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THE REGULAR MEETING OF THE BRISTOL VIRGINIA CITY COUNCIL WAS HELD ON OCTOBER 27, 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 Vice Mayor Sprouse, followed by the Pledge of Allegiance to the flag.

1. Consider Approval of the Minutes:
  - Called Meeting – October 12, 2009
  - Regular Meeting – October 13, 2009
  - Called Meeting – October 16, 2009

Council Member Odum made the motion to approve the Council Minutes from the Called Meeting of October 12, 2009, the Regular Meeting of October 13, 2009, and the Called Meeting of October 16, 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

There were no matters presented by members of the public.

3. Consider the Following Street Closure Requests:

- 1) Annual Veterans Day Parade Scheduled for November 7, 2009
- 2) 28<sup>th</sup> Annual Christmas Tree Lighting Scheduled for November 30, 2009
- 3) Annual Christmas Parade Scheduled for December 3, 2009

City Manager, W.A. Dennison, Jr. stated that each of these requests are for annual events and recommended that all three street closure requests be approved by City Council.

Council Member Bowman made the motion to approve the street closure requests for the Annual Veterans Day Parade scheduled for November 7, 2009, the 28<sup>th</sup> Annual Christmas Tree Lighting scheduled for November 30, 2009 and the Annual Christmas Parade scheduled for December 3, 2009. Motion was seconded by Vice Mayor Sprouse and carried by the following votes:

AYES: Bowman, Heaney, Odum, Sprouse and Rector

4. Consider Letter of Resignation of Ms. Patricia Sorah from the Bristol Public Library Board of Trustees

Vice Mayor Sprouse made the motion to accept Ms. Patricia Sorah's resignation from the Bristol Public Library Board of Trustees. Motion was seconded by Council Member Bowman and carried by the following votes:

AYES: Bowman, Heaney, Odum, Sprouse and Rector

Vice Mayor Sprouse stated that the Library Board has a Board Development Committee and that they have a couple of names they are going to submit for the replacement of Ms. Sorah.

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City Manager, W.A. Dennison, Jr. stated that a letter of resignation has been accepted from Ms. Era Lee of the Mount Rogers Planning District Commission. He further stated that the appointment of a replacement would be on the agenda for the first meeting in November.

5. Presentation of an Amended Proposed Contract Between the City and BVU

Mr. Walt Bressler, General Counsel for Bristol Virginia Utilities presented an amended proposed contract between the City and BVU to City Council recapping the items, as stated during the previous City Council Meeting, in the amended proposed contract. Those items include (1) the continued budgeting of five hundred thousand dollars (\$500,000) per fiscal year to pay for economic development projects inside the City General in accordance with TVA terms that are currently in place; (2) three hundred fifty thousand dollars (\$350,000) to be paid from the Electric Division to be paid to the City in lieu of taxes; (3) one hundred thousand dollars (\$100,000) to be paid annum in lieu of tax payments for non electric division funds for ten (10) years commencing July 15, 2010; (4) around one hundred thousand dollars (\$100,000) to be paid in lieu of tax payments on all property of the OptiNet division inside the City of Bristol Virginia commencing July 30, 2013; (5) regarding the sale of all or part of the Authority, Mr. Bressler stated that there basically can not be a sale of any or all parts of the Authority just on the Authority Boards decision, as it would require the agreement of City Council to sell any or all of the Authority; however, if it is sold to a third party, the net proceeds after payment of all the debts and liabilities would be returned to the City of Bristol Virginia and the Authority would be dissolved, in the event the OptiNet division is sold by itself to a third party the net proceeds after the repayment of the OptiNet debt and equity investment shall be split evenly between the City and the Authority, regarding the sale of the electric division, the parties believe that there is no practical legal way to sell the electric division of the Authority, but should that ever occur, the net proceeds after payment of all of the debt of the Authority will be split evenly between the City and the Authority; (6) the Authority will not sell any of its sewer capacity without City Council approval; (7) the Authority will not attempt to have the number, makeup or method of appointment of the members of the Board of Directors changed from that contained in the original Act without the prior consent of the City Council.

Following further discussions, Mayor Rector asked if the wording in item number four (4) of the provision which states that the BVU Authority shall pay a BVU OptiNet in lieu of tax payments on all property of that division inside the City of Bristol, Virginia commencing July 30, 2013 could be changed to "would not be less than one hundred thousand dollars (\$100,000) per annum". Mr. Bressler stated that you probably could do that, but that was not the intent of the offer as the intent of the offer was to pay pursuant to the formula. Mayor Rector then asked what problem it would it present if we said "would not be less than one hundred thousand dollars (\$100,000)" to which Mr. Bressler stated none except that he did not have authority from the board to make that offer. Mayor Rector stated that he thinks that we need that protection that it would not be less than one hundred thousand dollars (\$100,000). Mr. Bressler then stated he had enough shows of hands from the BVU Board to make the change.

