

**City Of Martinsburg  
Regular Council Meeting  
November 14, 2013  
The J. Oakley Seibert Council Chambers**

With a quorum present, the regular session of the Martinsburg City Council was called to order by City Attorney Kin Sayre at 6:30 p.m. The following Council Members were present: Don Anderson, Dennis Etherington, Kevin Knowles, Jason Baker, Max Parkinson and Roger Lewis. Not present was Gregg Wachtel Also present were: Mark Baldwin, City Manager, Kin Sayre, Legal Counsel, Gena Long, City Recorder, Chief Paul Bragg, Martinsburg Fire Department, Chief Kevin Miller, Martinsburg Police Department, Steve Knipe, Utilities Director, Jeff Wilkerson, Public Works Director, Mike Covell, City Engineer/Planning Director, Patricia McMillan, Community Development Director and Mark Spickler, Finance Director.

Motion made by Councilman Etherington, seconded by Councilman Parkinson, to appoint Councilman Wachtel to chair the meeting. Motion carried unanimously.

**3. Salute to Flag**

Councilman Etherington led the Salute to the Flag.

**4. Prayer—** Pastor Walter Bowers

Pastor Bowers lead the invocation.

**5. Approve October 10, 2013 Regular Meeting Minutes**

Motion made by Councilman Knowles, seconded by Councilman Etherington, to approve the October 10, 2013 Regular Meeting Minutes. Motion carried unanimously.

**6. Approve September 2013 Administrative and Financial Report.**

Motion made by Councilman Etherington, seconded by Councilmen Parkinson, to approve the September 2013 Administrative and Financial Report. Motion carried unanimously.

**7. Presentations**

**a. Administer Oath of Office to Police Officer Marc Loretta, II**

City Recorder Gena Long administered the oath of office to Police Officer Marc Loretta, II.

**b. Make Comment on ABC Zoning Letter for Lesco Beverage, LLC—DBA Les's Station Grill—127 E. King Street**

Mr. Leslie Hill, Greensburg Road, addressed Council regarding his application.

Councilman Knowles asked what type of clientele Mr. Hill intended to cater to. Mr. Hill replied that he intended to cater to working class customers, the bar will be non-smoking, there will be no machines or live music and there will be an active manager on site.

Councilman Baker asked if the bar will serve families with children during lunch and dinner hours. Mr. Hill replied that he would prefer not to create a family restaurant atmosphere; he likened his vision to an “adult Buffalo Wild Wings.”

By consent of Council, the Zoning letter was forwarded without additional comment.

**c. Make Comment on ABC Zoning Letter for Carib Life, LLC—DBA Escape Lounge and Grill—306 Wilson Street**

Mr. Dewayne Rhone, Surry Court, addressed Council regarding his application.

Councilman Knowles pointed out that this has been a problem location and asked the Police Chief if this application was submitted by all new owners. Police Chief Kevin Miller stated that, to his knowledge, it was.

Mr. Rhone added that he intends to operate the facility as a Caribbean restaurant during the week and offer a light band and drinks on the weekends.

By consent of Council, the Zoning Letter was forwarded without additional comment.

**d. Proclamation—Christian Heritage Week—November 24-30, 2013**

The Proclamation was forwarded to the requestor.

**e. Proclamation—National Hunger and Homeless Awareness Week—November 16-24, 2013**

The City Recorder read the Proclamation, which was then presented to the Community Development Director.

**f. Proclamation—Discover the Arts in MARTinsburg—November 22-24, 2013**

The City Recorder read the Proclamation, which was then presented to the Berkeley Arts Council.

**g. Request for ground lease for a Wireless Telecommunications Facility at the Boston Street Public Works Facility—Mr. Lynn Koerner, Consultant/ Michael E. Hofe, CIG DT Holding, LLC**

Mr. Lynn Keorner, independent consultant representing CIG DT Holding, explained that CIG (Verizon) wishes to construct the proposed tower to increase 4G coverage. Verizon already has space on most other current towers in the local area.

Councilman Lewis was concerned that the tower is to be located in a residential area and may cause "skyline pollution." He advised that CIG seek locations in commercial and industrial areas, as its location in a residential district has potential to be an obstacle for mortgage funding, under certain programs.

