Special
Council Meeting
April 21, 2008

A special meeting of the Elkton Town Council was held in Council Chambers of the Elkton Area Community Center on April 21, 2008, with Mayor Wayne E. Printz presiding. The following Council members were present:

PRESENT
M. Dearing
M. Isom
M. O'Neill
D. Kite
S. Sigafoose
T. Pence

Hearing for Revocation of Home Occupation Permit for Scott Knight

Town Attorney M. Christopher Sigler, Chief James A. Morris, Treasurer Clairen Sipe, EACC Administrator Allison Morris, EACC Secretary Dianne Johnson and Clerk of Council Denise R. Monger were also present.

Town Attorney C. Sigler noted the hearing was regarding Section 110-705 (b)(3) of the Town Code. Under that section, Mr. Knight had the right to view evidence the Town had on the matter and question any evidence and witnesses who would testify.

(A copy of the agenda is appended to these minutes and marked as "Appendix A".)

Chief James A. Morris presented video evidence from a police cruiser.

Chief Morris narrated the video as it was being played. He noted an individual changing a tire on a tire changer at 161 North Street. He was unsure if the individual was the resident. He indicated the video was shot from the front of Mr. Bobby Gooden's residence on Morgan Street. He noted the camera was mounted atop the police vehicle. It was undetermined if the tire changer was portable.

Chief Morris indicated the police department was responding to a complaint from a citizen. He noted a number of complaints had been received from one individual.

Chief Morris noted at the rear of the residence, two rollback trucks were parked at the residence at 161 North Street. To the right of the garage, he noted what appeared to be tires and other materials in the yard.

Town Attorney C. Sigler stated he was about to present photographs to Council and would make them available to Attorney Derrick W. Whetzel and his clients. Chief Morris noted the photographs showed the following: rollbacks (possibly same), truck used to carry mechanical equipment, garage area near fence showing one car and numerous tires, vehicles in the driveway and a rollback in the backyard.

Vice Mayor Dearing queried if Mr. Knight's home occupancy permit was for paperwork only. Town Attorney C. Sigler stated that Mr. Knight does have a home occupancy permit. It was noted that when he applied for his business license, he listed his business as a transportation business and circled personal business service on the form. He also listed that he had a home office for which he applied for a home occupation permit.

Town Attorney C. Sigler noted the Town's position was that Mr. Knight was violating his home occupation permit by the business being visible from the street. He noted the photographs and video were proof of the violation.

Scott Knight, Shawn Dean and their attorney, Derrick W. Whetzel, Esquire, were present for the hearing.

Mr. Whetzel asked his client to clarify some of the photographs and videotape. Mr. Knight stated he had hired Earl Knight to remove his tires from the rims. He noted that Earl Knight was licensed to perform that type of work. He stated that the tires in the photographs were removed the same day.

Mr. Whetzel asked if Mr. Knight had checked certain items on the home occupancy permit form. Mr. Knight indicated he had checked shed/storage building, and home occupation. He questioned if Mr. Donachy had issued the permit on January 31, 2005. Mr. Knight responded affirmatively.

Mr. Whetzel stated the business license indicated personal business service. Mr. Knight responded that information was correct. Mr. Whetzel prompted Mr. Knight to explain what type of business he was engaged in at the residence. Mr. Knight responded that he only parks his trucks there and does no mechanical work. He noted that some junk cars were brought to his house while on a roll back if the hour was late. He noted the roll back was not for hire and only used privately.

Mr. Whetzel asked Mr. Knight if the home occupation permit allowed him to store tires. Mr. Knight responded the tires were not stored (inaudible). He noted the tires were loaded and taken away the same day to a junkyard.

Earl Knight was in attendance at the meeting. Mr. Whetzel inquired if Earl Knight had a mobile license as indicated. Earl Knight responded affirmatively. He noted that he was the individual in the videotape and that the red truck belonged to him. Mr. Whetzel inquired if the compressor in the video belonged to him. Earl Knight responded affirmatively.

Mr. Knight stated the cars were never unloaded from the trucks. He noted that a fence was erected because of his neighbors. People could not see in or out of the property. He noted that the garage was inside the fenced area.

Mr. Whetzel inquired where the video was actually shot from. Mr. Knight responded the police vehicle shot the footage from Bobby Gooden's driveway. He noted the area of view was small at the gate area. He noted you could not see that same view from the front of the residence.

