

Approved Minutes

**ELKINS COMMON COUNCIL
REGULAR COUNCIL MEETING
MINUTES**

***401 Davis Avenue
Council Chamber, 2nd Floor
October 18, 2012
7:00 p.m.***

Elkins Common Council met in regular session in the council chamber of city hall at 7:00 p.m. Thursday, October 18, 2012. Present were Mayor Duke Talbott; Councilpersons: J. S. Bibey, N. E. Bross-Fregonara, V. T. Broughton, M. D. Cuonzo, T. Z. Hensil, C. G. Kinnison, C. L. Metheny, J. J. Sabatino, M. D. Scott, and R. A. Woolwine; Operations Manager R.P. Pingley; Treasurer L. D. Daniels-Smith; Police Chief Captain H. R. White, Jr.; Fire Chief T. W. Meader; City Clerk S.R. Stokes; City Attorney G. S. Roberts; and Inter-Mountain Reporter Anthony Gaynor.

AGENDA ADJUSTMENTS

- a. Selection of firm to perform annual audit.
- b. Travel request for Brandon Tice to attend vehicle search training in Streetsboro, Ohio, October 29-30.

PUBLIC COMMENT

There was none.

EMPLOYEE RECOGNITION

Cw. Cuonzo, chair of the Personnel Committee, recognized Accounting Clerk Tracy Fox as Employee of the Quarter.

INFORMATIONAL PRESENTATION

Karen Carper, the director of Elkins ON TRAC/Main Street, gave a presentation on that organization's completed and planned activities for 2012, including the Spring Clean Sweep, Mountains Beckon Bicycle Parade and Street Fair, Rack Card Co-op (through which area business could each obtain 5,000 marketing rack cards for \$300), Artists Gather Street Fair, Building Blocks for Business seminars, First Friday downtown events, History Lives open houses, placement of benches downtown, Downtown Trick or Treat, the Taste of Christmas (a collaboration with local businesses welcoming the Polar Express), the Holiday Open House, and the weekly Community Circles. ON TRAC/Main Street has exceeded its 2012 fundraising goal

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of \$10,000. Next steps for the organization include achieving incorporation, tax-exempt status, and, by 2014, recognition for Elkins as a Main Street community.

CONSENT CALENDAR

Cm. Metheny, seconded by Cm. Broughton, **MOVED THAT COUNCIL APPROVE THE MINUTES OF THE MEETING OF SEPTEMBER 20, 2012.** The motion carried.

UNFINISHED BUSINESS

There was none.

NEW BUSINESS

Cm. Metheny, seconded by Cw. Cuonzo, **MOVED THAT COUNCIL CALL THE 2013 MUNICIPAL ELECTION AND MAKE PUBLIC THE FOLLOWING INFORMATION BY BOTH POSTING IT IN THE LOBBY OF CITY HALL AND, WITHIN FIVE DAYS, BY PUBLISHING IT IN THE INTER-MOUNTAIN NEWSPAPER.** The motion carried with no “no” votes.

“The 2013 municipal election will be March 5, 2013. On that date, a mayor will be elected for a two-year term, and one council member from each of the five wards of the city will be elected for four-year terms. Any citizen eligible to hold office and desiring to appear on the ballot must file a *Certificate of Announcement of Candidacy* (W.V. S.O.S. Official Form C-1 MUNI) accompanied by the appropriate filing fee. The fee for mayoral candidates is \$50; the fee for council candidates is \$25.

“The filing period will commence at 9 a.m. Monday, November 5, 2012 and continue until midnight of Friday, November 23, 2012. Certificates of announcement may be filed at city hall with the Elkins city clerk during normal weekday business hours. A filing may be made by mail; however, the U. S. Postal Service postmark on the envelope must be no later than midnight of the last day of the filing period, and the proper filing fee must accompany the certificate of announcement. Questions may be directed to the Elkins city clerk: (304) 636-1414.”

