

City Council Meeting  
Regular Session  
February 2, 1995  
City Council Chambers

With a quorum present, the regular session of the Martinsburg City Council was called to order by Mayor Earnest L. Sparks at 7:00 PM. The following Councilmembers were present: Donald Anderson, Richard Wachtel, Charles Taylor, Gregg Wachtel, Melanie Files, Richard Yauger, Max Parkinson, Oden Barrett, Joan M. Leeworthy, Betty B. Gunnoe and Glenville Twigg. Also present were Philip F. Hertz, City Manager; J.Oakley Seibert, City Attorney; Sharon A. Flick, City Recorder; Nan Stephens, City Planner, Ralph Long, City Engineer; G. Douglas Fellers, Fire Chief; Wayne Cleveland, Police Chief and Mark Spickler, Finance Officer .

Mayor Sparks announced that Councilman George Karos was ill.

**3. Salute to Flag**

Councilwoman Files led the Pledge of Allegiance to the Flag.

**4. Prayer—Rev. Keith Edward—Bethel Pentecostal Assembly**

The invocation was led by Rev. Edward

**5. Approval of January 12, 1995 Council Minutes**

Motion made by Councilman Taylor, seconded by Councilman Anderson, to approve the January 12, 1995 Council minutes. Motion carried unanimously.

**6. Approval of January Administrative and Financial Report**

Motion made by Councilman Yauger, seconded by Councilman Taylor, to approve the January 1995 Administrative and Financial Report. Motion carried unanimously.

**7. Petitions from Citizens**

**Market House Restaurant—Amy Carte**

Ms. Amy Carte advised that she and her husband had recently purchased the Market House restaurant business located on the corner of N. Queen and W. Burke Streets. Ms. Carte stated that they have made several changes to the restaurant. They are not open for lunch and dinner. Ms. Carte asked Council to approve the sale of alcoholic beverages on the premises. Ms. Carte reported that her husband has twenty-four years of restaurant experience and she has ten years. She also advised that they understand the responsibility that goes along with service alcohol and they have set standards which they and their employees will follow. Ms. Carte further advised that she and her husband want the development of downtown Martinsburg to

continue to move forward and they hoped to help with this progress by creating more foot traffic downtown during lunch and dinner. Ms. Carte believed that the sale of alcohol in their restaurant is necessary to reach their goal. Ms. Carte stated that this is a restaurant serving food and not a tavern. If the request was approved the service bar would be placed behind and under the existing lunch counter where it would not be visible to the public. Ms. Caret advised that their hours would be 11 AM to 2 PM for lunch Monday through Saturday and 5:00 PM-9:00 for dinner Tuesday through Saturday.

The Police Chief stated that he does not feel that this will pose a problem as long as the emphasis is on a restaurant and not a bar.

Motion made by Councilman G. Wachtel, seconded by Councilwoman Files to approve the request.

The City Attorney advised that this request would have to go before the BZA for a special exception, and they would make the decision.

The City Planner stated that the Ordinance requires a thirty-day publishing period, and therefore, the Board of Zoning Appeals would be acting on this request at their April meeting.

Councilman Gregg Wachtel withdrew his motion and Councilwoman Files withdrew her second.

Motion made by Councilman Twigg, seconded by Councilman Gregg Wachtel, that Council adopt a resolution in support of the Market House Grill having a license to sell alcoholic beverages. Motion carried unanimously.

Mayor Sparks asked the City Planner to expedite this request.

The Finance Officer advised that the current lease with the City of Martinsburg does not allow for the sale of alcoholic beverages and the lease would have to be amended.

Motion made by Councilman Taylor, seconded by Councilwoman Files, to amend the lease to allow for the sale of alcohol on the premises with this current owner and with the stipulation that the alcohol is served during the regular dinner hours. Motion carried unanimously.

### **Rocky Lane Sidewalk Situation—Martha Donahue**

Ms. Martha Donahue, 408 W. Burke St, advised that she was representing her daughter, Josephine Mostero. Ms. Donahue stated that her daughter was concerned about the lack of sidewalks on Rocky Lane and Snapp Street.

Mayor Sparks reported that the City of Martinsburg is currently in the process of having sidewalks installed in that area and this should be completed in the spring.

