

**City Of Martinsburg
Regular Council Meeting
December 13, 2012
The J. Oakley Seibert Council Chambers**

With a quorum present, the regular session of the Martinsburg City Council was called to order by Mayor George Karos at 6:30 p.m. The following Council Members were present: Don Anderson, Roger Lewis, Dennis Etherington, Kevin Knowles, Jason Baker, Max Parkinson and Gregg Wachtel. Also present were: Mark Baldwin, City Manager, Kin Sayre, City Attorney, 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, and Patricia McMillan, Community Development Director.

3. Salute to Flag

Councilman Lewis led the Salute to the Flag.

4. Prayer—

Pastor Walter Bowers lead the invocation.

5. Public Hearing: A public hearing has been scheduled to discuss the City's Community Development Block Grant Program (CDBG) and HOME Program funds through the Eastern Panhandle HOME Consortium and the housing and community development and economic development needs of the City of Martinsburg, WV.

Mayor Karos opened the public hearing at 6:32 PM.

- Ms. Patricia McMillan, Community Development Director, stated that this was the first of a series of public hearings to make the public aware of the beginning of the process to apply for funding. Applications are available online or in her office at City Hall, she stated. She stated that funding amounts are not known at this time, but projections are being based on last year's amounts. Referring to Community Development Block Grant (CDBG) funds, Ms. McMillan stated that they are used to provide services and improvements for low income communities. The second public hearing will be in April in order to allow for the submission of funding requests to Housing and Urban Development (HUD) by May 15, 2013.
- Ms. Glenda Helman, Community Networks, thanked Council for the previous award of CDBG funds and stated that they were used for Rapid Rehousing and improvements to Bethany House. She reviewed needs that the organization will be requesting funding for in the next year and hoped that Council will review the requests favorably. *Ms. Helman's testimony in its entirety is available in the City Recorder's office.*
- City Manager, Mark Baldwin, added that the City, as always, will evaluate funds needed for various capital improvement projects.

As no one else came forward, the public hearing was closed at 6:40 PM.

6. Approve November 08, 2012 regular Council Meeting Minutes

Motion made by Councilman Knowles, seconded by Councilman Parkinson, to approve the November 08, 2012 regular Council meeting minutes. Motion carried unanimously.

7. Approve October 2012 Administrative and Financial Report.

Motion made by Councilman Parkinson, seconded by Councilman Etherington, to approve the October 2012 Administrative and Financial Report. Motion carried unanimously.

8. Presentations

a. Make Comment on ABC Zoning Form—Finn Thai Restaurant and Bar—748 Foxcroft Avenue

Mr. Chaokrajang Watcha was present for the request. Discussion included the hours of operation (M-F 11:30AM-10:00PM and until 11:00 PM on weekends) and the location (old Asian Garden location). The application was forwarded to the ABC Commission with the above comment.

9. Petitions From Citizens

There were no petitions from citizens.

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

- a. Board of Zoning Appeals October 02, 2012 and November 13, 2012 Meeting Minutes
- b. Historic Preservation Review Commission October 01, 2012 and November 05, 2012 Meeting Minutes
- c. Berkeley County Animal Control Report; 10/1/12 through 10/31/12
- d. U.S. Department of Housing and Urban Development Program Year Review Letter—Program Period July 1, 2011-June 30, 2012
- e. West Virginia Infrastructure and Jobs Development Council Approval of Estimate Grant Proceeds—Chesapeake Bay/Greenbrier River Basin Compliance Projects
- f. West Virginia Department of Environmental Protection Notice of Award—Chesapeake Bay Regulatory and Accountability Program grant funds--\$50,000 (\$37,500 grant, 12,500 City Match).
- g. Resolution—Martinsburg Bulldogs Third Consecutive Football Championship Win (as presented Thursday, December 6, 2012 High School Awards Ceremony)

Motion made by Councilman Wachtel, seconded by Councilman Anderson to receive and file items 10a-10g. Motion carried unanimously with Councilman Anderson stating that he does not approve of items 10e and 10f.

