

**City Of Martinsburg
Regular Council Meeting
Thursday, February 11, 2016
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, H.D. Boyd, Dennis Etherington, Kevin Knowles, Gregg Wachtel, Ken Collinson and Jason W. Baker. Also present were: Mark Baldwin, City Manager; Kin Sayre, Legal Counsel; Gena Long, City Recorder; Police Chief Maury Richards, Steve Knipe, Utilities Director, Fire Chief Paul Bragg, Community Development Director Nancy Strine, Finance Director Mark Spickler, City Engineer/Planning Director Michael Covell and Utilities Director Jeff Wilkerson.

3. Salute to Flag

Councilman Knowles led the Salute to the Flag.

4. Prayer—

Robert Brennan, Jr., Calvary United Methodist Church, led the invocation.

At the request of Mayor Karos, motion was made by Councilman Baker, seconded by Councilman Knowles, to move items 17 A and 17 B to be heard immediately after the Public Hearing (Item 8). Motion carried unanimously.

5. Approve January 14, 2016 Regular Meeting Minutes

Motion made by Councilman Baker seconded by Councilman Etherington, to approve the January 14, 2016 Regular Meeting Minutes. Motion carried unanimously.

6. Approve January 21, 2016 Special Meeting Minutes

Motion made by Councilman Baker, seconded by Councilman Knowles, to approve the January 21, 2016 Special Meeting Minutes

7. Approve December 2015 Administrative and Financial Report

Motion made by Councilman Baker, seconded by Councilman Etherington, to approve the December 2015 Administrative and Financial Report. Motion carried unanimously.

8. Public Hearing to solicit comment on Resolution 2016-02 authorizing substantial amendments to the City of Martinsburg's FY 2011, 2013 & 2015 Annual Action Plans for use of Community Block Grant Funds

Mayor Karos opened the public hearing at 6:35 PM.

Ms. Strine explained that the public hearing was for a substantial amendment to the FY 2011, 2013 & 2015 Action Plans, in which funds will be transferred from one eligible public project to another. This request is necessary to meet the timeliness requirements for use of CDBG funds. Ms. Strine explained that funds will be transferred from the Church Street Stormwater project to the Street Paving project in low-mod income areas.

As there was no further public comment, the public hearing closed at 6:40 PM.

17 A. Approve/deny Resolution 2016-02 Amending the FY 2011, FY 2013 & FY 2015 CDBG Program Budgets and Annual Action Plans

Motion made by Councilman Etherington, seconded by Councilman Knowles, to approve Resolution 2016-02. Motion carried unanimously.

17 B. Approve/deny Resolution 2016-03 Amending the FY 2013 HOME Program Budget and Annual Plan

Motion made by Councilman Knowles, seconded by Councilman Etherington, to approve Resolution 2016-03. Motion carried unanimously.

9. Presentations

a. Administer Oath of Office to Police Officer Teresa Gibbons

The City Recorder administered the Oath of Office.

b. Make Comment on WVABCA Zoning Form—The Phoenix Mill Café, LLC—615 W. King Street

Mr. Larry Wright, Coyne Avenue, and Mr. Robert Myers, Bunker Hill, were present. Mr. Wright stated that they are requesting to serve alcoholic beverages, such as craft beers and wine, as well as have events in which these beverages will be served.

Mayor Karos asked what the proposed hours of operation are.

Mr. Wright stated that the establishment will likely be open from 10 AM until midnight, seven days a week.

Mr. Myers added that they would actually likely not open until 1 PM on Sundays because of state liquor sales restrictions, and would likely close at 9 PM on Sundays.

Mayor Karos advised the applicants that the Zoning form would be forwarded without comment.

c. Make Comment on WVABCA Zoning Form—Kwik Chek—301 Rock Cliff Drive (new owner)

Dimple Patel introduced herself as the new owner of the Kwik Chek, she stated that all licensing is to remain the same.

