Public Hearing
Special Council Meeting
January 30, 2006

Mayor Wayne E. Printz presided at a public hearing and a Special Council meeting held in Council Chambers on January 30, 2006. The purpose of the public hearing was to receive citizens' comments on the proposed Elkton Charter and the Special Council meeting was called for the purpose of the Second Reading of a payment of $68,000.00 to Anderson & Associates for the Preliminary Engineering Report. The following Council members were present:

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

Town Attorney Nathan Miller, Town Manager Dennis R. Donachy, Treasurer Clairen Sipe, Director of Public Works Marty Shifflett, Chief of Police Richard Pullen, and Clerk of Council Richard Carey were also present.

Mayor Printz: "I'm going to open this meeting and I'd like to also state at this point in time the Council has not formally scheduled a public hearing. I'm going to open this session for open discussion, but I do not consider this a public hearing. According to my notes, I got Rick to check them, the Council will have to schedule a public hearing at a later date after this discussion, after this meeting. So, with that, I'm going to open up this meeting for discussion."

Vice Mayor Snow: "Point of order, Mr. Mayor."

Mayor Printz: "Yes, sir."

Vice Mayor Snow: "I disagree with that. I believe this is a legitimately called public hearing. That's why we are here."

Mayor Printz: "According to the notes that is not correct."

Vice Mayor Snow: **"I'll make a motion that we overrule that rule."**

Council member McDaniel: **"I'll second that."**

There was an interruption from a citizen in the audience which was inaudible, but Mayor Printz continued with his point of view.

Mayor Printz: "Well, it really is not in due order because according to the notes from the regularly scheduled meeting of last month:

Attorney Miller: "I'm not going to make a ruling on it here right tonight (then inaudible). If you want to have a Special Council meeting I will have that answer for you tomorrow."

Much of what Attorney Miller spoke was inaudible but he did advise Council they could approve the Charter subject to a public hearing.

Mayor Printz asked if the issue should be sent to the Special Meeting.

Council member Pence: "Do we have to have another public hearing?"

Attorney Miller: "That is what I will answer for you at your Special Meeting."

Vice Mayor Snow stated that many topics that people wanted included in the Charter "already exist in the State Code and we don't need to have it in both." Vice Mayor Snow favored passing the Charter "contingent on a public hearing" if one was required.

It was repeated that the motion was to table the Charter and Mayor Printz proceeded with the roll call vote:

YEAS: C. McDaniel, T. Pence, and S. Sigafoose

NAYS: R. Snow and P. Workman

Motion carried (3 – 2)

So this Council did not call for a public hearing and it was told at the last scheduled meeting that the public hearing would be called tonight. So, I don't think that motion would be in proper form because of what was in the notes and that is what the people go by – what is in the notes. Is that correct the way I read that?"

Clerk: "As long as they have been approved."

Mayor Printz: "So with that I will open the floor…"

Vice Mayor Snow: "We have a motion on the floor."

Mayor Printz: "I don't know that I can accept that motion because I don't think it is in due order because you've already made that commitment at the last monthly meeting. And I would be afraid that there would be legal consequences to all of us if we did that. I think it would be best if we opened up the meeting and let the people talk."

Vice Mayor Snow: "What's the point of doing this if it's not a public hearing? We've gone through this 50 times."

Mayor Printz: "I have a motion to adjourn?"

Council member Workman: "No. If you can't accept my motion, how can you accept his motion?"

Mayor Printz: "That's different. That motion's in due order. You have certified minutes from the last meeting that said to the public…"

Clerk: "No, no, Mr. Mayor. They have not been approved."

Mayor Printz: "Are these the meeting notes from the last meeting?"

Mr. Donachy: "They are an extract that was asked for from public information and they are not approved minutes."

Mayor Printz: "Are these going to be the minutes that were in the last meeting?"

Clerk: "Most likely."

Mayor Printz: "So, with that, because I feel like we would be deceiving the public and I don't think anyone, no matter which side you are on at this point in time, would want to be doing that. We can fix this problem. We can do it properly and talk about the Charter, let the people say whatever they want to say in this open forum. We'll talk about the Charter and then schedule a public hearing and do it in proper form."

Council member Workman: "Mr. Mayor."

Mayor Printz: "Yes, sir."