**ABC License Application Request—Red Men Club**

Mr. Steve Fielder, representing Red Men Tribe #2, 1304 N. Queen Street, reported that the Red Men have obtained a lease on the property located at 311-313 N. Maple Avenue. Mr. Fielder further reported that the property has been used almost continually since 1964 to house either Clubs or Fraternal Orders. Mr. Fielder asked Council to allow the Red Men Tribe to transfer their license to 311-313 N. Maple Ave. Mr. Fielder advised that there would be no exotic dancing. This would be basically a food service and perhaps alive musical entertainment.

The Police Chief stated that, give their history, he is opposed to the request.

Mr. David Ray Kisner, advised that the Red Men Tribe is a Fraternal organization and they are a member of the National Fraternal Organization. Mr. Kisner further advised that there would be no dancers at the new proposed location.

Mayor Sparks agreed with the Police Chief and felt that Council should deny the request.

Councilman R. Wachtel stated that the Council can only comment on the ABC application, as they are not empowered to grant or deny liquor licenses.

Mayor Sparks felt that Council should send a letter to the State of West Virginia opposing this liquor license.

Mr. Fielder reported that this organization is trying to improve its image and bring revenue into the City. Mr. Fielder further reported that the Red Men Tribe would be willing to enter into an agreement that there would be no exotic dancers.

Councilman Taylor felt that this matter should be tabled until the Council has an opportunity to investigate this request.

The City Attorney cautioned that if the matter is tabled, the Council will lose their right to comment, as they only have thirty days.

Motion made by Councilman Taylor, seconded by Councilwoman Gunnoe, to poll Council for comments after each Councilmember has had an opportunity to look at the license and receive information from the City Planner, Police Chief and Fire Chief. Motion carried unanimously.

Mayor Sparks advised that the Council would have a week to investigate this request and then they would be polled for comment.

### **Zoning Discussion of the Roger Johnson Property—Phyllis Kafton**

Ms. Phyllis Kafton, 1400 Loweland Drive, approached Council to discuss the zoning of a piece of property owned by Mr. Roger Johnson.

Mayor Sparks informed Ms. Kafton that this matter would be addressed later in the Council meeting.

### **Main Street Presentation—Ms. Becky Linton**

Ms. Becky Linton, Main Street Board of Directors, updated Council on the progress of Main Street Martinsburg. Ms. Linton reported that on March 8, 1995, the National and State coordinators will be meeting with them to discuss the parking situation in downtown Martinsburg.

Ms. Linton stated that there will be a new bakery opening around April.

Main Street Martinsburg received approval from the Historic Preservation Review Commission to place boundary signs at the entrances of the Main Street area. Ms. Linton asked that the City of Martinsburg offer assistance in the placement of those signs. Ms. Linton asked that the City provide the labor to erect these signs. Ms. Linton reported that the signs were donated by Sensel Signs.

Motion made by Councilman R. Wachtel, seconded by Councilwoman Leeworthy, that the City assist in erecting the signs. Motion carried unanimously.

Mayor Sparks asked that the City direct their own labor.

Ms. Barbara Zimmer, Director of Main Street Martinsburg, advised that she, along with the City Planner and City Engineer, looked at the best locations for the placement of these signs.

Ms. Linton advised that Main Street is checking on the feasibility of an incubator in the downtown area. This would help start up small businesses by sharing space.

Main Street is planning special events on Saturday, May 6, 1995 and for West Virginia Day on Saturday, June 17, 1995. Both events will be coordinated with the Police Department.

Ms. Linton reported that currently there are four businesses working with Main Street to locate in the downtown area. Ms. Linton felt that Main Street is beginning to see positive results.

Ms. Linton advised that in the past City representatives have served on the Board of Director and she requested that a member of Council serve on that Board.

Mayor Sparks stated that Councilman Karos is the appointee to the Main Street Board of Directors.

## **8. Presentations**

### **A. Reconstructing Plans from Individual Property Owners with Property Listed for Demolition**

#### **251 E. Liberty Street—Mr. Frank Turner**

Mr. Frank Turner, 251 E. Liberty Street, advised that the property is owned by his mother. Mr. Turner has discussed his plans with the Building Inspector to demolish the old structure and replace it with a new structure. Mr. Turner advised that he is taking care of the property on his mother's behalf.

The City Planner reported that Mr. Turner has met with her and the Building Inspector on several occasions to discuss his plans for demolishing the old structure and replacing it with a new structure.

Mr. Turner felt that the structure could be demolished within six-months.