Cm. Metheny, seconded by Cm. Scott, **MOVED THAT COUNCIL RECONSIDER THE MOTION CALLING THE 2013 MUNICIPAL ELECTION.** The motion to reconsider carried. The original motion to call the 2013 municipal election now being before the body again, Cm. Hensil, seconded by Cm. Sabatino, **MOVED TO AMEND THAT MOTION TO REFLECT THAT NOT ONE BUT TWO COUNCIL MEMBERS WILL BE ELECTED FROM WARD 5.** (The reason for this is that Cm. Sabatino was appointed to fill a vacancy caused by resignation; even though the council member that Cm. Sabatino replaced would not have faced reelection until 2015, city code and the West Virginia constitution mandate that appointments stand only until the next general election.) The motion to amend carried. The amended motion carried. (The changed language resulting from the amendment is underlined below.)

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“The 2013 municipal election will be March 5, 2013. On that date, a mayor will be elected for a two-year term; one council member from each of wards 1, 2, 3, and 4 will be elected for four-year terms; and two council members from ward 5 will be elected, one for a two-year term and one for a four-year term. Any citizen eligible to hold office and desiring to appear on the ballot must file a *Certificate of Announcement of Candidacy* (W.V. S.O.S. Official Form C-1 MUNI) accompanied by the appropriate filing fee. The fee for mayoral candidates is \$50; the fee for council candidates is \$25.

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Cm. Woolwine, seconded by Cm. Scott, **MOVED THAT COUNCIL ADOPT RESOLUTION 390, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH PERRY AND ASSOCIATES, CPAs, A.C. TO PERFORM THE CITY’S ANNUAL AUDIT.** Treasurer Daniels-Smith explained that the governing body-appointed Audit Committee, consisting of herself, Cm. Woolwine, and Cm. Scott, had examined RFP responses from six firms before selecting Perry and Associates. The motion carried.

Cm. Scott, seconded by Cw. Bross-Fregonara, **MOVED THAT COUNCIL APPROVE ORDINANCE 160, REQUIRING CERTAIN CLASSES OF STRUCTURES TO BE EQUIPPED WITH KEY BOXES ALLOWING FIRE DEPARTMENT ENTRY, ON FIRST READING.** The motion carried.

Cw. Cuonzo, seconded by Cm. Broughton, **MOVED THAT COUNCIL ADOPT RESOLUTION 386, IMPLEMENTING A LEAVE-DONATION PROGRAM AND AMENDING THE TEXT OF THE PREVIOUSLY ADOPTED CITY OF ELKINS PERSONNEL MANUAL TO REFLECT SAME.** The motion carried.

Cm. Bibey, seconded by Cm. Metheny, **MOVED THAT COUNCIL ADOPT RESOLUTION 387, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH THE U.S. DEPARTMENT OF AGRICULTURE FOR MANAGEMENT OF FERAL PIGEONS.** The motion carried.

Cm. Hensil, seconded by Cm. Sabatino, **MOVED THAT COUNCIL ADOPT RESOLUTION 388, AUTHORIZING PAYMENT OF INVOICES FROM EXTERNAL VENDORS RELATED TO THE WATER SYSTEM IMPROVEMENT PROJECT.** The motion carried.

Cm. Metheny, seconded by Cm. Broughton, **MOVED THAT COUNCIL ADOPT RESOLUTION 389, AUTHORIZING PAYMENT OF AN INVOICE FROM THE CITY OF ELKINS RELATED TO THE WATER SYSTEM IMPROVEMENT PROJECT.** The motion carried.

Cm. Bross-Fregonara, seconded by Cm. Metheny, **MOVED THAT COUNCIL REAPPOINT JUDY GUYE SWANSON TO THE RANDOLPH-ELKINS BOARD OF HEALTH.** The motion carried.

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Council next considered two past ordinances for which no complete (i.e., both duly signed and attested) copies can be located, Ordinance 99-05, vacating and abandoning two alleys near Weese Street, and Ordinance 047, amending limited video lottery rules. (The city clerk's "Unsigned Ordinances" memo of September 5, 2012 has been appended to these minutes for background information on the issue of unsigned ordinances).

