Special
Council Meeting
April 18, 2007

A special meeting of the Elkton Town Council was held in the Community Room of the Elkton Area Community Center on April 18, 2007, with Mayor Wayne E. Printz presiding. The following Council members were present:

PRESENT
M. Dearing
D. Kite
M. O'Neill
T. Pence

ABSENT
M. Isom
S. Sigafoose

Town Attorney Tom Miller, Acting Town Superintendent/Zoning Administrator Marty Shifflett, and Clerk of Council Denise Monger were also present.

Mayor Printz read the agenda:

1. Zoning Ordinances
2. Increase water and sewer connection fees
3. Farmers Market
4. Amendments to water and sewer ordinances.

Town Attorney Miller stated that he had spoken with the Virginia Municipal League regarding the farmers market issue. The Town is covered under the current insurance policy. He recommended that Administrator Allison Morris require the Health Department to perform kitchen inspections of all vendors. Inquiries should be made of potential vendors regarding insurance coverage under their homeowner's policy. Many insurance companies offer liability insurance for part-time businesses located in a person's residence. Further, if they don't have it, encourage them to do so or if they do have that insurance ask if they might be willing to put the Town on as an "also insured." Lastly, Town Attorney Miller recommended all persons selling items at the farmers market endorse an indemnification agreement which states they will hold harmless and indemnify the Town.

Farmers Market

Council member Kite moved, second by Council member O'Neill, and carried to allow the Farmers Market with the conditions set forth by the Attorney.

YEAS: M. Dearing, D. Kite, M. O'Neill, and T. Pence

Motion carried (4 – 0 voice vote)

Ordinances as Advertised

§110-302 – Terms Defined – added the definition of STREET, PRIVATE – A private street providing access to no more than three lots or six dwelling units and must meet VDOT standards, but not including driveways.

§110-303 – Supplemental definitions – Added the definitions for an adult business, adult theatre, adult store, adult entertainment, specified an anatomical areas and specified sexual activities.

§110-404 – Replacement of Official Zoning Map. The proposed Official Zoning Map may be seen at the Town of Elkton Offices located at 173 West Spotswood Avenue Elkton, Virginia.

§110-603 – Low Density Residential District R-2 "Home occupations in accordance with § 110-705."

§110-605 – Residential District R-4 – "Home occupations in accordance with § 110-705."

§110-606 – Residential District R-5 – "Home occupations in accordance with §110-705."

§110-607 – High Density Residential District R-6. Add "Home occupations in accordance with §110-705."

§110-608 – Planned Unit Development District R-8 Edited.

"B. Permitted Uses. Within the Planned Unit Development District R-8 the following uses are permitted:

(1) Single family detached dwellings with a lot regulations and accessory uses consistent with R-3 District Standards.

(2) Two family dwellings with lot regulations and accessory uses consistent with R-5 District Standards.

(3) Multifamily dwellings, apartments, townhouses, (as regulated in § 110-709 of this Chapter) and condominiums with lot regulations and accessory uses consistent R-5 District Standards."

§110-610 – Downtown Business District B-1. (Edited Permitted Uses).

"B. Permitted Uses. Within the Downtown Business District B-1 the following are permitted:

(4) Living and/or sleeping quarters shall be a permitted use when constructed above the ground and basement floors. No living and or sleeping quarters shall be permitted in any detached accessory building or structure on the same lot of any building."

§110-611 – General Business District B-2. (Edited Permitted Uses).

"B. Permitted Uses. Within the Downtown Business District B-2 the following are permitted:

(4) Living and/or sleeping quarters shall be a permitted use when constructed above the ground and basement floors. No living and or sleeping quarters shall be permitted in any detached accessory building or structure on the same lot as any building.

§110-611 – General Business District B-2. (Added adult businesses to list of businesses needing a Special Exception permit to operate).

§110-613 – Light Industrial M-1. (Added adult businesses to list of businesses needing a Special Exception permit to operate).

§110-703 – Off-Street Parking. (Edited the size of parking space).

"(5) Parking space size shall be two hundred square feet. Parking space width shall be ten feet; parking space length shall be twenty feet. Two way drives shall be a minimum of twenty-two feet in width."

§110-709 – Special Regulations for Townhouses.

"C. Each townhouse building shall front on a street dedicated to public use. The streets including curbs, gutters, and sidewalks shall be developed according to standards found in Subdivision Street Regulations by the Virginia Department of Transportation by authority of Title 33.1 of the Code of Virginia, 1950, as amended."

§110-802 – Zoning and Building Permit.

"(5) In evaluating the proposed special exception, the governing body shall address the following concerns:

(f) The proximity of dwellings, churches, schools, parks, or other places of public gathering.

(g) The probable effect of the proposed use on the peace and enjoyment of people and their homes.

(h) The preservation of culture and historical landmarks and trees.