Councilman R. Wachtel suggested tabling the vote on the property located at 251 E. Liberty Street for thirty days, and if Mr. Turner shows good faith in obtaining a permit to demolish, the City can halt their plans.

Motion made by Councilman R. Wachtel, seconded by Councilwoman Leeworthy, to table the vote on 251 E. Liberty St. for thirty days. Motion carried unanimously.

#### **200 E. King Street**

Ms. Nancy Snider, Chairman of the HPRC, addressed Council to discuss the demolition of the property located at 200 E. King St. Ms. Snider advised that three months ago, the HPRC passed along to Council to recommendation to bring condemnation proceedings against the old King's Daughter's Hospital. Ms. Snider stated that the building has since been sold and the new owners wish to repair the structure. Further, the owners were willing to go by the architectural demands requested by the HPRC. Ms. Snider advised that the HPRC, at their last meeting, voted to rescind the recommendation to Council about the demolition of that structure so the new owners could work toward its restoration. Ms. Snider asked that Council consider an extension of sixty to ninety days on this property.

Mr. Kevin, Pat and John Shibley addressed Council to discuss their proposed plans for the property located at 200 E. King St. Mr. John Shibley stated that they have been interested in the building for quite some time. Mr. Shibley further stated that they intend to follow the City's building codes and the HPRC mandates. Mr. Shibley felt that the front of the building could be secured between thirty and sixty days, and the entire building could be secured, as far as a safety factor, in approximately 120 days.

The City Planner advised that she was in receipt of a letter from the Blue Ridge Bank signed by Ms. Peggy Smith, Vice President of Business Development/Loan and read as follows:

Over the past years, I have financed numerous construction loans for John Shibley's customers. All of his customers have been very satisfied with his workmanship and his pricing. Normally, the appraised value exceeds his contract price. John and his brother do most of the construction which in turn gives customers affordable homes.

The City Planner also advised that she was in receipt of a letter from One Valley Bank signed by Mr. Thomas A. Cummings, Assistant Vice President and read as follows:

Please be advised that One Valley Bank-East, National Association, currently accepts any new construction loan applications from qualified borrowers utilizing Basic Housing and Development as a general contractor.

Mr. Shibley stated that they plan to make the first floor handicap accessible and have their business on that property.

Motion made by Councilman Anderson, seconded by Councilman Files, to grant the owners permission to begin work on the property located at 200 E. King St after securing the proper building permits. Motion carried unanimously.

Councilman Taylor stated that the City did not wish to see another boarded-up structure.

Ms. Snider advised that the Shibleys have a work plan which begins with a new roof, new guttering and replacing damaged woodwork on the outside.

### **331 E. Burke Street—Mr. Joe Cox**

Mr. Joe Cox, 331 E. Burke St., addressed Council asking them to allow him to replace three porches, twenty-three windows and install vinyl siding.

The City Planner reported that this property has been on the list for a number of years with problems in property maintenance code violations. The City Planner further reported that there is currently a code violation and there continues to be furniture stored under the front porch. Also, the building is open and the owner has not responded to some of the complaints. The City Planner asked that the property code violations be addressed in the very near future.

Mr. Cox stated that over the past summer, he had two surgeries and was not able to maintain the property. He further stated that he would need six weeks to bring this property into code compliance.

Councilman R. Wachtel advised that this property has been in deplorable shape for several years.

Mr. Cox did state that he was in receipt of the demolition notice.

Councilman G. Wachtel did not feel that the owner could complete the work in six-weeks when it had been in a state of disrepair for five years.

Mr. Cox has made arrangements with a contracting firm in Maryland to repair the property and he has ordered the windows.

The City Attorney advised that the property is currently under a demolition order and if the Council extends the time limit for sixty days, they will fully expect that the work be completed.

The City planner stated that there has been a continual problem with the securing of the structure.

Mr. Cox's son reported that this property has been abandoned for years and over the years, they have received letters for maintenance. Mr. Cox's son further reported that over the years he has assisted in correcting some of the problems the City Planner addressed, such as taking care of the lawn. There is a love seat currently stored under the front porch.

Motion made by Councilman Twigg, seconded by Councilman R. Wachtel to extend the demolition order for sixty days on the property located at 331 E. Burke Street and there will be no further extension beyond that period. Motion carried, G. Wachtel, no.