Mr. Whetzel stated that Mr. Gooden went out of his way to see any activity on the property. Mr. Knight confirmed that statement and noted he had a permit. Mr. Knight noted he had paid Earl Knight approximately $400.00 for the work he performed and has documentation.

Mr. Whetzel asked if Chief Morris had responded to the complaint. Chief Morris responded one of his officers had responded.

Mr. Whetzel inquired if the complaints were made by one individual. Chief Morris responded affirmatively and confirmed that person was Bobby Gooden. Chief Morris could not recall if any other complaints were made from other neighbors. Bobby Gooden spoke (inaudible) from the audience, but was not recognized to speak at that time.

Mr. Knight stated that Mayor Printz had been by his property and Vice Mayor Dearing lived near him. He invited the rest of the Town Council to inspect his property and advise of any wrongdoing. He confirmed that numerous Council members had visited his property, with a roll back in the driveway, and he had not been told of any wrongdoing.

Mr. Whetzel stated Mr. Knight had received a letter from the Town on September 5, 2002 from Mr. McCoy which stated he was permitted to park a wrecker at his residence but could not park a towed vehicle. Mr. Knight noted he was told "as long as it's on the truck."

Council member Isom questioned the situation with the tires. Mr. Knight stated the tires were there for one day. He noted when he received the last letter he went and met the former Town Superintendent at the Town Hall and asked him to inspect his property. Mr. Knight stated the inspection was performed and no wrongdoing was noted. He reiterated he only parked his roll back at the residence.

Town Attorney Sigler queried if Earl Knight was a resident at Scott Knight's property. It was determined he was not and resided in Grottoes.

Road tractors were discussed briefly.

Council member O'Neill noted he had issues with the "stacked" tires and the number of tires at the residence. He questioned the number of tires showed in the photographs. Chief Morris could not make a determination on the matter. Mr. Knight noted the tires were stored in his garage. He noted he sold rims off of tires and he removed the tires from the rims. Council member O'Neill questioned how removing rims from tires constitutes vehicle maintenance. Mr. Knight noted it was not maintenance, he was using the garage. Council member O'Neill noted the matter resembled "business activity" and not maintenance of private vehicles at the residence.

Mr. Whetzel noted that under the business permit, Mr. Knight was allowed storage use at the garage. Council member O'Neill disagreed removal of tires was "storage." Mr. Whetzel argued Mr. Knight was allowed the "act of removing the tires from the facility." He noted Mr. Knight needed to enter and exit someway and if the tires were broken down that was the process. Mr. Whetzel noted the tires could be "stored" under the home occupation permit.

Vice Mayor Dearing noted this matter had been ongoing with complaints. He queried if Mr. Knight was aware that Council was concerned of "activity" taking place on his property.

Shawn Dean stated they had spoken with the Town's former superintendent at which time he came by to inspect their property regarding a complaint of "a repair business being conducted at their property." Mr. Knight noted the matter had been ongoing for eight years.

Mr. Whetzel queried if all complaints had been responded to. Mr. Knight responded that they had responded and corrected issues. He noted he had needed and received a permit to park his work vehicles on his property. Mr. Whetzel noted other residents in that neighborhood also park their work vehicles at their residences.

Council member O'Neill stated he still had unresolved issues with the matter.

Shawn Dean stated that Earl Knight had brought all of the tires from their salvage yard to the garage where he removed the tires from the rims. Earl Knight had also performed repairs on their roll back the same day.

Council member Isom queried a correspondence prepared by Marty Shifflett to Scott Knight dated February 8, 2008, which stated, "*These activities are strictly prohibited in the R-3 district. Witnesses have seen commercial vehicles on the premises and have seen individuals stripping tires and other parts off of vehicles.*" Mr. Knight stated he did recall receiving the letter but noted the "stripping of the tires" took place on only one day.

Town Attorney C. Sigler noted that Council would need to vote on the revocation of the home occupancy permit. He stated that the incident being discussed violated the Town code. First, a violation of Subsection Two which stated, "The home occupation can only be operated by members of the family who reside at the residence." Second, he noted a violation of Subsection Three had taken place since you could actually see the home occupation. He noted the photographs and video were an indication of that activity.

