

THE REGULAR MEETING OF THE BRISTOL VIRGINIA CITY COUNCIL WAS HELD ON OCTOBER 13, 2009 AT 7:00 P.M. IN COUNCIL CHAMBERS WITH MAYOR JAMES RECTOR PRESIDING. COUNCIL MEMBERS PRESENT WERE VICE MAYOR ERNEST SPROUSE, FRED BOWMAN, JAMES HEANEY AND GUY ODUM. CITY MANAGER W.A. DENNISON, JR., AND CITY ATTORNEY PETE CURCIO WERE ALSO PRESENT.

Invocation was given by Mayor Rector, followed by the Pledge of Allegiance to the flag.

1. Consider Approval of the Minutes:
  - Called Meeting – September 9, 2009
  - Called Meeting – September 10, 2009
  - Called Meeting – September 11, 2009
  - Regular Meeting – September 22, 2009
  - Called Meeting – October 5, 2009

Council Member Odum made the motion to approve the Council Minutes from the Called Meeting of September 9, 2009, the Called Meeting of September 10, 2009, the Called Meeting of September 11, 2009, the Regular Meeting of September 22, 2009, and the Called Meeting of October 5, 2009. Motion was seconded by Council Member Bowman and carried by the following votes:

AYES: Bowman, Heaney, Odum, Sprouse and Rector

2. Matters to be Presented by Members of the Public

Ms. Cathy Stephenson addressed City Council regarding the legality of voting by a Council Member that was appointed and not elected.

City Attorney, Pete Curcio addressed this issue by stating that it is his opinion that Vice Mayor Sprouse can vote on these matters based on the language of the City's Charter.

3. Consider Granting Consent of City Council to the City Manager for the Appointment of Andrew O. Trivette as Director of Community Development as Required by the City Charter

City Manager, W.A. Dennison, Jr. stated that he has appointed Mr. Andrew Trivette to the position of Director of Community Development and Planning; however, the City Manager must obtain consent of City Council to do so. He further requested that City Council grant consent to the appointment of Mr. Trivette pursuant to the provisions of the City Charter.

Council Member Bowman made the motion to confirm the appointment of Mr. Andrew Trivette as the Director of Community Development as required by the City Charter. Motion was seconded by Vice Mayor Sprouse and carried by the following votes:

AYES: Bowman, Heaney, Odum, Sprouse and Rector

4. Joint Public Hearing of the City Council and the Planning Commission Regarding Special Exception #89. Request for Permission for Retail/Agricultural Uses within Property Zoned R-1 (Single-Family Residential) and B-1C (Neighborhood Shopping Conditional Zoning). (224 Old Abingdon Highway)

Planning Commission Chairman Sanslow, called the meeting to order; stating that this is a joint public hearing of the Bristol Virginia Planning Commission and the Bristol Virginia City Council to consider Special Exception #89 for retail agricultural uses within property zoned R-1 (Single-Family Residential) and B-1C (Neighborhood Shopping

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Conditional Zoning), for property located at 224 Old Abingdon Highway, further stating that the State Code stipulates that the Planning Commission acts as an Advisory Body, with City Council being the Legislative Body with the authority to approve special exceptions and rezoning requests.

Mr. Andrew Trivette, Director of Community Development and Planning, addressed the Planning Commission stating that Mr. Michael Richard has requested that Special Exception #89 be granted for his property located at 224 Old Abingdon Highway for the purpose of allowing an extension of his existing agricultural areas and to allow the development and retail/agricultural use of additional fruits and/or vegetables to be picked by and sold to the general public.

Mr. Trivette further stated that this request was advertised in the Bristol Herald Courier on September 29, 2009 and October 4, 2009 and notices were mailed to all adjoining property owners and a public notice sign was placed on the property on October 5, 2009.

Mr. Trivette continued by stating that several factors have to be evaluated when considering a special use permit/special exception and that staff had commented favorably to these factors, and therefore, recommended that the Planning Commission approve this request.

Planning Commission Member Goodson stated that although she is for granting this Special Exception, she is concerned about the work that has been done to this property prior to requesting the Special Exception.

Planning Commission Member Light made the motion to present this request for Special Exception to City Council for approval. Motion was seconded by Planning Commission Member Leonard and carried by the following votes:

AYES: Goodson, Leonard, Light, Odum, Snodgrass, Steele and Sanslow

Planning Commission Chairman Sanslow declared the public hearing closed.