#### **221 Winchester Avenue—Mr. John Justice**

Mr. John Justice, 221 Winchester Avenue, advised Council that he has owned this property for less than one-hundred days. Mr. Justice requested that he be allowed to obtain a six-month demolition permit, but he was looking for a tenant to remodel the property within the next three or four months. Mr. Justice stated that he could have the property demolished within two days, but he did not want to act hastily if a tenant would be willing to remodel the property. However, Mr. Justice did wish to demolish the two small buildings behind the structure.

Councilman Taylor did not feel that Council should allow this property to remain in its current condition for six months.

Motion made by Councilman R. Wachtel, seconded by Councilman G. Wachtel, to proceed with the demolition of the property located at 221 Winchester Avenue.

Mr. Justice advised Council that he would now proceed with the demolition, but was not sure his contractor would be able to complete the work in thirty days, and asked Council to allow him ninety days.

Councilman R. Wachtel amended his motion and Councilman G. Wachtel amended is second that if the property located at 221 Winchester Avenue is not razed by the property owner by March 10, 1995, the City will proceed immediately with demolition. Motion carried unanimously.

#### **24. Report of City Attorney**

**D. Third and Final Reading of Ordinance 1995-05 for the Zoning of the Roger S. and Johnetta Johnson 9.3 Acre Tract on the Northwest Side of Snapp Street (RP).**

Mayor Sparks asked that the City Planner explain the difference between Planned Residential (RP) and Urban Residential Class A (RUA) zoning.

The City Planner advised that under the Planned Residential RP zoning, the over density in the older sections of the City shall not exceed 15 units per gross acre. The overall density in a developing area on the fringe of the City shall not exceed 8 units per gross acre. The City Planner further advised that the Planning Commission may require a lower gross density if review of the proposed development indicates the maximum allowable density is excessive for the area. The City Planner stated that the minimum size of an area proposed to be zoned Planned Residential (RP) and located in the older section of Martinsburg, shall be two acres. In the Planned Residential zoning single-family detached, semi-detached, two family dwellings, town-house dwellings, multiple family dwellings and multiple family group dwellings are permitted.

The City Planner reported that the Urban Residential Class A (RUA) provides for relatively compact residential development of a maximum density of approximately six dwelling units per acre. Single-family detached, semi-detached, and two-family dwellings are permitted. Further, the RUA District is mapped in the newer sections of the City and may be appropriately extended to developing areas on the urban fringe. This district shall be mapped only where water and sewer lines are available or can be easily extended. 7000 square-feet of lot area is required for a single-family detached dwelling.

The City Planner stated that the area surrounding this 9.3 acre tract is zoned Urban Residential Class A (RUA).

The City Planner advised that the stormwater management plans have been forwarded to Chester Environmental for their review.

Ms. Phyllis Kafton, 1400 Lowland Drive, read the following grievance to City Council:

We, the property owners of Lowland Drive and Snapp Street, file this grievance to restrict and/or change the residential zoning of Stone Point Subdivision from the proposed RP to RUA for the following reasons.

1. The already established residential community is zoned as RUA, which abuts the said subdivision.
2. The RP classification, in accordance with <Martinsburg Zoning Ordinance, Section 541.2 (2) stipulates such zoning to be a minimum of 50 acres, which is contrary to the present approximate 9.5. acres for the said subdivision.
3. Such diversification of individual property (lots) would impede appropriate distribution pertaining to the already established ratio of two-to-three dwellings

per acre, which would present/preclude the over-building of the said subdivision from the proposed 35 to 44 houses for the estimated 9.5 acres minus the 1.5 acres for said streets/roadways. By zoning the said subdivision RUA, it will bring the subdivision into conformity with the adjoining established properties of Loweland Drive and Snapp Street to 16-24 dwellings.

4. The existing proposed plan of said subdivision, in the opinion of the established property owners, will have a negative impact on their real estate such as the existing proposal causes serious concerns regarding possible water run-off, especially during inclement weather, that may flood the adjoining properties and streets.

5. The existing plan may cause a fire hazard in an overcrowded development by not having adequate streets whereby fire and emergency vehicles have egress. Further, the existing plan does not provide for planned streets, which would satisfactorily allow maneuverability of sanitation vehicles and school bus activity. Additionally, the proposed number of dwellings, coupled with the standard number of vehicles per dwelling, will cause severe stress on the Snapp Street road top, as well as be a serious hazard to the children who reside there.

6. The proposed plan does not provide for a dedicated playground area to house play activity for children. Traditionally, the lack of such area often results in children wandering onto others' personal property and thus can lead to potential crime activity.