Councilman Baker disagreed, stating that the area is near the Public Works building and is not residential. He asked Mr. Koerner to confirm that the tower was not tall enough to require a blinking light, and Mr. Koerner replied that a blinking light should not be required on the proposed monopole.

Councilman Baker asked if the construction would require the demolition of any of the City's facilities. Mr. Koerner stated that it would not and all ingress and egress would be through existing access points. He added that the base would be screened by trees.

Councilman Baker asked about the width of the tower at the top. Mr. Koerner replied that it will be 20-30 inches, depending on what type of tower is needed and the requirements of the City and the consultant.

Councilman Wachtel asked how it will be supported. Mr. Koerner replied that those factors would be determined during the design phase, but he believes it will be a solid foundation with no guy wires.

City Attorney Kin Sayre recommended that Council allow the proposal to be forward to Mr. Richard Comi, the City's consultant, who would conduct a comprehensive and technical study of the proposal, including engineering, and offer recommendations. City Engineer Michael Covell agreed, adding that Mr. Comi of the Center for Municipal Solutions, is contracted to review all cellular telephone tower requests in the City, at the developer's cost.

Councilman Parkinson agreed that there are location concerns and asked that Council make no quick decisions, that the request be forwarded to the Property Committee, Mr. Comi and other appropriate channels.

Councilman Knowles asked if Verizon's access via the Public Works property and around the K9 Training Site would cause operational disruption. Mr. Koerner stated that CIG would be willing to work around City operations. Once the structure is constructed, it needs service once per month and the local technicians can coordinate with Public Works and the Police Department to come at convenient times, as they do with other installations on City owned properties.

Councilman Anderson asked if Public Works Director Jeff Wilkerson had any concerns. Mr. Wilkerson responded that he did not foresee any disruption.

Councilman Anderson asked if there would be fence around the installation. Mr. Koerner replied that, typically, a 6-foot fence with anti-climb wires is installed, but 8-foot fences and anti-climb devices on the tower can be installed when needed.

Motion made by Councilman Knowles, seconded by Councilman Parkinson, to forward the request to the Center for Municipal Solutions and bring the resulting information back to Property Committee for further evaluation. Motion carried unanimously.

Mr. Koerner added that CIG is hesitant to escrow the amount for a full evaluation without some idea on the City's decision to allow the lease of their property, but he would request they begin the process of gathering information.

### **8. Petitions From Citizens**

Mr. James Smith, Good Natured, LLC, addressed Council and presented the following written complaint addressed to Mark Baldwin, City Manager and signed by Pamela S. Smith, Good Natured, LLC:

Mr. Baldwin:

For the last 6 and ½ years, we have operated our store and vegetarian café on Raleigh Street. During that entire period, our largest single supplier UNFI (the largest wholesaler of natural foods in the country), has made delivery to us on the same day of the week, every week, at the same time. Of our many vendors, theirs is the only truck that is large enough that it cannot fit into our driveway and cannot regularly find a large enough space for parking on the street.

I want to stress this: for approximately the last 310 weeks, this truck has been parked on the street in front of our store on the same day of the week, at the same time of day, for the same length of time (usually 15 minutes or so). There have never been any complaints about this to us or the UNFI driver by the Police or our neighbors. Never. If complaints have been registered with the City, these have never been communicated to us or the driver. The few times that a policeman has stopped and talked to the driver, he or she has simply asked the driver how long they were going to be parked there, then drove on with no further comment.

This morning, however, with a great show of force involving three police cars (themselves possibly creating an extra traffic issue) the Martinsburg Police issued the driver a citation, accompanying this with some very forceful speech. When I approached the police, the lead officer with whom I spoke (who was chewing tobacco, if that is any help in identifying him) was quite rude and yelled at me. When I indicated that we had no complaints or problems, he indicated that "his boss" told him there had been a lot of problems. The level of harassment and lack of civility were shocking. There was no attempt at explanation or warning or reason, and no indication of the reason for the apparent change in policy, nor any explanation for the need for so many officers and cars.