(i) The probable effect of noise and glare upon the uses of surrounding properties.

(j) The contribution, if any, such proposed use would make towards the deterioration of the area and neighborhoods."

§110-905 – Utility requirements.

"D. Fire Protection. The installation of adequate fire hydrants in a subdivision at locations of and quantities approved by the County Fire Marshall is required."

Water and Sewer Ordinances

Council member O'Neill moved, second by Vice Mayor Dearing, and carried that the zoning ordinances presented in the ad 110-302 through 170-28 be approved as previously read and presented in the Planning Commission meeting.

When questioned by Mayor Printz, Planning Commission Chair Daniel Talbot stated that the Planning Commission met at a Special Meeting and voted to recommend approval of the zoning ordinances as read and the zoning map as presented. Marty Shifflett abstained from the vote.

YEAS: M. Dearing, D. Kite, M. O'Neill, and T. Pence

Motion carried (4 – 0 roll call)

Ed Butler Right-of-Way

Town Attorney Miller stated that Mr. Butler had spoken Monday night and said he had a right-of-way agreement signed. Town Attorney Miller stated that no document had been signed to date and that a deed needed to be prepared regarding this matter. He continued that he needed to obtain particular details of the matter and further suggested that a surveyor be hired in order to obtain a better "description" of the property.

Mayor Printz inquired as to why the Town is acquiring expenses regarding this matter. Acting Town Superintendent Marty Shifflett explained that by this agreement, VDOT will recognize the improved area as a road and enter it into its road system. As such, VDOT will reimburse the Town of Elkton for the maintenance of the road.

Each property owner must relinquish ten feet of right-of-way and Virginia Shifflett must relinquish thirty feet of right-of-way per this agreement. In exchange, if approved by the previous Council, the Town would give one water and sewer connection per residence with no additional free connections if subdivided. The free water and sewer connections would be in lieu of the fair market value for the properties.

The owner of the private drive could not maintain the drive and wanted it to become part of the public road system. At that time, a twenty-five foot right-of-way was needed to be inspected by VDOT. Once this endeavor began, he learned the right-of-way needed to be forty feet. The Town approached the landowners acquiring ten feet from them and the thirty feet from Ms. Shifflett. Therefore, some of the landowners may feel since there will be a "road" through that area that a "public right-of-way" may apply and that gives them the right to ask for lot subdivisions.

Mr. Shifflett was of the opinion that the landowners "jumped the gun" by doing this since final approval had not been given by VDOT.

Vice Mayor Dearing was concerned that the Town was giving away $8,000.00 in connection fees, making improvements to the road and only picking up three new tenants. Mr. Shifflett stated the number of tenants would be eight.

Council member O'Neill was also concerned regarding the value of the real estate involved in the matter. Further he was not comfortable with the Town "bartering" connections for land.

Mr. Shifflett continued, that five families had asked the Town to take the street into the road system because they could not maintain it. Vice Mayor Dearing responded, "I have no problem with them asking. What we now have is they have asked us to improve that street and we have now paid them to ask us."

Mr. Shifflett stated, "Originally there was only going to be one connection at $3,000.00 – one connection at $3,000.00, that's how long this has been going on, one connection at $3,000.00. It turned out to be four connections because of the VDOT right-of-way issue."

Vice Mayor Dearing asked, "But did every homeowner want that road improved?"

Mr. Shifflett responded, "Yes, but really one person owned that right-of-way and that was Mrs. Shifflett. Everybody else had a right-of-way from her across this property. She was the one that said, ' I can't maintain it anymore, I need it…'"

Vice Mayor Dearing and Council member Kite queried Mr. Shifflett to explain how the Town arrived at a "water and sewer give away."

Mr. Shifflett responded, "Instead of paying her for how ever many feet it was at the time, the Town Attorney (not current counsel) said you have three choices: you can either pay her the cash, you can just tell her outright that you're not interested, or the water and sewer connection is going to be put in anyway as part of the Pentecostal Hill Project. The connections are going to be put there."

Town Attorney Miller inquired and it was confirmed that this area is part of the annexation. Further, he questioned what additional actions needed to be taken regarding the annexation agreement.

Council member Kite stated he is still unclear on the matter and would like to visit the site before rendering any further decisions.

Further discussion ensued regarding fees under the annexation agreement; frozen connection fees and grandfather clauses.

Council member O'Neill stated he would like to review some financial figures and reiterated his dislike of the "bartering" aspect of this situation.

Town Attorney Miller also stated, "Doing the road improvement – taking it into the system and then maintaining the road ever after is consideration for the land. So we don't necessarily have to buy the land. That could be a position that Council could take."

Mayor Printz recommended that Council member Kite and Council member Pence assist Mr. Shifflett with this matter.

Vice Mayor Dearing inquired if any promises had been made.