Mayor Karos advised that the Zoning Form will be forwarded without comment.

d. Matthew Mullenax, Hagerstown/Eastern Panhandle Metropolitan Planning Organization (HEPMPO), EPTA Bus Transfer Point Study Update and City-Related Transportation Projects Update (See 10 B)

Mr. Mullenax stated that there are significant concerns about the Caperton Train Station as EPTA Bus Transfer Point, due to logistics issues with tight corners, crowded spaces and the damage to the shocks caused by frequent travel over street pavers as are on E. Martin Street.

The study has revealed several other suitable locations, the most promising being the parking lot on W. Stephen Street owned by the County. He stated that this is a planning study at this point and is looking for a general consensus to move forward with other feasibility and funding studies.

Councilman Wachtel asked if the buses will still be able to load and unload bicycles at that location. Mr. Mullenax stated that they can.

Mr. Mullenax discussed other projects, such as upgrades to the signal systems and Oak Street and Burke Street bridges. He stated that the traffic signal at Moler and High Streets is still on the books, but there are some serious right of way issues that are causing a delay. He also mentioned a corridor study on Apple Harvest Drive from the Blue Ridge Technical College to New York Avenue.

10. Petitions from Citizens

Helen Henderson, 211 W. Burke Street, spoke in opposition to the Confederate Flag Parade, stating that the Confederate battle flag symbolizes oppression.

Dorothy Davis, Bunker Hill, representing the Executive Committee of the NAACP read the following:

On Monday evening, February 8, 2016, the Executive Board of the Martinsburg/Berkeley County Branch of the NAACP voted overwhelmingly to support the nondiscrimination ordinance that will be voted on tonight. Despite strong religious convictions among many members, even the NAACP position remains firmly in support of equal rights for ALL persons.

The NAACP voted in 2012 to support marriage equality as a right rooted in the Fourteenth Amendment's Equal Protection Clause. The resolution read: " The NAACP Constitution affirmatively states our objective to ensure the 'political educational, social and economic equality' of all people.

Therefore, the NAACP has opposed and will continue to oppose any national, state, local policy or legislation initiative that seeks to codify discrimination or hatred into law or to remove the Constitutional rights of LGBT citizens."

As a representative of the Executive Committee, I urge you to reflect for a moment on the vehemence against civil rights for African Americans 50 years ago, and to stand firmly on the just side of history tonight.

Todd Funkhouser, President of the Berkeley County Historical Society, stated that the Society encourages all who support Martinsburg's heritage, however, the Historical Society is denying the use of the Belle Boyd House to the Sons of Confederate Veterans as their request interferes with the office hours of the Convention and Visitors' Bureau.

Kristen Loken stated that the Supreme Court determined that speech that directly leads to harm is not covered by the First Amendment. She is opposed to the Confederate Flag parade. She asked if the organizers are associated with known hate groups, will they allow known hate groups to participate, are the requestors residents of Martinsburg and if there will be hate speech as part of the planned presentations. Ms. Loken asked the Council delay the vote until these questions can be answered.

John Bartley, Inwood, congratulated the Council on the appointment of Police Chief Richards. He stated that the City Police Department needs to purchase a prisoner transport van, which would allow the office to stay on the scene for further investigation while the van transports prisoners to incarceration. He also stated that the vehicle represents power and offers safety to the officers. Mr. Bartley also recommended posting billboards outside of town with catchy phrases to deter drug dealers. Mr. Bartley stated that the Sons of Confederate Veterans have the right to peaceably assemble and stated that we must not forget our history.

Hubert Smith, President of the NAACP, read the following into the record:

As President of the Berkeley County NAACP Branch, I have decided to veto the decision of our branch backing the Anti-LGBTQ discrimination ordinance amendment scheduled for February 11, 2016 at City Hall. The decision has been made because it is very controversial.

Richard Anderson, citizen, stated that all ethnic groups and other groups have the same rights but non-discrimination laws would never work because people call others names based on physical characteristics. He stated that if anyone feels they have been discriminated against, they should suck it up.