This logic of this action today is incomprehensible, and we certainly, along with driver, given the history, could have had no way of predicting it. That being the case, it raises the suspicion that we are being targeted for harassment, but, for the life of is, we can't understand why. In the end, however, understanding the motivation will not undo the real result: UNFI will no longer be able to deliver to us after next week without a change in this new apparent policy. We have no alternative way to get their delivery. With the loss of our largest supplier and their particular line of products, we will likely go out of business as a result, and quite quickly.

Additionally, we understand from UNFI that the citation was written directly to the driver when, normally, it is written to the company, and this results in an unnecessary and unworkable problem for the driver himself, who was acting in good faith, as far as he knew.

We have invested many hundreds of thousands of dollars in this business and this City. We are the only vegetarian restaurant for many many miles in any direction (a fact that brings in many new folks from I-81 to spend their money in Martinsburg). We are the last remaining health food store in Berkeley or Jefferson Counties. We have always paid our substantial taxes and fees and worked hard to comply with city regulations and the Planning Office. Why are we being visited so suddenly with this radical change in treatment that threatens to take our contributions to the City away, make our staff unemployed and leave the City with, yet another, empty unsellable building in a downtown that is seemingly not now supportive of our business?

It has been suggested that we apply for an emergency Loading Zone designation (for limited hours) in front of our store as a remedy. Although we are willing to do this (for the 8AM to 10:30 AM period), there are certainly foreseeable problems with this:

- Enforcement relies on ticketing that may not actually get the cars off the street at the appropriate time, thus not alleviating the problem at all, while creating problems for the whole neighborhood and increasing the need to police patrolling beyond what is needed.
- The resultant Loading Zone space would not be large enough to park the truck, requiring it to block one of the driveways at either end for 15 minutes, even when there are no ticketed cars in the way.

Given this, I would suggest other, superior solutions:

- Allow things to resume as they had been, since there seems to be little evidence of a problem.
- Make sure the driver puts out adequate warning cones as part of his standard procedure.
- If the things above are not enough, and since the police obviously have enough manpower to send three cars to issue a simple citation, have an officer come by once a week to check on the situation and direct traffic as need be. This would require less manpower and attention than ticketing the Loading Zone parking, and would ensure safety and result in fewer problems for the neighborhood.

- As a last resort, you could allow the truck to park in the yellow zone at the corner of John Street, though blocking vision of this stop sign would seem to be a much greater danger than what has been going on in front of our store for 6 and ½ years with no associated problems.

We are, of course, open to other suggestions. The City of Martinsburg has given us full sanction to operate our business here, and has been fully aware of the scope of our operations, and verified that we had adequate parking from the start, and seen this truck parked in this manner every week for 6 years. I would hope the town can find a way to keep us here and keep us contributing to a better business climate, building on what seemed, until today, a workable relationship.

I am also wondering how this new enforcement policy will affect other businesses in the area, especially our neighbors at Dunn and Seibert across the street, who frequently park tractor trailers either in the street or on the sidewalk, but have never caused any problems for us or anyone in the neighborhood, that we could see.

Please let us know if you need further information or have further input for us. We want to get this resolved as quickly and amicably as possible, and we want to be able to continue trying to up the ante for all of us in downtown Martinsburg. We are, understandably, very concerned.

After much discussion, Council recommended that the Smiths meet with the Police Chief and City Manager to discuss options, as Council could not take official action on an item not previously posted.

**9. Receive and File Reports—Minutes—Correspondence of the Following:**

- a. Berkeley County Animal Control September and October 2013 Incident Reports
- b. Division of Highways letter dated October 9, 2013 in reference to traffic study at the intersection of WV 45 and N. High Street
- c. Martinsburg Berkeley County Convention and Visitors Bureau Meeting Agendas, Minutes and Profit and Loss Statements from July 2013-October 9, 2013
- d. Hagerstown Eastern Panhandle Metropolitan Planning Organization Interstate Council Meeting August 28, 2013 Draft Minutes, Project updates and TIP Amendments
- e. WVDOT Inspection Report for Oak Street Bridge, October 2013
- f. Timeline for planning process of Community Development's CDBG and HOME Five Year Consolidated Plan, 2014 Annual Action Plan and Analysis of Impediments to Fair Housing Choice
- g. Planning Commission September 4, 2013 and October 4, 2013 meeting minutes
- h. Board of Zoning Appeals October 1, 2013 meeting minutes

Motion made by Councilman Etherington, seconded by Councilman Lewis to receive and file item 9a-h. Motion carried unanimously.