Ordinance 99-05: Although council meeting minutes can be used to verify at least the passage of some unsigned ordinances (if not the precise wording), the problem with Ordinance 99-05 is that the minutes for the meeting at which it would have received its second reading (March 18, 1999) are missing from the record book. City Attorney Roberts reported that she had been unable locate any record at the county clerk's office properly recording this abandonment, raising doubt as to whether the city had in fact completed all necessary steps in the abandonment process. Some council members proposed that the city might simply rescind the abandonment and then reconsider the issue if necessary at a later date. However, City Clerk Stokes reported that he had identified a 2011 real estate transaction that treated at least a portion of one of the alleys in question as abandoned (a June 22, 2011 transaction between Deborah M. Carr Huffman and Pauline K. Mams, recorded in the county clerk's office in Deed Book 546, page 633.) In light of this, the city attorney suggested that council might pass a new ordinance conceptually similar to a corrective real-estate deed, affirming that the weight of the evidence suggests that the 1999 council did in fact intend to abandon those alleys and that the city considers those alleys abandoned today. Cm. Hensil, seconded by Cm. Scott, **MOVED THAT COUNCIL DIRECT THE CITY ATTORNEY TO PREPARE AN ORDINANCE APPROVING ORDINANCE 99-05, WITH A SURVEYOR'S PLAT ATTACHED SHOWING PRECISELY THE ALLEYS IN QUESTION.** The motion carried.

Ordinance 047: Although council meeting minutes can be used to verify passage of Ordinance 047 on first reading, the minutes from the meeting at which it received its second reading (the meeting of August 17, 2006) record only the *motion* to approve the ordinance; there is no affirmative statement that "the motion carried." Although all indications are that this was simply an oversight, City Clerk Stokes explained that, as a result of that oversight, he cannot attest that the minutes show that the ordinance in question was in fact passed on second and final reading. Through discussion, council reached a consensus that the city attorney should determine who among the council's current membership was also on council at the time of and in attendance at the meeting of August 17, 2006 and draw up an affidavit for them to sign affirming (1) their attendance at that meeting and (2) that they recall Ordinance 047 passing on second and final reading then.

Cw. Bross-Fregonara, seconded by Cw. Cuonzo, **MOVED THAT COUNCIL APPROVE THE MAYOR'S NOMINATIONS FOR THE CITY'S PLANNING COMMISSION.** At a previous meeting, council reached a consensus that the commission as it then stood should be disbanded and a new slate of members appointed. The motion carried. Council next reached a consensus that the new members should commence their terms as if they were the first selectees for a newly created planning commission, as described in West Virginia Code Section 8A-2-3(g): "The remaining members of the municipal planning commission first selected shall serve respectively for terms

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of one year, two years, and three years, divided equally or as nearly equally as possible between these terms. Thereafter, all members shall serve three-year terms.” Council also agreed through discussion that the new members should devise for themselves some agreeable method of apportioning the various term lengths, such as by drawing lots at their first meeting. The new membership of the planning commission is as follows:

Randall Biller, 104 Maple Ln.	Carol Schuler, 41 High Street
Jerry Corley, 100 Washington Ave.	Greg Schumacher, 110 Vector Ave.
Alice Gervais-Sabatino, 405 Kerens Ave.	Nanci Bross-Fregonara (council rep.)
Judy Guye Swanson, 107 Sylvester Dr.	Duke Talbott (administrative officer)
William King, 103 Elm Street	

Cm. Sabatino, seconded by Cm. Broughton, **MOVED THAT COUNCIL APPROVE A TRAVEL REQUEST FOR MELISSA STALNAKER, DAVID CRAWFORD, AND THOMAS PRITT TO ATTEND MANDATORY WEST VIRGINIA MUNICIPAL LEAGUE MUNICIPAL COURT TRAINING IN CHARLESTON, NOVEMBER 1-2.** The motion carried.