Michelle Cassuccio, Martinsburg, stated that the United States is founded on religious freedom. It does not allow any religious group to compel others to practice their religion. Because of this freedom, the US has not been ravaged by religious wars, as has been the case in other countries. LGBT people have had violence done against them. She stated that non-discrimination is not about protecting individuals from being called names, but to protect them from actual physical danger.

Tracy Lane, former Martinsburg resident, stated that the House of Delegates has passed the Religious Freedom law. She thanked the Martinsburg City Council for being progressive and not furthering hatred.

James Boyd, Falling Waters, stated that he has faced significant discrimination and has struggled with addiction. He stated that he stands in solidarity with the people on the heroin issue, as he is 20 years sober. He stated that he considers himself proof of life beyond addiction. He stated that jail did not help him overcome addiction, but he was helped by social connections. He stated that the drug issue is a symptom of social disconnect and income equality. Law enforcement can help stop the supply but the involvement of the community is needed to stop the demand. He asked Council what they had to offer the community to help with this issue.

Steve Redding, Flight of Arrows Way, stated he is a retired career fireman in DC. He stated that the current drug problem in the Eastern Panhandle is worse than anything he saw while working in DC. He stated that he currently represents children in abuse and neglect cases, and that he represented over 100 children in 2015, which is ten times the number of children in need of representation a decade ago. He said he can't speak for or against the rehab center, officially, but he said that drugs are a generational issue and he is now providing services for the children of those he represented a generation ago. He stated that drugs are not an economic issue either, as abuse is seen in low income, middle income and upper income households. The biggest need to help with this issue is a local recover center, as parents who have to go away for treatment fail because they miss their children and leave. He asked Council to work to make this a reality in the near future.

Habib Ali, Eclipse Court, stated that he commends Council for approving the nondiscrimination ordinance as discrimination of any kind is deplorable. He also suggested that Council get more information before approving the Confederate Flag Parade. Mr. Ali also suggested that, in regards to the drug epidemic, that Council establish a committee or commission and seek the guidance of previous speakers, Mr. Redding and Mr. Boyd.

Dee Stottlemeyer Pierce, Rhinestone Court, represented the Bikers against Heroine. She stated that the organization has set aside funds for the rehab center and asked that Council allow the project to move forward. Cleaning up the streets and perception of Martinsburg is important.

Lisa Everhart, Yoakum Avenue, stated that a heroin addiction is like being stuck in a well, except there is no bottom to stop the fall. She stated that a rehab is needed now as people are dying every day.

Mindy Hutton, Kyle Drive, stated that most of those opposed to a rehab center are of an older generation. She stated that they used to fight for peace and love and had a strong desire to leave a better world for their children, but now they are being conservative. Ms. Hutton stated that people cannot continue to deny change due to fear, and that it still takes a village.

Joe Merceruio, Pope Farm Road, thanked Council for their courage and conviction to support the non-discrimination ordinance. He also thanked the audience for their engagement and showing what a community can do. Martinsburg has proven itself a City that cares for all citizens.

Larry Smith, Duchess Way, stated that he owns rental property in Martinsburg. He stated that no one is opposed to a rehab facility, they just do not want it located at 750 Baltimore Street. He stated that that the County Council should concern itself with the County and let the City Council run the City.

Barbara Bratina, Tennessee Avenue, asked that Council approve the definition of “public building.”

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

a. Fraternal Order of Police, Morgan-Berkeley-Jefferson Lodge 83 Letter of Reappointment of James Barbour to the Martinsburg Police Civil Service Commission through 12/13/2020

b. Hagerstown/Eastern Panhandle Metropolitan Planning Organization (HEPMPO) Interstate Council October 21, 2015 Meeting Minutes and Berkeley County WV Highway Projects Update

c. City of Martinsburg Fire Department 2015 Annual Report

d. City of Martinsburg Source Water Protection Plan and Notification of Region 9 Comment Period

e. Notice of December 2015 Resignation of Nell Thompson from the Historic Preservation Review Commission after Twenty-two (22)+ years of Service

f. Eastern Panhandle Transit Authority (EPTA) January 19, 2016 Board Minutes and December 2015 Financial Statement

g. Historic Preservation Review Commission (HRPC) January 4, 2016 Meeting Minutes

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to receive and file item 11A-11G. Motion carried unanimously.