Councilman Baker thanked Senator Unger and Delegate Barrett for their work on item 9B.

## **11. Reports of Chairpersons of Council Standing Committees**

There were no reports

### **11. Report of Mayor**

**a. Schedule Council as a Whole Committee Meetings (Dates TBD) to discuss the following: E. Burke Street Parking Lot, N. Queen Street Underpass, and ordinances**

**b. Reminder of vacancies:**

- Shade Tree Commission
- Planning Commission
- Parking Authority
- Code Appeals Board

### **12. Report of City Attorney**

The City Attorney had nothing further to report.

### **13. Report of City Manager**

**a. Projects Update**

The City Manager explained that, as the sponsor for the Little League Grant, they submit the invoices to the City, which get paid, and the City is reimbursed by the state from the grant funds.

Councilman Knowles pointed out that the COPS grant expires in December 2013.

### **14. Unfinished Business**

There was no unfinished business.

### **15. New Business**

**a. First and Second reading of Ordinance 2013-17: *An Ordinance Amending The Zoning Ordinance Of The City Of Martinsburg By Repealing Existing Requirements Known By Title As "The Proper Maintenance Or Storm Water, Sediment And Erosion Control In The City Of Martinsburg, Berkeley County, West Virginia" And By Replacing And Enacting Requirements Known By Title As "The Stormwater Management Ordinance Of The City Of Martinsburg"***

Motion made by Councilman Etherington, seconded by Councilman Baker, to her the first and second reading of Ordinance 2013-17, by title only. Motion carried, Baker & Anderson, no.

**b. Approve/deny approval to amend Garner Economics, LLC's expense reimbursement fees from \$5,000 to \$7,000**

Motion made by Councilman Baker, seconded by Councilman Etherington, to amend Garner Economics, LLC's expense reimbursement fees to \$7,000, as requested. Motion carried unanimously.

**c. Approve/deny Resolution 2013-22: A Resolution of the Council of the City of Martinsburg Revising the FY 2008 and FY 2010 Morgan County Tenant Assistance Program**

Councilman Knowles asked if this Resolution was to transfer City of Martinsburg funds to Morgan County. The City Manager stated that it is not, it is dealing with funds already allocated to Morgan County.

Motion made by Councilman Etherington, seconded by Councilman Baker, to approve Resolution 2013-22. Motion carried unanimously.

**d. Approve/deny snow removal bid for four (4) Municipal parking lots—Parking and/or Train Station Fund**

Motion made by Councilman Etherington, seconded by Councilman Lewis, to snow removal bid. Motion carried unanimously.

Councilman Knowles asked if the City of Martinsburg would require proof of insurance from the bidder; Finance Director Mark Spickler confirmed that proof of insurance would be required.

**e. Approve/deny purchase of twelve (12) Tasers from Taser International (sole provider) with associated accessories and warranties--\$16,849—Police Levy Fund**

Motion made by Councilman Parkinson, seconded by Councilman Etherington, to approve the purchase of twelve Tasers, as requested. Motion carried unanimously.

**f. Approve/deny Return to Rank Policy for Chief Kevin Miller**

Utilities Director Steve Knipe explained that his change order deducts unneeded flow meters and spare media, resulting in a cost of -\$73,265. Motion made by Councilman Knowles, seconded by Councilman Etherington, to confirm Change Order #1 for Contract #1. Motion carried 5-1, Anderson, no.

**g. Approve/deny purchase of one new Ford F250 Mechanic's Truck (including crane, off-road package and 8-foot bed) for the Public Works Department--\$37,778 (budgeted)—State Contract**

Motion made by Councilman Baker, seconded by Councilman Knowles, to approve the purchase of one new Ford F250 Mechanic's Truck as requested. Motion carried unanimously.