5. Consider the Planning Commission's Recommendation Regarding Special Exception #89

Mr. Andrew Trivette, Director of Community Development and Planning, addressed City Council stating that the department had received an application from Mr. Michael Richard of 224 Old Abingdon Highway which is located at the intersection of East Valley Drive and Old Abingdon Highway. Mr. Richard's proposal is to construct a pick service of different goods, particularly apples and strawberries on this property. The property is currently split zoned between R-1 (Single Family Residential) and B-1C (Neighborhood Shopping Conditional Zoning). He continued by stating that the request was advertised according to state statute.

Mr. Trivette further stated that staff and the Planning Commission have recommended that Special Exception be granted and requested that City Council approve the request.

Mayor Rector entertained a motion from City Council.

Vice Mayor Sprouse made the motion to approve Special Exception #89 as findings of fact as stated by the Director of Community Development and Planning. Motion was seconded by Council Member Bowman and carried by the following votes:

AYES: Bowman, Heaney, Odum, Sprouse and Rector

6. Presentation by BVU Board of Directors Regarding the Establishment of an Independent Political Subdivision of the Commonwealth of Virginia to be Named BVU Authority

Mr. Paul Hurley, Chairman of the Bristol Virginia Utilities Board addressed City Council stating that following several meetings of the Bristol Virginia Utilities Board and several meetings with City Council Members, the Bristol Virginia Utilities Board voted unanimously for a contract and an Act to be presented to City Council requesting that an Ordinance be adopted and presented to the General Assembly requesting that Bristol Virginia Utilities be changed to an Authority.

Mr. Kurt Pomrenke, Bristol Virginia Utility Board Member, addressed City Council explaining the proposed Ordinance. He stated that the Authority would have legal power to enter into contracts to borrow money, initiate litigation and determine rates, fees and charges of service among many other duties. The Authority will have the same four (4) divisions that Bristol Virginia Utilities currently has, which are electric, water, sanitary sewer and OptiNet. The Authority would be governed by a board of directors consisting of eight (8) members. The biggest advantage of having an Authority is that the Authority can, by itself, borrow money to fund infrastructure projects and upgrades.

Mr. Pomrenke continued by stating that under the contract agreement, after July 1, 2010, Bristol Virginia Utilities Authority would continue to contribute five hundred thousand dollars (\$500,000) per fiscal year to the City for economic development projects in Bristol Virginia during the life of the TVA electric contract. They would also continue to pay three hundred fifty thousand dollars (\$350,000) per year in lieu of taxes for electric during the life of the TVA electric contract. He continued by stating that there are two (2) additional annual payments that have not been paid before that would be paid under this agreement. The Authority would pay one hundred thousand dollars (\$100,000) annually in lieu of tax for payment from non electric division funds for ten (10) years and a BVU OptiNet payment in lieu of tax payments on all property of that division inside the City of Bristol Virginia beginning July 30, 2013.

Mr. Pomrenke explained that there can not be a sale of all or part of the Authority to any third party without the approval of both the Authority Board and the City Council. In the event that all of the Authority is sold to a third party, the net proceeds after payment of all of the Authority debts and liabilities will be the property of the City of Bristol and the Authority would be dissolved. In the event the OptiNet division is sold to a third party, the net proceeds after repayment of the OptiNet debt and the equity investment shall be split evenly between the City and the Authority. In the event the electric division of the Authority was to be sold, the net proceeds after payment of all of the debt of the Authority will be split evenly between the City and the Authority. The Authority will not sell any of its sewer capacity to any other entity without the approval of both the Authority Board and City Council.

Mr. Ted Cole, a Davenport representative, addressed City Council stating that with the proposal to create the Authority nothing will change with regard to the way the Bristol Virginia Utilities Authority and the City of Bristol Virginia would continue to obtain their own debt financing.

