

MINUTES
TOWN COUNCIL
TOWN OF SHENANDOAH
SPECIAL MEETING

JANUARY 6, 2011

CALL TO ORDER: The Shenandoah Town Council held its regular meeting on Thursday, January 6, 2011, at 11:00 a.m., with Mayor Clinton O. Lucas, Jr., presiding.

The meeting began with the Pledge of Allegiance.

ATTENDANCE: Council Members present were: Mayor Clinton O. Lucas, Jr.; Russell Comer, Jr.; Charles Jenkins; Richard Pierce; and Keith Sampson.

Council Members absent were: Vice Mayor William L. Kite and Councilman I. Michael Lowe.

Other Town Officials present were: Larry E. Dovel, Town Manager; Steven M. Blatt, Town Attorney; and Juanita F. Roudabush, Assistant Town Manager/MMC.

Citizens present were: Scott Beatson of North American Phillips Company; Patrick Racey and David Atwood of Racey Engineering.

Media Representatives: Ted Hayes, The Valley Banner.

SPECIAL MEETING

Mayor Lucas stated this special meeting was called for the purpose of discussing possible

condemnation of the gap in property lines or other alternatives for easements to install the water line to serve residents along Shenandoah River Road. He noted this project is being fully funded by North American Phillips Company. He reported the Town Council previously discussed and voted on this issue at their December 14, 2010, Town Council meeting following their receipt of Town Attorney Blatt's recommendation. Mr. Blatt had recommended Council accept the boundary line agreement and require it be insured by a title insurance company, which should provide insurance against any future Town liability. However, Council had several concerns regarding this issue and opted to have Town Attorney Blatt begin condemnation proceedings to avoid any future litigation in this matter. He noted since Council voted to begin the condemnation proceedings for the gap between the property lines, there are further explanations to be heard and Council will then determine if a change in the vote is needed or if they desire to stay with their vote of December 14, 2010.

Scott Beatson stated North American Phillips goal is to install a water line along Shenandoah River Road as soon as possible. He noted he hopes Town Attorney Blatt will be able to provide a more in depth explanation of any potential risks to the Town for the gap in the property lines.

Patrick Racey stated he agreed with Town Attorney Blatt's recommendation to accept the boundary line agreement and allow it to be covered by the title insurance company.

Town Attorney Steven Blatt reported the issue arose when the surveys were being completed for the utility line easements. He noted they found there was a gap in the ownership of the property, where the records and on-site surveys indicated the properties did not join each other, but contained a small gap in between them. He explained Attorney Dean Mack Nichols is working with North American Phillips on this project and provided information regarding property ownership in this area. Mr. Blatt then tried to conduct a title search, but was unable to determine a common owner going back to 1831, due to the lack of available deed records. He noted the southern portion of Page County, which includes the Town of Shenandoah, was formed partially from land originally in Rockingham County. Many of Rockingham County deed records were destroyed in the civil war and Page County does not have the records available either, which makes a completely accurate title search impossible in this case.

Mr. Blatt then explained the risk to the Town is very minimal for any presently unknown persons to come forward and claim ownership of this small gap of land. In practical terms, a person would spend far more in legal expense than what this very small portion of property would be worth. Therefore, this is the reason he recommended the Town accept the boundary line agreement with insurance through the title company. He noted if the Town were to go this route now and in the future, by some remote possibility, an heir claims ownership of this very small

portion of property, the Town could begin condemnation proceedings (at the expense of the title insurance company) and win easily because having a potable water to serve the residents along this road is for the good of the community.

Councilman Jenkins inquired how long it takes to complete a condemnation proceeding?

Mr. Blatt stated the process normally takes 60 to 90 days before it is finalized. He noted the Town is not planning to own this property, but rather merely use it for this water line easement. He explained after a period of time, the Town will have a public prescriptive right to the easement and there would be no recourse for any objections to it then.

If an heir would ever come forward in the future, Councilman Comer inquired if there could possibly be any charges for trespass on this piece of property?

Mr. Blatt stated that would come under a civil action and the person would have to prove how a water line "damaged" their property and what the value of this small piece of land would be. The land is less than nine (9) feet wide in some areas.

Councilman Comer reported there is a real possibility sewer lines may extend across the road from the houses to septic tanks in this area. He then inquired how it would be handled if a property owner did not want to sign the easement or if the installation of the water line damaged a sewer pipeline owned by one of the known property owners?

Mr. Blatt stated if a person would not sign the easement agreement, then the Town would have no choice but to begin condemnation proceedings to provide safe drinking water to these residents who have contaminated wells.

Mr. Racey noted if any damages occur during the installation of the water line, then the contractor would be required to repair them and abide by the sewer easement agreement. He noted if it involved a septic system, then the health department regulations would take affect as well, and all other agency requirements would have to be met.

In order for a contractor to work in optimal conditions, Mr. Racey stated they hope to have everything ready to go to bid in March and finish the project by late summer. He noted all the information regarding possible septic lines, etc. will be presented to the contractors who may bid on it.

Following the brief discussion, Councilman Pierce indicated he now felt secure enough to change from condemnation to just accepting the boundary line agreement and going with the title insurance company.

Councilmen Comer, Jenkins, and Sampson agreed the full explanation of today was adequate enough to allow them to reverse the December 14th decision for condemnation. Each acknowledging this is especially true since they learned the Town would be fully protected in this matter and could ask for condemnation in the future if needed.

Therefore, a Motion was made by Councilman Jenkins, seconded by Councilman Comer, to rescind the motion from the December 14, 2010, Council meeting to begin condemnation proceedings for the gap in the property lines for the water line on Shenandoah River Road.

Members Roll Call Vote was as follows:

YEA: Councilman Comer NAY: None.
 Councilman Jenkins
 Councilman Pierce
 Councilman Sampson

ABSTAIN: Mayor Lucas.

ABSENT: Vice Mayor Kite and Councilman Lowe

VOTE: Unanimous in favor of motion.

A Motion was made by Councilman Jenkins, seconded by Councilman Comer, to accept the boundary line agreement and the title insurance policy, all paid for by North American Phillips Company, to expressly and affirmatively insure the trespass, taking and condemnation risks, that may be associated with the known property gap to install a water line along Shenandoah River Road to serve residents whose wells have tested positive for TCE, with the entire project being paid for North American Phillips Company.

Members Roll Call Vote was as follows:

YEA: Councilman Comer NAY: None.
 Councilman Jenkins
 Councilman Pierce
 Councilman Sampson

ABSTAIN: Mayor Lucas.

ABSENT: Vice Mayor Kite and Councilman Lowe

VOTE: Unanimous in favor of motion.

ADJOURN

There being no further discussions, a Motion was made by Councilman Sampson, seconded by Councilman Jenkins, to adjourn the meeting at 11:39 a.m.

Members Vote was as follows:

YEA: Councilman Comer NAY: None.
 Councilman Jenkins
 Councilman Pierce
 Councilman Sampson

ABSTAIN: Mayor Lucas.

ABSENT: Vice Mayor Kite and Councilman Lowe

VOTE: Unanimous in favor of motion.

APPROVED: ATTESTED:

Clinton O. Lucas, Jr., Mayor Juanita Roudabush, MMC