11. Reports of Chairpersons of Council Standing Committees

- a. Council as a Whole Committee November 14, 2012 meeting minutes
- b. Council as a Whole Committee November 27-28, 2012 meeting minutes

Motion made by Councilman Etherington, seconded by Councilman Knowles, to enter the Council as a Whole Committee meeting minutes listed above into the record with the correction that Councilman Don Anderson was not in attendance on November 27, 2012. Motion carried unanimously.

12. Report of Mayor

a. Reappoint Frank Bradley to the Board of Zoning Appeals, term 1/1/13-12/31/15

Motion made by Councilman Knowles, seconded by Councilman Wachtel, to accept Mayor Karos's recommendation and reappoint Frank Bradley to the Board of Zoning Appeals, term 1/1/13-12/31/15. Motion carried unanimously.

b. Reappoint Laura Gassler to the Martinsburg/Berkeley County Convention and Visitors' Bureau, term 1/1/13-12/31/14

Mayor Karos struck this item from the agenda, due to Ms. Gassler's resignation from the Bureau in order to serve as acting director of the CVB.

c. Reappoint Gary Gimbel to the Historic Preservation Review Commission, term 1/1/13-12/31/15

Motion made by Councilman Wachtel, seconded by Councilman Lewis, to accept Mayor Karos's recommendation and reappoint Gary Gimbel to the Historic Preservation Review Commission, term 1/1/13-12/31/15. Motion carried 5-2, Baker and Knowles, no.

d. Reappoint Nell Thompson to the Historic Preservation Review Commission, term 1/1/13-12/31/15

Motion made by Councilman Anderson, seconded by Councilman Wachtel, to accept Mayor Karos's recommendation and reappoint Nell Thompson to the Historic Preservation Review Commission, term 1/1/13-12/31/15. Motion carried 5-2, Baker and Knowles, no.

e. Appoint Ryan A. Perks to the Historic Preservation Review Commission to fill an expired term 1/1/13-12/31/15

Motion made by Councilman Lewis, seconded by Councilman Parkinson, to accept Mayor Karos's recommendation and appoint Ryan Perks to the Historic Preservation Review Commission, term 1/1/13-12/31/15. Motion carried unanimously.

f. Appoint Bridget M. Cohee to the Board of Zoning Appeals to fill an expired alternate term 1/1/13-12/31/15

Motion made by Councilman Knowles, seconded by Councilman Lewis, to accept Mayor Karos's recommendation and appoint Bridget Cohee to the Board of Zoning Appeals to fill an expired alternate term—1/1/13-12/31/15. Motion carried unanimously.

g. Appoint Mary A. Dulyea to the Board of Zoning Appeals to fill an expired alternate term 1/1/13-12/31/15

Motion made by Councilman Parkinson, seconded by Councilman Baker, to accept Mayor Karos's recommendation and appoint Mary Dulyea to the Board of Zoning Appeals to fill an expired alternate term—1/1/13-12/31/15. Motion carried unanimously.

h. Discuss vacancies—Code Appeals Board (1) and Shade Tree Commission (1)

Mayor Karos discussed the above vacancies and added a vacancy on the Martinsburg/Berkeley County Convention and Visitors' Bureau.

13. Report of City Attorney

a. Discuss draft ordinance in reference to 2013 Police Levy Special Election.

Mr. Kin Sayre, Legal Counsel, explained that an election needs to be held in order to renew the existing police levy which expires in 2014. He stated, in a later agenda item, he will be requesting authorization to prepare an ordinance which Council will vote on the first and second reading at the February meeting and hold a public hearing and move on the third and final reading at a special meeting on February 28, 2013. The election is expected to be held on May 11, 2013 and a 60% yes vote is needed to pass.

Councilman Baker asked why the election is being held in May and not as part of the 2014 primary election conducted by the County. Mr. Sayre replied that the election date is the choice of Council; it has been held both ways, but that the May election would get the issue before the public sooner.

City Manager Mark Baldwin stated that, hopefully the election is successful, but if it is not the May special election leaves room for another election in the event that it fails, also that it gives room for budget planning based on the results of the election.

Councilman Parkinson agreed, stating that if you put the issue before the public and it fails, the City has another chance at getting it passed before the existing levy expires.