#### 7. Public Comment Period Regarding the Establishment of the BVU Authority

The following individuals addressed City Council either in favor of, or opposed to, the establishment of the BVU Authority:

Mr. Don Ashley, resident (opposed to), Mr. Eric Ramey, resident (in favor of), Mr. Jerry Chorosevic, resident (opposed to), Mr. Tyler Franklin, Executive Director, Faith in Action (in favor of), Ms. Lauren Griffith (in favor of), Mr. Con Sauls, Vice President of Operations, Virginia Intermont College (in favor of), Mr. Cary Perkins, resident (opposed to), Mr. David Crockett, private citizen representative of the Economic Development Committee (in favor of), Mr. Mike Wells, Plant Manager, Snack Alliance (in favor of), Mr. Scott Emerine, Executive Committee Member of the Bristol Tennessee Virginia Chamber of Commerce (in favor of), Mr. Paull Anderson, resident (opposed to) Ms. Nancy Marney, resident (opposed to), Mr. Mark Salyer, resident (in favor of), Ms. Vicie Dotson, resident (in favor of), Mr. Steve Buchanan, resident (in favor of), Mr.

Randy Jacoby, Chief Operating Officer, Bristol Compressors, International (in favor of), Ms. Beth Rhinehart, resident (in favor of), Ms. Barbara Beidleman, a member of the Board of Zoning Appeals (in favor of), Mr. Jim Clifton, resident (in favor of), Mr. Lonnie Whitley, resident (opposed to), Mr. Brad Davis, Pastor of Antioch Baptist Church (in favor of), Mr. Archie Hubbard, resident (in favor of), Ms. Catherine Jewell, resident, (opposed to), Mr. Frank Goodpasture III, resident (opposed to), Mr. R.L. Light, resident (opposed to), Mr. Tom Adams, former CEO of Bristol Virginia Utilities (in favor of), Mayor Rector read two (2) letters from residents (in favor of), Mr. Frank Leonard, business owner (in favor of), Mr. Jim Bowie, former legal council for Bristol Virginia Utilities (in favor of), and Mr. Dave Fletcher, resident (in favor of).

Mr. Walt Bressler, General Counsel for Bristol Virginia Utilities addressed City Council to help answer questions he felt needed to be addressed. He explained that the concept that there are assets of value that the City would be giving away, are not assets in the normal sense of those of a business. The infrastructures that are used to provide services, for which fees are received, are pledged on the bond issues that have many years remaining. He also explained that if the utility were to be sold, that the debt would have to be paid off and that all of the remaining funds would be returned to the City.

Mayor Rector inquired about a spin-off of OptiNet, to which Mr. Bressler stated that by itself OptiNet was not self sufficient at this time, it pays for itself, but it is not large enough to run as an independent entity. In response to OptiNet not being spun-off due to the assets being pledged for the total revenue bonds, Mr. Bressler stated that none of the revenue producing infrastructure of the entity could be disposed of without the bond holder's approval and that the bond holders would not do so unless they were paid in full.

Mr. Bressler addressed the issue regarding the number of members that would be on the Utility Board and how they would be appointed. He also addressed the issue that nothing in the contract between the City and the Authority could be changed without the agreement by both parties.

## 8. Ordinance

### First Reading

- 1) Consider First Reading of an Ordinance Asking the General Assembly of Virginia to Convert Bristol Virginia Utilities to an Authority

Council Member Bowman made the motion to consider the first reading of an Ordinance asking the General Assembly of Virginia to convert Bristol Virginia Utilities to an Authority as it relates to the Act. Motion was seconded by Vice Mayor Sprouse.

Council Member Heaney voiced his concerns regarding converting Bristol Virginia Utilities to an Authority.

Votes were as follows:

AYES: Bowman, Sprouse and Rector

NAYS: Heaney and Odum

City Attorney, Pete Curcio read the following Ordinance:

**ORDINANCE ASKING GENERAL ASSEMBLY TO  
CONVERT BRISTOL VIRGINIA UTILITIES  
TO AN AUTHORITY**

**WHEREAS**, the City Council for the City of Bristol, Virginia has determined that it would be in the best interest of the City’s finances and of the citizens of the City of Bristol, Virginia to have the General Assembly of Virginia create a separate authority and convert the City’s separately managed and budgeted division into that Authority;

**NOW THEREFORE, BE IT ORDAINED** by the City Council for the City of Bristol, Virginia that the attached proposed Act creating said Authority be presented to the General Assembly of Virginia with this body’s request that it be taken up and passed at the 2010 legislative session of the General Assembly, to become effective on July 1, 2010.

First Reading: October 13, 2009

Second Reading: \_\_\_\_\_

Adopted: \_\_\_\_\_

9. Adjournment

There being no further business, the meeting was adjourned.

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City Clerk

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Mayor