Council Member Odum stated that item number seven (7) reads the Authority will not attempt to have the number, makeup or method of appointment changed and asked if this includes the duties, responsibilities and powers of the Board of Directors of the BVU Authority. Mr. Bressler stated that it does. Council Member Odum stated that it does not say that in the agreement. Mr. Bressler stated that the powers and duties are to operate the system, they are not set out in the Act, they are not set out for the BVU Board as it stands now, it basically is to manage and operate that which is in the Act. Council Member Odum stated that it is not in the contract between the City and BVU which is nailed down and solid. If you will say that the Board will have the complete responsibility, duties and authority over the Authority. Mr. Bressler stated that you have that by virtue of the Act. Council Member Odum stated that the Act can be changed at anytime, to which Mr. Bressler replied not to do away with the power of the Board to operate it, it can not.

Vice Mayor Sprouse addressed Mr. Bressler stating that he had talked to him about adding an additional City Council Member to the Board which would put two (2) City Council Members plus the appointed three (3) members on the Board.

Mr. Bressler stated that at this point in time, the Ordinance and the Act could not be changed as it now stands. Mr. Bressler continued by stating that however, after the adoption of the Ordinance, the Board may by majority or unanimous vote, ask the General Assembly to amend the Act so that there would be a nine (9) member board which would include a second Council Member, then he would determine whether or not he had Board approval by consensus to say that we would join in that motion and they have given that approval today unanimously.

After further discussion, Council Member Odum asked Mr. Bressler if he would be willing to make a statement on the contract between the City and BVU that the Board of Directors' powers of the Authority shall be vested in the Board of Directors in this agreement between the City and BVU to which Mr. Bressler replied that if it happens by law, he doesn't have any problems with putting it in there at all.

Council Member Heaney stated that there were three (3) items that he had submitted to Mr. Wes Rosenbalm, President and CEO of Bristol Virginia Utilities, that he had not received a response of which were (1) changing the Act that currently states that only a quorum needed to make decisions, that you could actually make decisions of changing anything in the Act or requesting that the State change it with only three (3) Board Members, because the quorum would be five (5) and three (3) would be a majority of that quorum, so three (3) members could make decisions that would effect the future; (2) a typo that states that a Council Member would be appointed May 1 instead of July 1; and (3) he had asked that it be put in the Act that no persons or committees would get compensation other than actual expenses occurred.

After further discussion, it was decided that an amendment to the Act to change the number of members on the board would be created and submitted to the General Assembly.

#### 6. Public Hearing 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. David Hutton, Attorney representing a group of citizens (opposed to), Mr. David Rose, Davenport and Company representative (in favor of), Faith Esposito, Vice Chairman of Bristol Virginia Utilities Board (in favor of), Ms. Pat Reece (opposed to), Mr. Ronald Morgan, former Mayor (opposed to), Ms. Ann Corley, resident (in favor of), Mr. Doug Fleenor, member of Bristol Housing Authority (in favor of), Ms. Lisa Meadows, Chamber of Commerce (in favor of), Mr. Sam Perkins, resident (in favor of), Mr. Brian Davis, resident (opposed to), Ms. Stephanie Surrect, Project Manager for the Virginia Department of Business Assistance (in favor of), Ms. Nancy Marney, resident (opposed to), Mr. Bernard Via, resident (opposed to), Mr. Frank Goodpasture III, resident (opposed to), Mr. Rogers McCall, resident (opposed to), Mr. Jerry Chorosevic, resident (opposed to), Mr. William Boyce, resident (opposed to), Mr. Lonnie Whitley, resident (opposed to), Mr. Cary Perkins, (opposed to), Mr. Paull Anderson, resident (opposed to), Mr. Mike Wells, Plant Manager of Snack Alliance (in favor of), Ms. Jerry Goodpasture, resident (opposed to), Mr. Don Ashley, resident (opposed to), and Mr. Mark Cofer, resident (in favor of).

City Attorney, Pete Curcio, stated that there can not be a referendum in Virginia on any issue unless it is authorized by statute or by Charter. The City's Charter does not authorize a referendum to create an Authority. Likewise, the Virginia Code does not authorize a referendum to create an Authority for this purpose. However, State Code does allow a request be submitted to the Circuit Court asking the Court to issue an Order for special election for the purpose of changing the Charter. If a request for a Charter change were to be initiated, the purpose for that request would state that we currently have a

Utility Board and we are asking that it be changed to a Utility Authority. It is possible that the Circuit Court would reject the request on the basis that we are circumventing the laws governing when it is appropriate to have a referendum.