Councilman Anderson asked about the cost of the special election. Mr. Baldwin stated that the cost will be the same as the 2012 general election, that \$60,000 is budgeted, but it may be less.

b. Overview of Memorandum of Understanding between the Berkeley County Farmland Protection Board and the City of Martinsburg.

Mr. Sayre explained that the Farmland Protection Board intends to sell Boydville, which the City had provided some of the necessary funds to purchase. The City will receive prorated funds from the sale, which equal one-third of the sale price of \$500,000. He added that the City has no say in the sale itself.

Councilman Baker asked how much money the City will be losing.

Mr. Sayre replied that the City had put forth \$750,000 toward the purchase and will receive approximately \$156,000 back.

Councilman Lewis stated that the money was put forth to preserve and protect Boydville, and that was accomplished. He took exception to the idea that the money has been lost, it was given as a grant to protect the structure and grounds and it has done so.

Mr. Sayre agreed, stating that a conservation easement and preservation easement will be part of the sale, he had read through both and found them to be very thorough.

c. Sale of City Property

Mr. Sayre added that it has been brought to the attention of his office that the plat provided for the property offered for sale by Ordinance 2012-11 may be incorrect. He advised moving forward with the sale and the issue can be resolved before conveyance.

14. Report of City Manager

(a) Projects update.

City Manager Mark Baldwin had nothing further to add.

15. Unfinished Business

There was no unfinished business scheduled.

16. New Business

a. Approve/deny Resolution 2012-28: A Resolution Concerning the Extension of the Cable Television Franchise Held by Comcast of CA/MD/PA/VA/WV, LLC. For The Purpose Of Permitting the City of Martinsburg, WV and the Franchisee to Complete Renewal Discussions

Mr. Baldwin explained that this resolution is a 6-month renewal to allow the City and Comcast to complete discussions. A draft agreement is being reviewed by Comcast and he hopes to have the approval ordinance on the January regular meeting agenda.

Councilman Anderson asked what fee the City receives from Comcast. Mr. Baldwin explained that the City receives B&O tax and a 5% franchise fee, which is the maximum allowable.

Councilman Wachtel added that it is a non-exclusive agreement, other cable companies may operate within the City of Martinsburg.

Motion made by Councilman Wachtel, seconded by Councilman Etherington to approve Resolution 2012-28. Motion carried unanimously.

b. Authorize City Attorney to prepare Ordinance scheduling the 2013 Special Police Levy Election

Motion made by Councilman Wachtel, seconded by Councilman Etherington to authorize the City Attorney to prepare an Ordinance scheduling the 2013 Police Levy Special Election. Motion carried 6-1, Baker, no.

c. Approve/deny Eighth Amendment to Lease, extending the lease agreement between the City of Martinsburg and the Berkeley Post 14, American Legion, Inc—January 1, 2013-June 30, 2013

Councilman Knowles asked about the rental amount to which Mr. Baldwin stated that the rental agreement is for \$500.00/monthly. The rate is low, but the American Legion is attempting to secure funds for construction of a new facility. Mayor Karos added that the American Legion allowed the City and its employees free parking in the lot behind the facility for years, before the City purchased it.

d. Approve/deny purchase of one new John Deere Backhoe Loader—James River Equipment--\$105,747—Water/Sewer Fund

Discussion included the difference in maintenance and purchase price between the John Deere equipment and comparable Caterpillar equipment. Councilman Baker provided a cost comparison. Further discussion included what equipment the department currently has and the availability and possible interchanging of parts. Utilities Director Steve Knipe stated that he recommends the low bid, which is for a John Deere Backhoe Loader.

