the time and has surfaced more or less according to who the mayor was and how faithfully he wanted to perform his obligations as mayor.

I felt when I took office that it was time to settle the hassle and that the best way to settle it, in fact the only apparent way to permanently settle it was through an opinion from the Attorney General's office. The route of changing the charter is too long and too cumbersome to solve such a problem.

So I undertook the solution of the problem knowing that there was going to be a long struggle and that there would be quite a hassle, ofter very painful.

I tried the route through the Attorney General's Office early in the game after going to the Virginia Municipal League's Office in Richmond for advice.

I found out that there is a new state law which denies the Attorney General the right to make an opinion to any official below the state level.

So, with the help of a few friends, I found that Senator Natham Miller

would help me. He did so, but it took three months of begging and pleading and calling back and forth to Richmond, But I did, through him, finally get the opinion.

I am going to read it to you now, but first I beg your indulgence in allowing me to make a few explanatory remarks. They are apropo to the problem and the solution, and I would greatly appreciate it if you would listen most carefully.

First of all, since the situation has been so muddled I cannot blame our Chief of Police for not knowing who to go to for instructions when he has to. I have little quarrel with the way the Chief is handling the Department. Our town is as well, or perhaps better policed than any town in the valley.

Secondly, I have little quarrel with the manner in which the Chairman of the Public Saftey Committee is now handling the Police Department. Our Public Safety Committee Chairman is an intelligent man and does any job he takes on in a manner befitting a man of intelligence.

The fault I do find is in the concept in which the entire operation exists.

That concept is that the Police Department should be operated through the Public Safety Committee, to the Mayor and thence to the Council. This is wrong.

The concept of the town government in Elkton is that the council, as a whole, makes the laws and by-laws and rules and regulations governing the town, with the Mayor as the chief executive officer, acting as Chairman of the Council and as tie-breaker when needed.

The council has no power to delegate this authority to anyone including the Public Safety Committee Chairman. This is what the hassle has been all about.

It has been suggested that the Chief of Police feels he can work better through the Chairman of the Public Safety Committee than he can with the Mayor. I won't argue that point. But, then, you see, we have never been given a really good chance to try that out, the Chief and I.

It has been said that the Public Safety Committee feels that in the best interests of the town and all concerned, that it should control the police department and the Mayor should work through it.

Perhaps the council itself actually feels that way...that it would be better for the Police Department to be run by a committee, or committee chairman. I don't know, how the council feels for sure, that is...because as one councilman has said, it has never really come up in council meetings.

Well, regardless of how the Chief of Police might feel, and regardless of how the Chairman of the Public Safety Committee might feel, and how the council would want the situation to be...one fact remains... and that fact is that the mayor is responsible.

And until and unless the laws are changed, it must absolutely be this way.

And as I, now, read to you the Attorney General's opinion, please keep in mind that in the eyes of the law his opinion is law until and unless changed by an act of the Virginia Legislature or by the Circuit Courts.

His opinion is as follows and I quote...

"...I am of the opinion that the mayor has control over the police department for the purpose of ensuring that the laws of the Commonwealth and the Town of Elkton are enforced;

for all other purposes and in all other respects, the police department is under the control of the town council."

In light of this opinion from the Attorney General as given to Senator Natham Miller, it is obvious that control of the Police Department is a matter of team work between the mayor and the council as a whole.

Since he has definitely drawn this line without doubt, I respectfully ask the council to make the following resolution:

1. The Chief of Police and whoever is in charge in his absence shall report to and receive general instructions from the mayor regarding law enforcement under the terms of the Attorney General as given to State Senator Nathan Miller.

2. Individual members of the town council, including chairmen of committees, shall refrain from giving any instructions to and from interfering with the mayor and/or any policemen in the legal discharge of his or their duties, or any other employee of the police department."

The Mayor asked Mr. Wiles for his opinion. Mr. Wiles pointed out that the statement from the Attorney General was an opinion only and not a ruling. He also stated that it may need interpretation. Mr. Wiles further stated that the Mayor, according to the charter, is responsible to see that the laws are enforced and the police are performing their duties and the council legislates and sets the rules.

Mr. Holt ask Mr. Wiles if the Mayor could legally work through the Public Safety Committee and Mr. Wiles said he could. Mr. Holt stated that he felt the letter was an interesting piece of paper and that he appreciated Mayor Lough's bringing it to the council's attention.

Mr. Leap ask if the Mayor sees something wrong does he come back to council for disciplinary action. Mr. Wiles pointed out that this is covered in the charter also.

Mr. Robert Lough stated he felt the Mayor should have control but he felt the Mayor's requests and the opinion from the Attorney General needed further study before any action could be taken.

Mayor Lough stated that unless council does clarify this, that in all due respect to Mr. Holt, he could not see sharing responsibility of the Police Department with the Public Safety Committee. He could not do this. Mayor Lough stated he had done all in his power to try to clarify this situation.

Council took no action on Mayor Lough's requests.

Mr. C. E. Dean moved, seconded by Mr. B. B. Holt to go into a short Executive Session to discuss pending litigation on annexation and the acquisition of land for the sewerage treatment plant. The vote was recorded as follows:

C. Dean	- yea	B. Holt	- yea
R. Dean	- yea	H. Leap	- yea
D. Flory	- yea	R. Lough	- yea

Mr. R. J. Lough moved, seconded by Mr. R. R. Dean and carried to go from Executive Session back into Regular Session.

Mr. R. J. Lough moved, seconded by Mr. C. E. Dean to issue a press release to the Daily News-Record as presented by council in order to correct a false and misleading account of the Elkton annexation suit which appeared in the Friday, December 10 edition of that newspaper. The vote was recorded as follows:

C. Dean	- yea	B. Holt	- yea
R. Dean	- yea	H. Leap	- yea
D. Flory	- yea	R. Lough	- yea

As there was no further business, Mr. R. J. Lough moved, seconded by Mr. R. R. Dean and carried to adjourn.

MAYOR: Maurice W. Lough, Mayor

RECORDER: Norma R. Leap, Clerk