

STATE OF WEST VIRGINIA, COUNTY OF UPSHUR, CITY OF BUCKHANNON, TO WIT:

A special meeting of the Buckhannon City Council was held on Thursday, January 27, 2022 at 9:00am in City Hall. The following were in attendance (GTM – GoToMeeting):

Mayor	Robbie Skinner	Absent
City Recorder	Randy Sanders	Present
Council Member	Pam Bucklew	Absent
Council Member	Shelia Lewis-Sines	Present
Council Member	Jack Reger	Present-by phone
Council Member	CJ Rylands	Present
Council Member	David Thomas	Absent
Assistant Recorder & Director of Finance	Amberle Jenkins	Present
City Attorney	Tom O'Neill	Present-by phone
MyBuckhannon.com	Beth Broschart	Present

To participate in a City Council meeting participants were invited to contact us at 304-472-1651 for the GoToMeeting link/access.

***Special Meeting of City Council of Buckhannon
9:00 A.M. in Council Chambers
Meeting Agenda for Thursday, January 27, 2022***

A. Call to Order

- A.1 Moment of Silence**
- A.2 Pledge to the Flag of the United States of America**

B. Strategic Issues for Discussion and/or Vote

- B.1 Approval Ordinance No. 455 Authorizing the Purchase of 61 E Main Street Property 2nd/Final Reading**
- B.2 Approval of Purchase Agreement with the Property Owner of 10 E. Lincoln Street To Purchase a 43'x58' Section Located in the Rear of Property for \$10,000.00**

C. Comments and Announcements

- C.1 Pamela Bucklew**
- C.2 C J Rylands**
- C.3 David Thomas**
- C.4 Jack Reger**
- C.5 Shelia Lewis-Sines**
- C.6 Randall Sanders**

D. Mayor's Comments and Announcements

E. Adjournment

POSTED 01/21/2022

A. Call to Order: Recorder Sanders called the meeting to order lead by a moment of silence and pledge to the flag.

B. Strategic Issues for Discussion and/or Vote:

B.1 Approval Ordinance No. 455 Authorizing the Purchase of 61 E Main Street Property 2nd and Final Reading:

City Attorney O'Neill read the ordinance by title:

ORDINANCE NO. 455 OF THE CITY OF BUCKHANNON, AN ORDINANCE APPROVING THE PURCHASE OF ALL OF THAT LOT OR PARCEL OF LAND, AND ALL THE BUILDINGS AND APPURTENANCES THEREUPON AND THEREUNTO BELONGING, SITUATED FRONTING ON THE SOUTH SIDE OF EAST MAIN STREET, WITH A COMMONLY KNOWN ADDRESS OF 61 EAST MAIN STREET, PRESENTLY TITLED IN THE NAME OF CATHERINE CUPPARI, AND SPECIFICALLY AUTHORIZING THE NET EXPENDITURE OF \$150,000 OF MUNICIPAL FUNDS FOR SAID PURCHASE

WHEREAS, the Council of the City of Buckhannon has determined that the Central Commercial Business District is an area deserving of particular attention as the City strives to develop and maintain a thriving central downtown core and Jawbone Park area; and,

WHEREAS, the Council of the City of Buckhannon has determined that the expansion and enhancement of the City's STOCKERT YOUTH AND COMMUNITY CENTER is an important part of providing municipal services to residents of the City of Buckhannon, and a key component of enhancing a growing and active downtown commercial core; and,

WHEREAS, the captioned property is located adjacent to the aforesaid STOCKERT YOUTH AND COMMUNITY CENTER and is identified as the location upon which a planned expansion of the Center's physical plant will be constructed; and,

WHEREAS, the Council has determined that the acquisition of the captioned property, being situate at 61 East Main Street, and described upon the real property tax rolls of Corporation District, Upshur County, West Virginia as Map 4, Parcels 361 & 363, will further accomplish the Council's municipal purpose of promoting the enhancing the offerings of the Stockert Youth and Community Center as well as the Central Commercial Business District; and,

WHEREAS, the captioned property has been offered for sale to The City of Buckhannon by its present owner, who has agreed to grant and convey said property to the City for the sum of One Hundred Fifty Thousand Dollars (\$150,000.00); and,