Mr. Shifflett stated "that it needs Council approval." Further, "I went over and asked them what is it you would like to see?" And the grandmother said, "They want a public street up through here. I can't maintain it. I can't clear the snow off of it. We'd like for ya'll to bring it into the system."

Mayor Dearing inquired, "No money so far?"

Mr. Shifflett responded, "Nope, that's right."

Mr. Shifflett continued that it was twenty-five feet and compared this project to the Hastings' easement to the Reservoir with the exception that this project would have been more expensive. According to Mr. Shifflett, "That's why they offered her the connection instead of money. It was cheaper to give her the $3,000.00 water and sewer connection because it wasn't going to require us to do anything because Atkins was putting the water meter in and all we would have to do is go up there and drop the meter into the meter pit and they would have to dig to the sewer lateral and they would have to dig to the meter pit."

There was additional discussion regarding subdivisions, proposed hook-ups, public street openings and Elk Street.

Town Attorney Miller queried, "Could these folks possibly feel like the previous Council said, if you get agreement from the neighbors to give this land the right-of-way then we are going to waive a hook-up fee? Could they see it that way?"

Mr. Shifflett responded, "Yes, sir."

Vice Mayor Dearing suggested the minutes be pulled and reviewed.

Water and Sewer Connection Fees

Mayor Printz stated that after speaking with Town Attorney Miller and meeting with Council, no action will be taken at this time regarding water and sewer connection fees. Further, he stated another Public Hearing is being planned, at which time the Town will have received information from Anderson & Associates.

Town Attorney Miller stated there is no requirement for another Public Hearing unless Council would increase fees above $10,000.00 or more than what was advertised. He advised Council to continue the Public Hearing if Anderson's report came back and recommended more that $10,000.00. Further, according to policy, the report should be made available to the public and have an opportunity for public comment. Therefore, treat this as another reading to increase the fees.

Further discussion ensued regarding an additional Public Hearing. Town Attorney Miller reiterated that if Council increased fees beyond what was in the advertisement then this entire process should be started again. Council member O'Neill stated that if the report comes back from Anderson & Associates and states the fees should be increased to $10,000.00 or less, Council can vote it in on the second reading.

Town Attorney Miller stated, "That State Law says when you are going to increase fees utilities you have to jump through certain hoops. One of those hoops is not two readings - that's separate. The hoops you have to jump through are advertising requirements and public hearing requirements. And in the advertising one, there are about four bullets you have to hit. One of them is how much we're intending to increase the rate by. That's why I'm saying we've advertised, we're going to increase under $10,000.00. We've advertised that increase to get the $10,000.00 so if we're going to go to $12,000.00, we should start all over again with the advertising and the public hearing."

Further discussion continued regarding current water and sewer rates and a possible solution for people who have overpaid on those connections. Mr. Shifflett confirmed for Council that one person has overpaid on connection fees. He believed that person be allowed a refund or apply that money toward new connections.

Council member O'Neill stated he wanted to preserve the effort that this Council had made thus far if Council decided to increase the water and sewer connections to $10,000.00 or less.

Town Attorney Miller stated that, "All that State law requires is that you cannot do that until after you have the Public Hearing – you now have had the Public Hearing."

Council member O'Neill further stated Council is awaiting the Anderson study which may recommend even higher fees. Further, he stated, "I want to make clear that now that we are considering the Anderson study, we may very well come back and say we're going to go for $12,000-$14,000.00. If the Anderson study makes a recommendation, we'll go through this process again."

Council member Kite stated the number one question asked of him during this process was, "Where did you arrive at $10,000.00 from?" He continued that Council had pondered on this question and had given it much thought.

Vice Mayor Dearing questioned Mr. Shifflett if Anderson & Associates was informed of the water treatment upgrades and if this would be included in the computation of their report. Mr. Shifflett responded that Anderson would consider all projects such as I and I, waste treatment plant, pump station upgrades, growth issues, infrastructure testing, as well as rates.

Council urged Mr. Shifflett to contact Anderson & Associates and inquire the status of the study. For budgeting purposes, Council member O'Neill desired to have Anderson's rates recommendations within three weeks.

Anderson & Associates

Council member O'Neill moved, second by Council member Kite, and carried for Council to approve a Resolution to instruct the Acting Town Superintendent, Marty Shifflett to officially inform Anderson & Associates to make recommendations on connection fees and rates based on implementing sewer plant improvements, expansion of water and sewer system on Mt. Pleasant and Newtown Roads, including results of recent smoke tests, including estimates for the pumping station upgrades at Elkwood and any other identifiable significant costs and for a report be provided as soon as possible.

YEAS: M. Dearing, D. Kite, M. O'Neill, and T. Pence

Motion carried (4 – 0 roll call)

As there was no further business, the meeting was adjourned.

Mayor: _____
Wayne E. Printz

Recorder: _____
Denise R. Monger, Clerk