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to approve the purchase of one new John Deere Backhoe Loader from James River Equipment in the amount of \$105,757 to be taken from the Water and Sewer funds. Motion carried 4-3, Baker, Knowles & Anderson, no.

e. Approve/deny purchase of one CUES MP2020 Push Camera—Atlantic Machinery, Inc.--\$11,081.00—Sewer Fund

Motion made by Councilman Etherington, seconded by Councilman Wachtel to approve the purchase of one CUES MP2020 Push Camera from Atlantic Machinery, Inc. in the amount of \$11,081.00 to be taken from the Sewer Fund. Motion carried unanimously.

f. Approve/deny purchase of one used Colman 4000 watt light tower—Godwin Pumps--\$2,600.00—Water/Sewer Fund

Motion made by Councilman Knowles, seconded by Councilman Etherington, to approve the purchase of one used Colman 4000-watt light tower from Godwin Pumps in the amount of \$2,600 to be split between the Water and Sewer funds. Motion carried unanimously.

g. Approve/deny Agreement for Administrative Services between the City of Martinsburg and Region 9 Development Council regarding Chesapeake Bay Regulatory and Accountability Program grant funds

Mr. Baldwin explained that the City had budgeted \$40,000 for Planning Director/City Engineer Michael Covell to update the Stormwater Management plan. Mr. Covell had become aware of a grant for this purpose, from which we are to receive \$37,500 to that end, meaning the City has to spend \$12,500 plus a \$3,000 dollar fee to Region 9 Development Council for administering the grant. After some discussion, Mr. Baldwin clarified that this money is for the update to the Stormwater Management plan, to be adopted by September 2013, an issue entirely separate from the Wastewater Treatment Plant Upgrade Project.

Motion made by Councilman Lewis, seconded by Councilman Parkinson to approve the Agreement for Administrative Services between the City of Martinsburg and Region 9 Development Council regarding Chesapeake Bay Regulatory and Accountably Program grant funds. Motion carried 6-1, Anderson, no.

h. Authorize Mayor to sign Community Development Block Grant (CDBG) Subrecipient Funding Agreement between the City of Martinsburg, West Virginia and Martinsburg/Berkeley County Parks and Recreation for a \$160,390 grant to make improvements to Ambrose Park.

Motion made by Councilman Wachtel, seconded by Councilman Knowles, to authorize Mayor Karos to sign the Community Development Block Grant (CDBG) Subrecipient Funding Agreement between the City of Martinsburg and the Martinsburg/Berkeley County Parks and Recreation for a \$160,390 grant to make improvements to Ambrose Park. Motion carried unanimously.

Mr. Baldwin added that the request has already been budgeted.

i. Approve/deny purchase of Fire Station warning system—J.O. Herbert Company--\$11,975.85—Fire/EMS Fund

Motion made by Councilman Etherington, seconded by Councilman Knowles, to approve the purchase of a Fire Station warning system from J.O. Herbert Company in the amount of \$11,975.85 to be taken from the Fire/EMS fund. Motion carried unanimously.

j. Approve/deny purchase of four (4) IX104C5 Dual Mode Sunlight Readable Tablet EMS computers—Xplore Technology (sole provider for existing equipment compatibility)--\$14,408—Fire/EMS Fund.

Motion made by Councilman Wachtel, seconded by Councilman Anderson, to approve the purchase of four IX104C5 Dual Mode Sunlight Readable Tablet EMS computers from Xplore Technology in the amount of \$14,408 to be taken from the Fire/EMS Fund. Motion carried unanimously.

k. Approve/deny one-time additional pay for full-time employees (\$500.00) and part-time employees (\$250.00) with 6-months City service completed.

Councilman Baker urged Council to deny the request, as he believed it to be hard to justify the expenditure when City residents are struggling. He pointed out that the City workers deserve it, but it is a cost of \$14.00 per household in the City and could be used on projects to benefit the entire City.

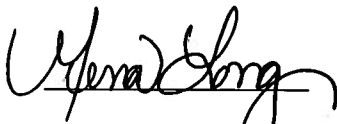
Motion made by Councilman Lewis, seconded by Councilman Wachtel to approve a one-time additional payment for full-time employees (\$500.00) and part-time employees (\$250.00) with 6-months City service completed. Motion carried 6-1, Baker, no.


18. Executive Session

Motion made by Councilman Etherington, seconded by Councilman Knowles, to go into Executive Session for real estate matters at 7:40 PM.

Adjournment

Motion made by Councilman Wachtel, seconded by Councilman Lewis to adjourn at 8:15 PM. Motion carried unanimously.


Gena Long, City Recorder


George Karos, Mayor