12. Reports of Chairpersons of Council Standing Committees

None

13. Report of Mayor

a. Upcoming Committee and Special City Council Meetings

Mayor Karos also thanked City Staff for their work in the aftermath of Winter Storm Jonas.

14. Report of City Attorney

None

15. Report of City Manager

None.

16. Unfinished Business

a. Third and Final Reading of Ordinance 2016-01: An Ordinance to Add to and/or Amend the Text of the Martinsburg Zoning Ordinance (MZO) at Section 522.3(a) “Design Limitations” contained within Section 522 “Service Business District” to Increase the Maximum Allowed Signage Size

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to read the third and final reading of Ordinance 2016-01, by title only, and approve. Motion carried 6-1, Collinson voting no.

b. Third and Final Reading of Ordinance 2016-03: An Ordinance to Add to and/or Amend the Text of the Martinsburg Zoning Ordinance (MZO) at Article VI: “Design Regulations” to Include Clarifying Language and Regulations for Storage Buildings, Storage Shipping-bins, Donation Drop-off Bins, and Temporary Structures

Motion made by Councilman Baker, seconded by Councilman Collinson, to amend Ordinance 2016-03 to strike Section 602.25 and add “in residential areas” in Section 601.21, paragraph 2. Motion carried 6-1, Anderson no.

Motion made by Councilman Collinson, seconded by Councilman Knowles, to read Ordinance 2016-03, as amended, through the first and second reading. Motion carried unanimously.

c. Third and Final Reading of Ordinance 2016-04: An Ordinance to Add to and/or Amend the Text of the Martinsburg Zoning Ordinance (MZO) at Article II, Section 200 “Definition of Terms” to Include Codification of the Federal Definition of “Public Building”

Motion made by Councilman Wachtel, seconded by Councilman Collinson, to read Ordinance 2016-04 through the third and final reading, by title only, and adopt. Motion carried 6-1, Anderson no.

d. Third and Final Reading of Ordinance 2016-05: An Ordinance Amending the City of Martinsburg Code, Part 1, Administrative Code, Chapter 5, Administrative, by Adding Article 154, Nondiscrimination Policy, Section 01 And 02, to Provide for Equal Opportunity In The Areas Of Employment, Public Accommodations, and the Sale, Lease, Rental and Financing of Housing Accommodations is Hereby Declared To be a Human Right or Civil Right of All Persons without Regard to Race, Religion, Color, National Origin, Ancestry, Sex, Age, Blindness, Handicap, or Sexual Orientation and Gender Identity

Motion made by Councilman Wachtel, seconded by Councilman Collinson, to read Ordinance 2016-05 through the third reading, by title only, and adopt. Motion carried unanimously.

17. New Business

a. Approve/deny Resolution 2016-02 Amending the FY 2011, FY 2013 & FY 2015 CDBG Program Budgets and Annual Action Plans

See Item 8.

b. Approve/deny Resolution 2016-03 Amending the FY 2013 Home Program Budget and Annual Plan

See Item 8.

c. Approve/deny Resolution 2016-04 Authorizing the Execution of a Supplemental Agreement with the West Virginia Department of Transportation, Division of Highways (Division) with Regard to Funding Associated with the “Oak Street Bridge Replacement” Project in the City of Martinsburg, West Virginia-\$20,000 additional City funding

Motion made by Councilman Baker, seconded by Councilman Knowles, to approve Resolution 2016-04. Motion carried unanimously.

City Manager Mark Baldwin reminded Council that these funds are for planning, design and right of way acquisition studies only.

d. Approve/deny 2016 Main Street events, authorize letters of endorsement to the WVABCA for Fridays at Five (June-August), Bike Night (Saturday, August 20) and Chili Cook-off (Saturday, October 8)

Motion made Councilman Knowles, seconded by Councilman Boyd, to approve the 2016 Main Street Events as proposed, including letters of authorization as necessary. Motion carried unanimously.

e. Approve/deny request from the West Virginia Division of the Sons of the Confederate Veterans to close a portion of Queen Street from the intersection of King Street to Race Street and a portion of E. Race Street on Saturday, March 5, 2016 from 10 AM until noon for purposes of conducting a parade in celebration of the birth of the Confederate flag and southern heritage, contingent upon proof of adequate liability insurance.