**h. Approve/deny Change Order #2 for Contract #1, Kilmer Springs Water System Improvements Project—additional asphalt overlay, as required by WVDOH and the placement of type "A" trench repair, as required by DOH--\$4,496.50**

Motion made by Councilman Etherington, seconded by Councilman Baker and Councilman Parkinson, to approve Change Order #2 for Contract #1—Kilmer Springs Water System Improvements Project. Motion carried unanimously.



**i. Confirm approval to increase Jefferson Asphalt's paving contract in the amount of \$5,800 (\$450,000 budgeted, new contract amount \$437,228) Millrace Drive and Wilson Street.**

Motion made by Councilman Knowles, seconded by Councilman Parkinson, to confirm the approval to increase Jefferson Asphalt's paving contract by \$5,800 to include Millrace Drive and Wilson Street. Motion carried unanimously.

**j. Confirm denial of request to pave alley right-of-way off Cypress Way**

Motion made by Councilman Etherington, seconded by Councilman Lewis, to confirm denial of request to pave the alley right-of-way off Cypress Way. Per roll call vote, motion to deny request was carried 6-1, Baker, no.

**k. Approve/deny request to utilize street millings on alleyway located between the 300 block of Porter Avenue and Kentucky Avenue.**

Councilman Etherington asked if the Council generally determined where millings will go during the bid and approval process. Mr. Baldwin confirmed that Council did, prior to the bid.

Mr. David McCauley, Jefferson Asphalt Products Company, replied that millings belong to Jefferson Asphalt when they are not already designated. He added that he intends to use the millings to pave the entire alley.

Councilman Baker asked if there will be added maintenance and who will be responsible for that cost. Mr. McCauley replied that he hopes the paving will cut back on maintenance issues. Public Workers Director Jeff Wilkerson added that any future issues would be resolved with "crush and run."

Motion made by Councilman Lewis moved to approve the request to utilize street millings on the alleyway located between the 300 block of Porter and Kentucky Avenues, on the condition that the entire alley be paved and the entire job be paid for by the requestor. Motion carried unanimously.

Mr. Baldwin asked that Mr. McCauley inform the City when work is to be done.

**l. Authorize City Manager to submit Intent to Apply application for WVDOT Transportation Alternatives Grant for Martin Street Corridor Improvement Project— approximate cost for 2013 \$620,796 (\$496,637 grant, \$124,159 City match).**

Motion made by Councilman Lewis, seconded by Councilman Knowles, to authorize the City Manager to submit Intent to Apply application for WVDOT Transportation Alternatives Grant for Martins Street Corridor Improvement Project. Motion carried unanimously.

Mr. Baldwin informed Council that, should the dollar amounts change, Council would be informed. He also added that the intent is to maintain the historic nature of the corridor.

**m. Approve/deny purchase of Gear Dryer for the Martinsburg Fire Department— Advantage Equipment (sole supplier) \$7,500 (\$3,500 WV DHHR Grant, \$4,000 Fire/EMS Fund)**

Motion made by Councilman Anderson, seconded by Councilman Parkinson, to approve the purchase of a Gear Dryer for the Martinsburg Fire Department. Motion carried unanimously.

**n. Confirm approval to allocate \$1,000 to Main Street Martinsburg for holiday lights for Town Square**

Motion made by Councilman Knowles, seconded by Councilman Etherington, to confirm the approval to allocate \$1,000 to Main Street Martinsburg for holiday lights for Town Square. Motion carried unanimously.

**o. Confirm approval of CVB request to close the blocks of E. Martin Street for the rally kick-off of the Rally North America Rte. 50 rally/scavenger hunt**

Motion made by Councilman Baker, seconded by Councilman Etherington, to confirm the approval of the CVB request to close blocks of E. Martin Street for the rally kick-off of the Rally North America Rte. 50 rally/scavenger hunt. Motion carried unanimously.

**16. Executive Session**

Motion made by Councilman Knowles, seconded by Councilman Baker, to go into Executive Session for real estate matters at 7:52 PM. Motion carried unanimously.

**Adjournment**

Meeting was adjourned by unanimous consent at 8:15 PM.



George Karos, Mayor



Gena Long, City Recorder