Council member Workman: "For my benefit what...why...we always want to have a public hearing. A public hearing is for the public. This is an opportunity. It was advertised correctly in the papers – a public hearing. Why would we not want to have a public hearing? What purpose does it serve, other than maybe delay the Charter vote? Is that the purpose of the whole thing?"

Mayor Printz: "First of all, it can probably be contested that it was put in the paper properly because even though it was put in the Harrisonburg paper it was not put in *The Valley Banner*. The Charter that was in the Harrisonburg paper we never voted on. That Charter was tabled."

Vice Mayor Snow: "We don't have to vote on a public hearing. When have we ever voted on having a public hearing?"

Mayor Printz: "I'm not saying that you have to vote on a public hearing. I'm telling you you voted that the public hearing would be notified at this meeting. That's what it says right here in these minutes. I'm not lying to you, they're right here."

Vice Mayor Snow: "Can I see that?"

Mayor Printz: "There's a copy here for everyone."

Clerk: "There is a conflict in those minutes because at one point Attorney Miller said 'I will have the answer for you tomorrow.' Then on Council member Pence's question the answer was Tuesday, or this meeting."

Mayor Printz: "We can settle this legal issue later. It is my suggestion we open this to an open forum for the public to speak. At that time, we'll go into our regular session and we can discuss it then. So, with that, I need a copy of the people who would like to speak."

Council member Pence: "Mr. Mayor, what is the use to let the public talk if it's not going to amount to anything? You only have to have it in one paper anyway. It was in the Harrisonburg paper."

Mayor Printz: "I am just telling you that I think we will be in a problem, a legal problem, I consulted with my attorney. I would be concerned that it would come back on us. All we would have to do is, if you guys want to discuss the Charter tonight..."

Council member Pence: "Run that by me one more time. What you just said."

Mayor Printz: 'Okay."

Council member Pence: "Alright, say it."

Mayor Printz: "If you are going to discuss the Charter tonight then just like the minutes said we will schedule a public hearing."

Council member Pence: "That's not what you said. You said something about an attorney. Your attorney or our attorney?"

Mayor Printz: "I discussed it with my attorney."

Council member Pence: "Okay, we are going by that man (pointing to Attorney Miller). That's the man we pay."

Attorney Miller: "Apparently the issue is what the minutes of the last meeting said. Those minutes have not been approved yet. My recommendation, in order to stay on some kind of a track to get the matter before council, would be to adjourn the public hearing until after the Council meeting. We have these Council meetings already called. At that point, the Council can approve the minutes of the previous meeting – and whatever Council determines the previous minutes are then you can make the determination on whether or not you go forward with the public hearing." He added, "You can adjourn a public meeting if necessary. It appears to be necessary because there is controversy among the Council members on what the minutes of the last meeting (inaudible). My recommendation is that you do that."

Council member McDaniel: **"And I make that motion."**

Council member Dean: **"Second."**

Mayor Printz: "I have a proper second. Any discussion on the motion?"

Mayor Printz: "Mr. Pence, how do you vote?"

Council member Pence: **"Yes."**

Mayor Printz: "Mr. Sigafoose?"

Council member Sigafoose: "Does that mean we're not…" Council member Sigafoose wanted to know if the citizens would be heard. After clarification of the point of the vote he responded, **"Yes."**

Mayor Printz: "Mr. Workman?"

Council member Workman: **"Yes."**

Mayor Printz: "Mr. Dean."

Council member Dean: **"Yes."**

Mayor Printz: "Mr. Snow."

Vice Mayor Snow: **"Yes."**

Mayor Printz: "Mr. McDaniel."

Council member McDaniel: **"Yes."**

After consultation with Attorney Miller, Mayor Printz moved the announced Special Meeting forward.

Special
Council Meeting
January 30, 2006

A Special Meeting of the Elkton Town Council was held in Council Chambers on January 30, 2006. Mayor Printz presided and stated the purpose of the meeting was a

Second Reading of the Preliminary Engineering Report. The following Council members were present:

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

Town Attorney Nathan Miller, Town Manager Dennis R. Donachy, Treasurer Clairen Sipe, Director of Public Works Marty Shifflett, Chief of Police Richard Pullen, and Clerk of Council Richard Carey were also present.

Vice Mayor Snow questioned the financing of the payment.