Cm. Scott, seconded by Cm. Broughton, **MOVED THAT COUNCIL APPROVE A TRAVEL REQUEST FOR BRANDON TICE TO ATTEND VEHICLE SEARCH TRAINING IN STREETSBORO, OHIO, OCTOBER 29-30.** The motion carried.

Council next considered four requests to use or close city streets for special events, all of which had been recommended for approval by the appropriate administrative officers and the Street Committee per the city’s Events Protocol.

Cm. Sabatino, seconded by Cm. Broughton, **MOVED THAT COUNCIL APPROVE A REQUEST FROM ON TRAC/MAIN STREET TO OFFER TRACTOR-PULLED HAY WAGON RIDES THROUGH CITY STREETS ON SUNDAYS DURING THE POLAR EXPRESS, NOVEMBER 11, 18, AND 25 AND DECEMBER 2 AND 9, 4-8 P.M.** The motion carried.

Cw. Bross-Fregonara, seconded by Cm. Broughton, **MOVED THAT COUNCIL APPROVE A REQUEST FROM ELKINS MIDDLE SCHOOL TO HOLD A RUN/WALK ON OCTOBER 20, 8-11 A.M.** The motion carried.

Cm. Scott, seconded by Cw. Cuonzo, **MOVED THAT COUNCIL APPROVE A REQUEST FROM THE ELKINS CHURCH OF GOD TO HOLD ITS HALLELUJAH HARVEST EVENT ON OCTOBER 31, 6-8 P.M.** The motion carried.

Cw. Cuonzo, seconded by Cm. Kinnison, **MOVED THAT COUNCIL APPROVE A REQUEST FROM THE ELKINS-RANDOLPH COUNTY CHAMBER OF COMMERCE TO HOLD ITS CHRISTMAS PARADE ON NOVEMBER 30, 6-8:30 P.M.** The motion carried.

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Cm. Woolwine, seconded by Cm. Broughton, **MOVED THAT COUNCIL APPROVE THE INVOICES PRESENTED.** The motion carried.

COMMITTEE REPORTS**Building Committee**

Cm. Sabatino reported that the Building Committee had approved the following building permits since the previous regular council meeting. Cm. Sabatino also announced that the committee will now be meeting with the building inspector every Monday to streamline the process of issuing building permits.

APPROVED BUILDING PERMITS				
Permit	Applicant	Location	Description	Value
1131	Tacy Properties LLC	409 Kerns Ave.	Replace decking boards on front and back porch, corner posts on rear porch	\$6,100
1132	MPL Properties LLC	111 & 113 Graham Street	Asbestos abatement	\$1,450
1133	Dale, Glen	100 Grant St.	Repair roof, ceiling and cabinets	\$11,000
1134	Hensil, Thomas	605 West Main St.	Re-roof	\$5,200
1135	Ricottilli, Carlo	200 David St.	Remodel duplex-interior, metal roof and vinyl siding	\$30,000
1136	Wilmoth, Linda	112 White Oak Lane	Remodel bathroom and replace post on porch	\$6,000
1137	Currence, Jacob Brian Jr.	610 West Main St.	Replace shingles	\$6,300
1138	Burge, Stephanie	114 Evans Dr.	Replace front door, and storm door	\$800
1139	Elkins Fire Dept.	14 River Street	Asbestos abatement	\$1,000
Demo 4-12	Elkins Fire Dept.	14 River Street	Demolition	\$0
1140	Kump, Kerr	4 Kerns Hill	450 sq. Ft. Sun porch	\$45,000
1141	Mountain Valley Bank	317 Davis Ave	Install new soffit and fascia	\$1,300
1142	Harman, Rita	100 Ferndale Ave.	Interior remodel (bath & kitchen electric & plumbing)	\$1,050