Mayor Rector read several letters from the following individuals in favor of the establishment of the BVU Authority: Dr. Jim Geiger, Ms. Julie Marion, Ms. Mona Salyer, Mr. Harry Williams, President of The Williams Company, Inc., Mr. Jerry Mullins, Corps Officer for the Salvation Army, Mr. Joe Sandidge, Plant Manager of Ball Corporation, Mr. Steve Smith, President & CEO of K-VA-T Food Stores, Inc., and Mr. John Tickle, President of Strongwell.

Council Member Odum read a letter from Mr. Jeff Combs, a resident of the City of Bristol, Virginia opposing the establishment of the BVU Authority.

A question and answer session ensued with Bristol Virginia Utilities CEO, Mr. Wes Rosenbalm, General Counsel, Mr. Walt Bressler and Davenport and Company representative, Mr. David Rose addressing issues brought forth by the citizens of Bristol.

Mayor Rector declared the Public Hearing closed.

7. Consider the Amended Proposed Contract Between the City and BVU

Mayor Rector stated that this contract sets forth the funds that will be distributed to the City and how the Authority would be set up.

General Counsel for Bristol Virginia Utilities, Mr. Walt Bressler stated that the language is being changed in paragraph seven (7) that will state that the Authority also will never ask the General Assembly to remove the operation and management of the Authority from this Authority's Board of Directors.

Council Member Odum made the motion to table this item until a final written document can be reviewed and approved. Motion was seconded by Council Member Heaney.

Vice Mayor Sprouse inquired about the amount of time for this item to be tabled. Council Member Odum said that it needed to be tabled until we can work out the questions that were mentioned here tonight, and until they are in writing because the written document takes precedence over what is said or what is spoken. I would like to see it in writing before we approve this, as I just think this is the right thing to do for the citizens.

In response to Vice Mayor Sprouse's question, Mr. Bressler stated that the contract is in the City's interest, it's not made to protect BVU at all or the Authority, it's made to protect the City. It should be done tonight when you act on the Act itself. I have read to you what I added and that was the last addition that needed to be made to it, that the Board had agreed to and that will be rendered in writing and can be signed in the morning if you so vote.

After further discussion, Mayor Rector asked the Clerk to call the roll.

AYES: Heaney and Odum

NAYS: Bowman, Sprouse and Rector

Council Member Bowman made the motion to approve the amended proposed contract between the City and BVU to include the verbal changes as stated by Bristol Virginia Utilities General Counsel. Motion was seconded by Vice Mayor Sprouse and carried by the following votes:

AYES: Bowman, Sprouse and Rector

NAYS: Heaney and Odum

8. Consider Ordinance:

2<sup>nd</sup> Reading

1) Ordinance Asking the General Assembly of Virginia to Convert Bristol Virginia Utilities to an Authority

Council Member Bowman made the motion for the second reading of an Ordinance asking the General Assembly of Virginia to convert Bristol Virginia Utilities to an Authority. Motion was seconded by Vice Mayor Sprouse and carried by the following votes:

Council Member Heaney inquired about changing the Act to state that in order for a change to be submitted to the General Assembly, that it would require a quorum consisting of all nine (9) members of the Board.

General Counsel for Bristol Virginia Utilities, Mr. Walt Bressler stated that the Board Members are notified a month in advance of a meeting and that it is unlikely that more than one Board Member would be absent from any of the meetings.

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: October 27, 2009

Adopted: October 27, 2009

Vice Mayor Sprouse made the motion to adopt an Ordinance asking the General Assembly of Virginia to convert Bristol Virginia Utilities to an Authority. Motion was seconded by Council Member Bowman and carried by the following votes:

AYES: Bowman, Sprouse and Rector

NAYS: Heaney and Odum

Mayor Rector stated that an item needed to be added to the agenda to request that the General Assembly approve the addition of a ninth (9<sup>th</sup>) member, consisting of a City Council Member, to the BVU Authority Board.

Vice Mayor Sprouse made the motion to add item number 8a to the agenda, to consider a request for the General Assembly to approve the addition of a ninth (9<sup>th</sup>) member, consisting of a City Council Member, to the BVU Authority Board. Motion was seconded by Council Member Bowman and carried by the following votes:

AYES: Bowman, Heaney, Odum, Sprouse and Rector

8a. Consider Submitting a Request to the General Assembly to Approve the Addition of a Ninth Member, Consisting of a City Council Member, to the BVU Authority Board

Vice Mayor Sprouse made the motion to approve submitting a request to the General Assembly to approve the addition of a ninth (9<sup>th</sup>) member, consisting of a City Council Member, to the BVU Authority Board. Motion was seconded by Council Member Bowman and carried by the following votes:

AYES: Bowman, Heaney, Odum, Sprouse and Rector

9. Adjournment

There being no further business, the meeting was adjourned.

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City Clerk

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Mayor