Mr. Donachy explained the $68,000.00 payment would be made from REPO, which would be reimbursed with proffers from the Angler Elkwood project. Mr. Donachy estimated a check of $350,000.00 would be remitted to the Town of Elkton.

Vice Mayor Snow moved, second by Council member Dean, and carried to use the money in that fashion to get the Preliminary Engineering Report started.

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

Motion carried (6 – 0 roll call)

Further consultation with Attorney Miller resulted in a review of the extracted document of the unapproved minutes of the January 16, 2006 Council meeting. Due to inaudible sections of the Council meeting's audio/video equipment, Attorney Miller offered his recollection of the issue. Attorney Miller stated, 'One of the questions posed to me was do we, in fact, need to have an additional public hearing? At that point I was unable to answer directly and suggested that I would research that and have the answer the next day, which I did. If you did have an affirmative answer that you had to have another public hearing that it would have to be done immediately because there was a ten day window that had to be met. My instructions to the Council, the way I recollect at that time, was that I was to research that and if that was the case then I was to prepare the order and have it run in order to do that. I don't recall that there was a special motion made to do that."

Mayor Printz stated he didn't recall the Council instructing anyone to publish the Charter and "call tonight a public hearing."

Attorney Miller responded, "That was done by me because the direction from Council was to determine if we needed a public hearing. If we did, run the notice."

Mayor Printz asked to hold the public hearing ten days from now. Council member Pence wondered why "all these people are here is this is not a public hearing?"

Council member Sigafoose wanted to know if the Town Attorney could call a "special council meeting or hearing without the Council?"

Mayor Printz believed that was a Mayor/Council discretion.

Vice Mayor Snow and Council member McDaniel agreed that Attorney Miller had the proper authorization and acted accordingly by publishing the Charter and announcing the public hearing.

Council member Sigafoose disagreed.

Mayor Printz read the following extract:

Mr. Donachy requested Council action on the Charter revisions.

Council member Sigafoose: **"I'd like to make a motion. It might settle it. I say we table this thing until the citizens know exactly what they are going to get."**

Council member Pence seconded the motion.

Council member Workman: "What constitutes the public knowing?" He believed the information was made available and not being informed rested with those who did not read/study the revisions.

Mayor Printz: "I need a ruling from the Attorney on the public hearing because I don't fully understand it. You are going to have to give us some guidance on this thing because it is my understanding under the State Code that we have to have another hearing anyhow."

Attorney Miller: "We've already had the public hearing (inaudible).

Mayor Printz: "That's what I'm saying. After the change, it is my understanding that we have to have another public hearing, but I'm not the attorney, you are."

Attorney Miller: "I'm not going to make a ruling on it here right tonight (then inaudible). If you want to have a Special Council meeting I will have that answer for you tomorrow."

Much of what Attorney Miller spoke was inaudible but he did advise Council they could approve the Charter subject to a public hearing.

Mayor Printz asked if the issue should be sent to the Special Meeting.

Council member Pence: "Do we have to have another public hearing?"

Attorney Miller: "That is what I will answer for you at your Special Meeting."

Vice Mayor Snow stated that many topics that people wanted included in the Charter "already exist in the State Code and we don't need to have it in both." Vice Mayor Snow favored passing the Charter "contingent on a public hearing" if one was required.

It was repeated that the motion was to table the Charter and Mayor Printz proceeded with the roll call vote:

YEAS: C. McDaniel, T. Pence, and S. Sigafoose

NAYS: R. Snow and P. Workman

Motion carried (3 – 2)

Council member Workman speculated that Attorney Miller's instructions from Council and the "intent" of his response could exist in the inaudible sections of the tape.

Attorney Miller stated, "In order to meet the deadline, that's why I immediately got back to the Council because we had to give a ten day notice. We have met the requirements for the notice, we've met the requirements for publication. Council can adopt and approve the publication now because it's been done. That would make it effective." Speaking of "substantial changes to the Charter," Attorney Miller offered the need for another public hearing could be argued. He decided not to make a judgment call regarding the public's right to speak. He took the "conservative" approach and proceeded with a "subjective call" to hold another public hearing.