Motion made by Councilman Knowles, seconded by Councilman Etherington, to deny the request of the Sons of Confederate Veterans to close a portion of Queen Street and E. Race Street. Motion carried unanimously.

f. Authorize letter of endorsement to WVABCA for the Wine and Arts Festival, Saturday May 28-Sunday May 29, 2016 and Public Works Assistance for the event

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to approve the letter of endorsement and public works assistance for the Wine and Arts Festival, as requested. Motion carried unanimously.

g. Approve/deny purchase of Karcher BR 35/12 C BP Floor Scrubber or comparable—Weiss Bros.--\$3,715.13 (see attached quote)—Custodial—Caperton Train Station and City Hall

Motion made by Councilman Etherington, seconded by Councilman Boyd, to approve the purchase of a floor scrubber as recommended. Motion carried unanimously.

h. Approve/deny purchase of 2016 Jeep Grand Cherokee 4x4 for Fire Department Chief—Stephen's Auto (State Contract)--\$37,205

Motion made by Councilman Collinson, seconded by Councilman Etherington, to approve the purchase of the 2016 Jeep Grand Cherokee for the Fire Department Chief, as recommended. Motion carried 6-1, Baker voting no.

i. Approve/deny Martinsburg Fire Department's Assistance to Firefighters Grant Application for purchase of Self Contained Breathing Apparatus (SBCA)--\$410,011 (\$390,497 AFG/\$19,524 City Match)

Motion made by Councilman Baker, seconded by Councilman Knowles, to approve the Grant Application. Motion carried unanimously.

j. Approve/deny Martinsburg Fire Department Standard Operating Procedure for HIPAA Forms and Policies

Motion made by Councilman Baker, seconded by Councilman Etherington, to approve the Standard Operating Procedure for HIPAA Forms and Policies. Motion carried unanimously.

k. Approve/deny appointment of Brian K. Nadenbousch as Martinsburg Fire Department's HIPAA Compliance Officer

Motion made by Councilman Baker, seconded by Councilman Wachtel, to approve the appointment of Brian Nadenbousch as the Fire Department HIPAA Compliance Officer. Motion carried unanimously.

l. Approve/deny bid recommendation for street paving (CDBG funds only)--\$_____ (bid opening 2/10/16)

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to approve the bid recommendation in the amount of \$199, 284 to Jefferson Asphalt, with \$163,902 from CDBG funds and \$35,382 from the General Fund. Motion carried unanimously.

m. Approve/deny pre-paid membership fee for new Planet Fitness Wellness Plan enrollees (as of 1/12/2016--\$199/18 months; current enrollees will remain at \$99/year rate—City of Martinsburg 50% Share

Motion made by Councilman Baker, seconded by Councilman Knowles, to approve the pre-paid membership cost for new Planet Fitness Well Plan enrollees with the City paying a 50% share. Motion carried unanimously.

n. Confirm consensus of council to approve funding to hire private contractors to assist with January 22-30 Winter Storm Jonas snow event/Update on snow removal (see reports)

Motion made by Councilman Baker, seconded by Councilman Wachtel, to confirm the consensus of Council. Motion carried unanimously.

o. Approve/deny Resolution 2016-05 authorizing HRI Inc.'s Application for February 2016 Payment #26 for the WWTP Upgrade Project--\$2,050,329.10

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to approve Resolution 2016-05. Motion carried 6-1, Anderson voting no.

16. Executive Session

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to enter Executive Session for personnel, legal and real estate matters at 8:00 PM. Motion carried unanimously.

Adjournment

Motion adjourned by unanimous consent at 8:45 PM.

George Karos, Mayor

Gena Long, City Recorder