Council member Kite asked the Knights if they had received any information regarding the zoning violations. Mr. Knight responded they had not.

Mr. Whetzel's final statement was as follows: "*First of all, we are only here to talk about whether or not the home occupancy permit should be revoked. Not whether there has been necessarily a violation of the zoning ordinance. The letter that they got February 8 indicated that they are being held in violation of a zoning ordinance and was service of a revocation of their home occupation permit. That's what we're doing here tonight, is trying to figure out whether or not it should be revoked. Not whether they should be held in violation. This is a hearing they are entitled to have where they get a chance to examine the evidence presented (inaudible). I think that we got two folks here that have, on every occasion, when they received numerous complaints all from one person. I think if this was really an issue in the neighborhood, then we would have had complaints from other folks. They put up a fence to try to block the view. The fence is not unsightly in any manner. It's a standard privacy fence six feet tall that their entitled to put up - and put in an application and received a permit for that. And Mr. Gooden has to go out of his way to come in there and see the tires. And what we're talking about on this particular day is one instance in a couple of hours where Earl might happen to bring tires over to that house and take them off the rims. We're not talking about any common-sense approach to this. You're not going to find these folks going out and trying to violate the statute on the zoning ordinance on a regular basis. In fact, when they received complaints they had tried to comply going beyond what they would otherwise be required to do - trying to make this situation bearable for all. And I think there's a situation here where you're just not going to please the person that's complaining no matter how far you go. So, these folks are trying to comply. They are doing everything they can to comply. They've been told by members of this Council, by staff of this Town that they're not doing anything wrong. I don't think taking the roll backs there is a violation. All of us take work home. I take my briefcase as he said. Members of Council take work trucks home. I don't think that's a violation. I'm not casting any dispersion on anyone in particular, but I don't think driving your work truck home (inaudible) allowed by the zoning ordinance. I don't think it should be revoked and I certainly don't think they should be held in violation of anything.*"

Council member O'Neill asked Town Attorney C. Sigler if the current situation was a violation of the zoning ordinance. Town Attorney C. Sigler stated the issue was a violation of Mr. Knight's home occupancy permit. He noted in an R-3 district, Mr. Knight was not allowed to perform the type of work discussed. He stated the code was instructive on how and what you could do when you have a home occupancy permit. He noted the evidence presented showed that Mr. Knight was in violation of his home occupancy permit.

Council member O'Neill inquired if a letter had been sent to Mr. Knight regarding the violation. Town Attorney C. Sigler offered to present letters dating back to 2002 regarding violations. Mr. Whetzel argued there was no evidence of any violations beyond the fact they are noted in the letters. He noted those allegations most likely came from Bobby Gooden. He noted his clients had addressed those issues with Council members or Town staff and rectified the situation. He noted since past Councils had not taken additional action, the issues must have been rectified. He noted his clients have been under a magnifying glass.

Town Attorney C. Sigler stated that Council could vote on the matter as part of the hearing.

Motion to Revoke Home Occupancy Permit for Scott Knight

Council member O'Neill moved, seconded by Vice Mayor Dearing, and carried that the home occupancy permit for Mr. Knight be revoked.

Council member Kite noted he would not support any home occupancy permits in any residences.

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

NAYS: None

VOTE: (6 – 0 roll call) Motion carried

Council member O'Neill moved, seconded by Council member Kite, and carried to adjourn the meeting.

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

NAYS: None

VOTE: (6 – 0 voice vote) Motion carried

Mayor: _____
Wayne E. Printz

Recorder: Denise R. Monger
Denise R. Monger, Clerk

APPENDIX

SPECIAL COUNCIL MEETING
TOWN OF ELKTON
April 21, 2008
5:30 p.m.

Mayor Wayne E. Printz has called a Special Meeting of the Elkton Town Council on Monday, April 21, 2008, at 5:30 p.m., at the Elkton Area Community Center located at 20593 Blue and Gold Drive in Elkton, Virginia. The purpose of the meeting is as follows:

AGENDA

1. Closed Session – Potential Litigation (5:30 p.m.)

2. Public Information Meeting regarding Water and Sewer Plant and Pending Matter with DEQ (5:45 p.m.)

3. Hearing regarding the Revocation of Home Occupation Permit for Scott Knight (6:45 p.m.)

The Regular Council Meeting will follow the conclusion of the above-referenced meetings.