WHEREAS, the real property tax assessment of the captioned property supports and validates its value to be in excess of the purchase price; and,

WHEREAS, the Council now deems the purchase price of One Hundred Fifty Thousand Dollars (\$150,000.00) to be a fair, just and equitable amount for the City to pay for the acquisition of the captioned property; and,

WHEREAS, the City possesses funds to fund this acquisition; and,

WHEREAS, Chapter 8, Article 12, Section 1 of the Code of West Virginia, 1931, as Amended, empowers The City of Buckhannon to purchase real property for any municipal purpose, and Chapter 8, Article 11, Section 3, Subsection (6) of said Code requires that the purchase of private property by a municipality shall be by ordinance; and,

WHEREAS, the Council of The City of Buckhannon desires in all respects to comply with the statutes of the State of West Virginia insofar as the acquisition and purchase of the captioned property is concerned.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF BUCKHANNON, AS FOLLOWS:

ARTICLE I – FINDINGS OF COUNCIL: The Council of the City of Buckhannon hereby makes the following findings:

(1) It is necessary for the expansion of the physical plant and programmatic offerings of the City's Stockert Youth and Community Center to acquire the captioned property, which is located adjacent to the Center;

(2) It is further reasonable and necessary for the development and maintenance of the vibrancy of the Central Commercial Business District, and the development and protection of the Jawbone Park area, as a consequence of the physical and programming expansion of the Stockert Youth and Community Center, that the City of Buckhannon assumes ownership of the captioned property;

(2) The captioned property shall be used for the municipal purpose of the construction and use of an extension of the physical plant of the Stockert Youth and Community Center, the details of which will be determined by the Council upon due deliberation and dialogue with the citizens of the City of Buckhannon and other stakeholders;

(3) The agreed-upon sum of One Hundred Fifty Thousand Dollars represents a fair and reasonable consideration for the captioned property;

(4) The Council of The City of Buckhannon now desires to formally, and in all respects does, approve and endorse the City's acquisition and purchase of the captioned property for the aforesaid purchase money amount; and

(5) The Mayor of the City of Buckhannon, Robert N. Skinner, III, is expressly authorized and empowered to execute, acknowledge, and deliver on behalf of The City of Buckhannon any and all agreements or other documents as may be deemed reasonable or necessary to realize the City's acquisition of the captioned property, and further to accept on the City's behalf the delivery of a good and sufficient deed of conveyance from the said CATHERINE CUPPARI, to evidence the City's purchase and acquisition of the captioned property.

ARTICLE II – EFFECTIVE DATE: This Ordinance shall be deemed effective thirty (30) days following the second (2nd) reading, passage and adoption by the Council of the City of Buckhannon.

FIRST READING	January 20, 2022
SECOND READING, PASSAGE AND ADOPTION	January 27, 2022

Robert N. Skinner, III, Mayor

CERTIFICATE OF PASSAGE AND ENACTMENT

I, Randall H. Sanders, Recorder of the City of Buckhannon, a West Virginia municipal corporation, do hereby certify that the foregoing Ordinance No. 455 was lawfully ordained and enacted by the Council of the City of Buckhannon during a regular meeting of the City Council on January 27, 2022.

Randall H. Sanders, City Recorder

Motion Reger/Sines to Approve the Second and Final reading of Ordinance No. 455. Motion carried.

B.2 Approval of Purchase Agreement with the Property Owners of 10 E Lincoln Street to Purchase a 43' x 58' Section Located in the Rear of Property for \$10,000.00.

City Attorney O'Neill stated that the purchase of the property is subject to bank approval. A survey and appraisal will also need to be completed in order to purchase the lot.

Description of Survey
For
The City of Buckhannon
0.057 Acre Tract

A tract of land situate in the City of Buckhannon, Buckhannon Corporation District, Upshur County, West Virginia, more particularly described as follows:

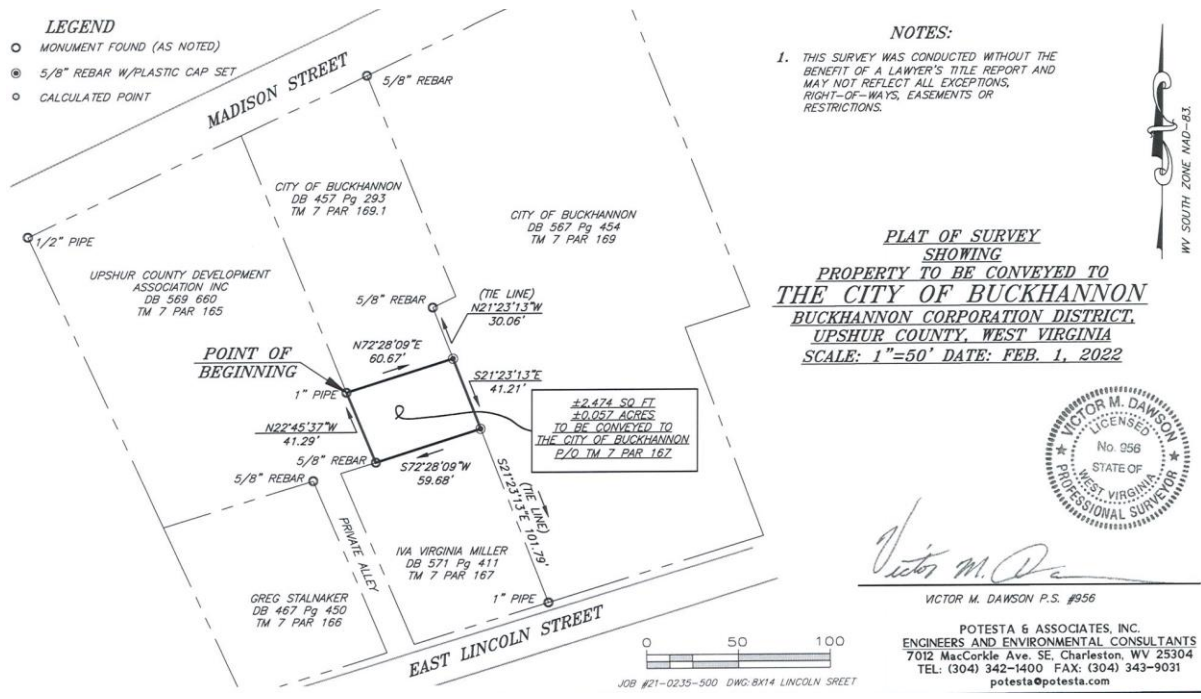
Beginning at a 1 inch pipe found in the line of the Upshur County Development Association Inc., recorded in Deed Book 569 at page 660, at the common division corner between Iva Virginia Miller, recorded in Deed Book 571 at page 411, and the City of Buckhannon, recorded in Deed Book 457 at page 293, thence with the line of said City of Buckhannon

N72°28'09"E, 60.67 feet to a 5/8 inch rebar with plastic cap set in the common division line of another parcel owned by the City of Buckhannon, recorded in Deed Book 567 at page 454, from which a 5/8 inch rebar found bears N21°23'13"W at 30.06 feet, thence running with said division line

S21°23'13"E, 41.21 feet to a 5/8 inch rebar with plastic cap set, from which a 1 inch pipe found on the northern right of way line of East Lincoln Street bears S21°23'13"E at 101.79 feet, thence leaving said City of Buckhannon and running through and across the property of said Iva Virginia Miller, from which this conveyance is a part of

S72°28'09"W, 59.68 feet to a 5/8 inch rebar found at the common corner to said Upshur County Development Association Inc., thence with said Upshur County Development Association Inc

N22°45'37"W, 41.29 feet to the point of beginning, containing 0.057 acres more or less, as shown on a plat of survey by Potesta and Associates, Inc., entitled "PLAT OF SURVEY SHOWING PROPERTY TO BE CONVEYED TO THE CITY OF BUCKHANNON, BUCKHANNON CORPORATION DISTRICT, UPSHUR COUNTY, WEST VIRGINIA, SCALE: 1"=50', DATE: FEB. 1, 2022", said plat is attached hereto and made a part of this description.