Mayor Printz made the point, with agreement from Attorney Miller, that the draft Charter in Richmond was not the same document published in *The Daily News-Record.*

Mayor Printz reiterated the points of his argument:

1. The Charter in Richmond was not the Charter published in *The Daily News-Record.*
2. The Charter published in *The Daily News-Record* was tabled.
3. The extracted minutes contained wording that the date for the public hearing would be announced at tonight's meeting.

Council member McDaniel summarized the opposing view. He stated, "Mr. Mayor, I have sat here for over a year and nothing we have done has met your satisfaction with this Charter. How much of the Town people's money are we going to spend by continuing to delay what this Council needs to do? This Council, in my view, needs to pass this Charter, get it to Richmond, and if we don't do that, the citizens need to remove every Council member here."

The Mayor asked what he was to do with the minutes. As Attorney Miller was explaining, Mayor Printz interrupted him, challenging Mr. Miller's advice. Council member Dean immediately presented a motion:

Council member Dean moved, second by Council member Sigafoose, to hold a public hearing on February 9.

Council member Workman was concerned how the timing would affect the Charter process. Attorney Miller believed the "crossover date" was around February 14 but, he was unsure how that fit into the Committee structure. He was also unsure how that "met Delegate Landes' schedule" (if a public hearing was held on February 9).

As has been stated repeatedly, Attorney Miller, responding to an explanation request from Vice Mayor Snow, specified, "The only purpose the previous Charter language that went in, which is not substantially different than this, was to preserve the slot, as I indicated to you in previous meetings. The General Assembly requires legislators to introduce their legislation before the session because there are 3,000 to 3,500 bills that must be introduced. What was happening was all the bills were being introduced the day of..."

Mayor Printz called for a vote on the motion.

YEAS: J. Dean and S. Sigafoose

NAYS: C. McDaniel, T. Pence, R. Snow, and P. Workman

Motion failed (4 – 2 roll call)

The next matter was to approve, reject, or amend the extracted portion of the January 16, 2006 meeting.

Council member McDaniel and Council member Workman concurred that they left the previous meeting believing that Council had instructed Attorney Miller to determine if another public hearing was needed. "That was the sole reason I voted to table the Charter. So the minutes need to reflect that. That's clearly what I recollect," stated Council member McDaniel.

Vice Mayor Snow moved, second by Council member McDaniel, and carried to approve the minutes, as amended, that Attorney Miller was authorized to determine if a public hearing was to be held or not, and to schedule such.

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

NAYS: S. Sigafoose

ABSTAIN: J. Dean

Motion carried (4 – 1 with 1 abstention on a roll call)

With the issue of the minutes resolved, Attorney Miller recommended that Council "suspend" the Special Council meeting now underway, reconvene the public hearing for public comments, close the public hearing, and reconvene the Special Council meeting.

Council member Dean moved, second by Vice Mayor Snow, and carried to suspend the current Special Council meeting and to re-enter the public hearing, and then reconvene the Special Council meeting.

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

Motion carried (6 – 0 roll call)

Public Hearing
Re-Opened
January 30, 2006

Lee Dearing, 124 North Street, as he has stated many times before, defined the Charter as the people's constitution. The Mayor and Council are controlled by the Charter and great care should be taken when changing the document. Mr. Dearing asked for an explanation of the "emergency clause." His opinion was the "new" Charter, if approved, should not take affect until July 1, 2006. He disagreed with the "boundaries" description. Other concerns were the absence of a public comments section, limitations on non-appropriated spending, and 2/3 vote of Council to amend the Charter. He wanted clearly stated responsibilities for the Mayor and Council, the Town Manager, the committee chairs, and their limitations. Mr. Dearing recommended tabling the Charter until additional changes were made.

Mike O'Neill, 425 East Rockingham Street, also asked what the "emergency" was? He stated the May 2006 election would be voided by the "emergency clause" because the Charter, if approved, would be in effect immediately. Mr. O'Neill questioned the "wisdom" of a Council, whose members were not all elected, changing a document without voter consent. That raised a question of referendum and Mr. McDaniel's Council seat, which was filled after four other candidates had followed the rules and Mr. McDaniel surfaced after the advertised deadline.

Attorney Tom Miller, Harrisonburg, speaking as Mayor Printz's personal attorney, was present to offer another point of view regarding the Charter process. He expressed his high regard for Mr. Miller and stated he was not completely comfortable disagreeing with him. Mr. Miller cited sections of State Code that related to amending charters.