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APPROVED BUILDING PERMITS				
Permit	Applicant	Location	Description	Value
1143	Hackman, Becky (Smith Apartments)	214 1/2 Third St. Apt. 4	Renovation	\$10,000
1144	Elkin's Housing Authority	Stoddard Ave	Remodel four kitchens	\$51,918
1145	Canfield, Becky	10 Second St.	Shingles, soffit and fascia	\$25,000
1146	Desbrow, Sandra	95 Elm St.	Metal roof, new soffit and fascia	\$30,000
1147	Knutti, Emil	132 Guy Street	Replace deck, construct roof and replace window	\$1,800
1148	Urban, Kim & Ryan	929 S Kerns Ave.	Remodel bedroom and install new HVAC	\$12,000
1149	Hazlett, Lee & Amelia	189 Summit St.	Metal roof and dining room floor	\$10,000
1150	Osborne, Matthew	118 Elm St.	Interior dewatering system with sump pump	\$10,272
1151	Kniffen, Andrew	314 Davis Ave	Repointing brick	\$12,000
1152	Hutton, Cody	500 Center Street	Replace front porch	\$6,500
1153	Randolph Co. Senior Center	422 Railroad Ave.	1749 sq ft modular office building	\$100,000

Sanitation and Landfill Committee

No report.

Water Committee

No report.

Parks Committee

Cm. Broughton reported that the Glendale restrooms project is about fifty percent complete.

Finance Committee

No report.

Street Committee

No report.

Rules and Ordinances Committee

Cm. Scott updated council concerning the recodification process and actions that have been taken regarding the city's vacant structures. The committee recommended and the mayor's office implemented a newspaper advertisement advising residents of the illegality of parking on

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sidewalks, whether paved or not. Cm. Scott will be transmitting a draft of the committee's proposed protocol for council meetings to all members for comment.

Municipal Property Committee

No report.

Personnel Committee

No report.

Public Safety Committee

No report.

ADMINISTRATIVE OFFICER REPORTS

Operations Manager

Operations Manager Pingley thanked council for approving the leave-donation policy.

He reported on cleanup activities after the Mountain State Forest Festival. The street and sanitation departments removed a total of 21.2 tons of trash, which incurred \$1,420 in dump fees. This volume was down from previous years, such as 2010, when the city transported more than 30 tons of Forest Festival trash.

Leaf pickup has begun.

Water Treatment Plant Supervisor Bob Johnson is retiring after about 30 years with the city. Wes Lambert is now both the supervisor and the chief operator.

The Water Department has started its flushing program and will work at night to minimize complaints about rusty water; a laundry stain removal product called Red-b-Gone will be available free to residents who request it. Some of the city's four-inch pipes do not have hydrants near their terminal points and so cannot be fully flushed. Although black hydrants are no longer used by the fire department, they can be used for flushing.

At the Wastewater Collection and Transmission Department, LeeRoy Whitmire has been replaced by Mike Currence, formerly the combined sewer overflow (CSO) technician. An opening is being announced for a new CSO technician.

Treasurer

Treasurer Daniels-Smith reported that three members of her department attended free training on Microsoft Excel software provided by the West Virginia Treasurer's Office. City personnel who received state purchasing cards ("P-cards") will be trained October 30-31.

Police Chief

Captain White reported that Patrolman Boatwright has started work after graduating from the state police academy and is doing well so far. Another potential recruit is about to undergo

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psychological testing; the department might need to request another round of entry-level testing soon.

The department's new canine unit should be in operation by the end of November. A cruiser has been purchased for use by the dog and its handler, Corporal Cross, who will begin a three-week course of training with the dog on Monday, October 22.

Fire Chief

No report.

MAYOR'S COMMENTS

Randolph-Elkins Health Department Survey

Mayor Talbott advised council members that they would soon be receiving a survey from the Randolph-Elkins Health Department and encouraged them to complete it. The deadline is November 2.

Bicycles for West Virginia Children's Home

The mayor explained that the West Virginia Children's Home is always in desperate need of bicycles. Discussion with council reached the consensus that the city attorney should prepare a resolution directing the police department to donate unclaimed bicycles to the home.