THIS AGREEMENT FOR THE SALE AND PURCHASE OF COMMERCIAL REAL ESTATE
 ("Agreement")

is by and between

IVA VIRGINIA MILLER, of Buckhannon, West Virginia
 ("Seller"),

AND

The City of Buckhannon, West Virginia, a municipal corporation ("Purchaser"),

(together, the "Parties")

and is dated this 27th day of January, 2022

WHEREAS:

A. Seller owns a certain parcel of real estate, being a tract with a commonly known address of 10 East Lincoln Street, Buckhannon, West Virginia, and which is identified on the real property tax records of Upshur County, West Virginia as **Corporation District, Map 7, Parcel 167**, together with all improvements thereon and appurtenances thereunto belonging, the real property being described on said tax records as "LOT 76 1/2 FRONT LINCOLN ST" (being the "Subject Property"), and desires to sell the same;

B. Purchaser desires to purchase a portion the Subject Property, described as being a parcel measuring approximately 58.82 feet by 43 feet (approximately 2529.26 square feet), the dimensions thereof to be confirmed by survey;

C. The Purchaser, as a West Virginia municipality, must complete certain steps in order to legally acquire title to the Subject Property, including the adoption of a municipal ordinance. This Agreement is intended to secure to the Purchaser a reasonable opportunity to undertake its required due diligence in furtherance of the acquisition.

NOW, THEREFORE, WITNESSETH, that the Parties do hereby covenant and agree as follows:

1. Seller agrees to sell, and Purchaser agrees to purchase, the Subject Property for the sale price of TEN THOUSAND DOLLARS (\$10,000.00), (the "Purchase Price"), as follows: a) upon execution of this Agreement, the Purchaser shall pay to the Seller the sum of One Thousand Dollars (\$1,000.00) as an earnest money deposit. This deposit shall be credited to the benefit of the Purchaser at the time of closing; and b) at Closing, Purchaser shall tender the remaining balance of Nine Thousand Dollars (\$9,000.00) to the Seller, less any deductions, charges, or debits creditable thereto, in current United States funds.
2. The parties covenant and agree that this Agreement vests the Purchaser with equitable title to the Subject Property, with the intent of the Seller to convey legal title thereto to the Purchaser upon full payment of the Purchase Price at closing.
3. This Agreement shall terminate upon the closing of the Subject Property and transfer of legal title thereof with the delivery of a Warranty Deed as provided for in Paragraph 11, below. Closing shall take place no later than May 31, 2022. Prior to closing, Purchaser shall have the right to inspect, appraise, survey, or otherwise test the Subject Property at its sole discretion, and shall have access to the Subject Property as necessary. Upon request by the Purchaser, the Seller agrees to share a copy of the latest appraisal of the Subject Property.
4. Seller shall maintain a policy or policies of insurance on the Subject Property to protect against fire or other casualty loss during the pendency of this Agreement. If, prior to Closing, a portion of the Subject Property is destroyed by fire or other casualty or is taken or threatened to be taken in condemnation or under the right of eminent domain ("Casualty Loss"), Buyer shall not be obligated to purchase the Subject Property and shall have its earnest money deposit returned. If Buyer elects to purchase, however, the Purchase Price shall be reduced by the estimated cost to repair the Subject Property (with equipment of similar utility), less all insurance proceeds which shall be payable to Buyer, (the reduction being the "Net Casualty Loss"). Seller, at its sole option, may elect to cure such Casualty Loss and, in such event, Seller shall be entitled to all insurance proceeds. If Seller elects to cure such Casualty Loss, Seller will replace any personal property that is the subject of a Casualty Loss with equipment of similar grade and utility or replace any real property with real property of similar nature and kind if such property is acceptable to Buyer in its sole discretion.

5. Purchaser shall take possession of the Subject Property at the time of closing but shall have reasonable access thereto for purposes of preparing for the closing of the transaction contemplated by this Agreement.

6. Purchaser agrees that the Seller has not made, nor makes any representations or warranties as to the condition of the premises, the condition of the buildings, appurtenances and fixtures located thereon, and/or the location of the boundaries. Purchaser accepts the property in its "as-is" condition.

7. **Taxes and Assessments:** Seller shall pay all taxes, levies, or assessments which are or have been assessed or levied against the Subject Property as of the date of closing; however, real estate property taxes shall be prorated between the parties as of the date of closing.

8. **Time is of the Essence:** Time is of the essence in the performance of each and every term and provision in this Agreement by Purchaser.