Hazel Crider, 114 Hillside, submitted that the people did not elect the Council "to change the Charter to their advantage." She called for direct election of a Mayor who would serve as head of Town government. A public comment period was another primary concern of hers. She commented on the absence of available State Code books for reference. She sought Attorney Miller's help, as "attorney to the people," to delay a Charter with which the people were dissatisfied.

Mildred Shifflett, 112 West Spotswood Avenue, was frustrated with Council. Her opinion was some members of Council feared not being re-elected and that was what constituted the "emergency" with the Charter.

Margaretta Dean Isom, Wirt Avenue, hoped that all the agreed to changes would be reflected in the final Charter. She appreciated the many months devoted to Charter issues but, she considered there was still much to be done and, perhaps, more time should be dedicated to this divisive issue.

Mary K. Hutton, 515 Chestnut Avenue, presented questions:

1. Why has "Vice Mayor" become a special section?
2. "Clerk of Council" not listed as an appointed position.
3. Burial place for the dead unchanged. Is it adequate language?
4. She, too, took exception to the "emergency clause" as it affected this May's election.

Greg Mowbray shared utility problems with Council before he was reminded this was a public hearing to receive comments regarding the Charter. His comment was the Mayor had no support on Council and the Town was being "bought out."

Vic Corbo, 248 Windsong Hills, observed the controversy was a power struggle between the Mayor and the Town Manager.

Steve Kite, North Eastside Highway, acknowledged Council's hard work then stated that the majority of the "people here" opposed the Charter.

Gene Kite, 337 West Spring Avenue, said he observed Council and believed they had already made up their minds. There have been many times when he did not agree with Council but he would stand behind them when they "did the right thing."

Mayor Printz closed the public hearing at 7:40 P.M.

After a ten minute break, Attorney Miller recommended to continue this public hearing rather than adjourn. Council will consider the opinions expressed tonight. In addition, the public will be give until noon on February 6 to submit written suggestions, questions, concerns, or recommendations to be considered for inclusion or exclusion to/from a final Charter.

Mayor Printz scheduled a work session for Council on February 6 at 6:00 P.M. Tonight's public hearing will be suspended until February 8 at 6:00 P.M. Following the public hearing, Council will meet in Special session.

Council member Dean moved, second by Council member Workman, and carried to suspend this public hearing until February 8, 2006 at 6:00 P.M.

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

Motion carried (6 – 0 voice vote)

Special
Council Meeting
Re-Opened
January 30, 2006

Mayor Printz re-opened the Special Council meeting.

Council member Dean moved, second by Council member Workman, and carried to have written comments to the Clerk of Council by noon on February 6, schedule a work session for February 6 at 6:00 P.M., suspend tonight's public hearing until February 8 at 6:00 P.M., followed by a Special Council meeting to adopt the Charter changes.

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

Motion carried (6 – 0 roll call)

Council member Dean moved, second by Council member Sigafoose, and carried to adjourn the Special Council meeting.

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

Motion carried (6 – 0 voice vote)

Emergency
Council Meeting
January 30, 2006
Reconvened

Mayor Printz announced he would now reopen the Emergency Council meeting that had been scheduled for January 25, 2006 at 6:30 P.M.

Mayor Printz discussed a compromise for Greg Mowbray's electric bill. Staff reported that the problem was bad water heater elements. There was no problem found with the meter.

Council took no action on an adjustment.

Community Center Committee

Vice Mayor Snow moved, second by Council member Sigafoose, and carried to appoint Becky Monger to the Community Center Committee, as a result of Larry Bompiani's resignation.

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

Motion carried (6 – 0 roll call)

Audit

Vice Mayor Snow referred to the audit requested by Mayor Printz and Mr. Donachy. In the form of a motion **he moved to pay for the audit with REPO funds and to start the audit at least one year prior to hiring Mr. Donachy.** No second was heard because a cost for such an audit was not available. Mr. Donachy will get that information for Council.

Council member Dean moved, second by Council member Sigafoose, and carried to adjourn at 8:40 P.M.

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

Motion carried (6 – 0 voice vote)

Mayor: _____
Wayne E. Printz, Mayor

Recorder: Richard D. Carey, CMC
Richard D. Carey, Clerk