OTHER BUSINESS

No other business.

The meeting adjourned at 9:08 p.m.

Duke Talbott, Mayor

Date

Attest:

Sutton R. Stokes, City Clerk

Date

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MEMORANDUM

TO: Mayor Duke Talbott
Cm. Mark Scott, Chair, Rules & Ordinances Committee
Cw. Nanci Bross-Fregonara
Cm. Charles Kinnison

FROM: Sutton Stokes, Elkins City Clerk

RE: Unsigned Ordinances

DATE: September 5, 2012

During the years 1998-2008, numerous ordinances were entered into Ordinance Book 4 despite lacking the signatures of the mayor, the clerk, or both.

There are two categories of ordinances lacking signatures in Ordinance Book 4:

1. Ordinances that, although unsigned in the record book, exist in signed copies in external files.
2. Ordinances for which no fully signed/attested copy can be located.

As of this morning, I have completed taking all actions available to me to resolve these problems, as described below.

Category 1 (above) consisted of approximately 90 ordinances. Because it proved impractical to insert this number of additional pages into the record book, I have compiled the signed copies in a three-ring binder called "Signed Ordinances: Supplement to Record Book 4." Then, in Ordinance Book 4, I have labeled all such ordinances with the following note:

"Signed/attested copy held in "Signed Ordinances" book."

Category 2 consisted of approximately 20 ordinances. In the case of these ordinances, I examined minutes to verify that (1) an ordinance by the title in question was duly approved by council and (2) that any changes shown as adopted in the minutes were reflected in the text in Ordinance Book 4. (The latter condition applied to only one ordinance, 98-08, which had been entered incorrectly in the record book. I made pen and ink changes to that text in accordance with the minutes.) Then, for each ordinance in Category 2 that satisfied the above conditions, I signed, sealed, and affixed the following label in Ordinance Book 4:

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I, Sutton R. Stokes, City Clerk for the City of Elkins, a West Virginia municipal corporation, certify that the minutes of the Elkins Common Council indicate approval of an ordinance by this title on the dates shown. I also certify that, if applicable, the text of this ordinance has been updated to include any amendments recorded as approved in said minutes.

Given under my hand and seal this 4th day of September, 2012.

Sutton R. Stokes, City Clerk

Finally, I am unable to certify passage of the following ordinances, for the reasons given.

- Ordinance 98-06, modifying fines for nonmoving vehicular violations, is missing in its entirety, although we have located a list of fines that seems to have been its attachment. In addition, minutes reflect that this ordinance, although “passed on second and final reading” at the meeting of August 6, 1998, never received its first reading. (The city attorney was only directed to prepare such an ordinance at the meeting of July 16, 1998, which would have been the meeting immediately preceding the meeting of August 6, 1998.) However, it should be noted that fines for nonmoving vehicular violations have been changed since then, by simple motion at the meeting of June 23, 2011 (although the changed amounts are not reflected in the minutes of that meeting or otherwise recorded in any official record known to me).
- Ordinance 99-5, concerning the abandonment of two alleys near Weese Street, was to have received its final reading on March 18, 1999. However, the minutes of that meeting are missing from the minutes record book and pre-date electronic records held by the clerk’s office. Minutes of subsequent months’ meetings do not reflect passage on another date.
- The minutes of the meeting of August 17, 2006 reflect a seconded motion to pass Ordinance 047, amending the limited video lottery regulations, on second and final reading. However, the minutes do not reflect that the motion carried. This is almost certainly a typographical error, as the previous clerk’s practice was to record not only actions taken but also detailed descriptions of discussions held during council meetings. Therefore, if there had been discussion and defeat of this measure, the minutes would almost certainly have reflected this. Nonetheless, I cannot certify that our records reflect council’s approval of Ordinance 047.

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cc: Geraldine Roberts, City Attorney
Lucinda Barrick, Mayor’s Executive Secretary