9. **Default:** If the Purchaser shall fail to perform any of the covenants or conditions contained in this Agreement on or before the date on which the performance is required, the Seller shall give Purchaser notice of default or performance, stating the Purchaser is allowed fourteen (14) days from the date of the Notice to cure the default or performance. In the event the default or failure of performance is not cured within the 14 day time period, this Agreement shall stand cancelled upon written notice delivered by the Seller to the Purchaser, and Seller may retain the earnest money deposit specified above as liquidated damages, with such liquidated damages being the limit of any recovery by the Seller. If the Purchaser terminates this Agreement for reasons of a title or other incurable defect of the Subject Property, including the unwillingness of the Seller's lender to grant a partial release or any deed of trust as to the portion of the Subject Property to be purchased by the Purchaser, the Purchaser shall receive from Seller a refund of its earnest money deposit upon disclosure of the particular defect which justifies its cancellation of this Agreement; otherwise, Purchaser may retain said deposit as liquidated damages.

10. Seller acknowledges that in order to close the transaction contemplated by this Agreement, the Purchaser must, through its City Council, adopt an ordinance authorizing its

purchase of the Subject Property. In the event the Buckhannon City Council does not adopt the necessary ordinance this Agreement shall be voidable by either of the Parties and have no force or effect.

11. Upon payment of the Purchase Price and any other amounts due Seller, Seller will immediately deliver to Purchaser a General Warranty Deed to the Subject Property, free and clear of any liens or encumbrances other than taxes and assessments for the current year. Purchaser's counsel will prepare the instrument of transfer. Should Seller be unable or unwilling to deliver such an instrument, Purchaser may initiate an action in the Circuit Court of Upshur County for specific performance of its obligations under this Agreement. At closing, Seller shall be responsible for the payment of any real estate transfer tax or the costs of recording any documents releasing any liens against the Subject Property which may accrue, and the Parties agree to bear their own respective attorney's fees or associated costs. Purchaser shall be responsible for the costs associated with recordation of the deed.

12. All notices required hereunder shall be deemed to have been made when deposited in the U.S. Mail, postage prepaid, certified, return receipt requested, to the Purchaser or Seller at the addresses listed below. All notices required hereunder may be sent to:

Seller: Iva Virginia Miller
10 East Lincoln Street
Buckhannon, WV 26201

Purchaser: City of Buckhannon, West Virginia
Thomas J. O'Neill, City Attorney
70 East Main Street
Buckhannon, WV 26201

and when mailed, postage prepaid, to said address, shall be binding and conclusively presumed to be served upon said parties respectively.

13. Purchaser shall not sell, assign, transfer or convey any interest in the Subject Property or this Agreement, prior to closing, without first securing the prior written consent of the Seller.

14. This Agreement embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein. All prior or contemporaneous

agreements, understandings, representations, oral or written, are merged into this Agreement.

15. This Agreement shall not be modified or amended except by an instrument in writing signed by all parties.

16. No delay or failure on the part of any party hereto in exercising any right, power or privilege under this Agreement or under any other documents furnished in connection with or pursuant to this Agreement shall impair any such right, power or privilege or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege, or the exercise of any other right, power or privilege. No waiver shall be valid against any party hereto unless made in writing and signed by the party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.

17. If any one or more of the provisions contained in this Agreement shall be held illegal or unenforceable by a court, no other provisions shall be affected by this holding. The parties intend that in the event one or more provisions of this agreement are declared invalid or unenforceable, the remaining provisions shall remain enforceable and this agreement shall be interpreted by a Court in favor of survival of all remaining provisions.

AGREED TO BY THE PARTIES ON THE DATE FIRST ABOVE WRITTEN

Purchaser: City of Buckhannon, West Virginia
a municipal corporation

Seller: Iva Virginia Miller

By: _____
Robert N. Skinner, III
Its: Mayor

[Remainder of page intentionally left blank]

Motion Reger/Rylands to Approve the Execution of the Purchase Agreement, with a survey and appraisal to take place. Motion carried.

Attorney O'Neill stated that an Ordinance will be drafted for City Council to approve prior to purchase of the lot behind 10 E Lincoln Street.

C. Comments and Announcements- None.

D. Mayor's Comments and Announcements-Absent.

E. Adjournment:

Motion Sines/ Rylands to adjourn at 9:05 am. Motion carried.

Mayor Robert N. Skinner III

City Recorder Randall H. Sanders