Ms. Kafton advised that the property owners in the area are not against the subdivision, but they would like to see less houses than are currently being proposed.

Ms. Kafton reported that thirty-five individuals had signed the petition, and that no one had refused to sign.

Mr. P.C. DiMagno, P.C. DiMagno Engineers and Surveyors, felt that the grievance petition had several inconsistencies. Mr. DiMagno stated that the proposed development is in front of the Planning Commission and has been approved shows thirty-four lots. That is the maximum of the proposal that has been submitted. Mr. DiMagno further stated that if the Council zones the property Urban Residential Class A (RUA), they would then be allowed to have 55.8 lots on teht nine acres. Mr. DiMagno did not feel that it was feasible to zone the property RUA, then go badk before the planning Commission with fifty-five lots. Some of the lots surrounding the property have lots as small as twenty-five feet wide by one-hundred-ten feet long. Mr. DiMagno advised that there would be thirty-five single family homes on the property, which would be 3.9 or less per acre, versus the six per acre in an RUA classification. The water runoff has been addressed by Chester Environmental. Mr. DiMagno stated that Loweland Drive currently floods, but they will have two stormwater management systems. There were no questions at the Planning Commission public hearing regarding the zoning classification. There

will be another public hearing before the Planning Commission prior to the preliminary plat approval on March 1, 1995. Extra fire hydrants will be placed in the area. Mr. DiMagno stated that the Planning Commission did not feel that a playground was necessary as there is a park nearby. Mr. DiMagno stated that by changing the zoning to RUA, that would stall the project and they chose RP because there is more flexibility with the side-yards and setbacks. They are not currently planning any townhouses on the property.

Councilman Taylor did not feel that this property should be classified as an older section of town when the property was annexed only three months ago.

Mr. DiMagno stated that the section surrounding the property is all in the City and it is an older section of Martinsburg.

Councilman Gregg Wachtel also felt that this was a new section of town.

The City Attorney stated that the Code does not define what is meant by an older or newer section.

Ms. Kelly Beck, Martin and Seibert, reported that Mr. Johnson currently has the property restricted. Two lots have been sold and they are restricted to residential use only.

Councilman Parkinson advised that if there are restrictions, that cannot be changed.

Ms. Beck stated that there will be a homeowner's association formed and the deed requires a payment of a maximum of \$100.00 per year for stormwater management upkeep.

Councilman Yauger questioned the garbage trucks and emergency vehicles getting in and out of the area.

Mr. DiMagno advised that as required by the Ordinance, the plans are submitted to the various department heads for their comments. There have not been any problems up to his point.

Councilman Anderson asked Mr. DiMagno if the Council could eliminate the time and additional expense by changing the zoning to RUA, would there be any concern about going to RUA.

Mr. DiMagno advised that if the Council could give them an RUA today, they would agree to do it.

Mr. Robert L. Lowe II, 1406 Loweland Drive, read section 510.1 of the Zoning Ordinance as follows:

**510.1 General Purpose:** The maintenance and development of attractive, healthy and well-planned residential areas is a major goal of the City. The residential zoning districts are established: 1) to protect the existing established residential neighborhoods where future development will generally occur in a gradual manner, through the infilling of vacant lots or the replacement of older structures and 2) to guide new residential development in the development

areas, primarily on the fringe of the City, where new growth will most likely be more rapid and where new forms of residential development may be more appropriate.

Mr. Lowe advised that every individual approached signed the petition as presented to Council. Mr. Lowe further advised that Lowland Drive and Snapp Street were already zoned RUA. Mr. Lowe felt that the streets needed to be widened, and he stated that they were not asking for the development not to occur, but they were asking that it be gradual. Mr. Lowe further stated that he would not let his children walk to the current playground facility and he felt that a playground should be a part of this proposed project.

Mr. DiMagno stated that the stormwater will need to be approved no matter what the zoning classification is.

Mr. Lowe expressed concern because there is only one street going into the development.

Councilman Anderson questioned the City Attorney about what the Council could do without going through the entire process to zone the property RUA and limit it to single-family dwellings.

The City Attorney stated that the Council was not obligated to accept the recommendation of the Planning Commission and if they wanted to change the zoning to RUA, the Council would need to read the Ordinance through at two different meetings, because an Ordinance cannot be changed materially at its final reading.

The City Planner advised that the plan would still be acceptable with the Planning Commission if the property were to be zoned RUA.

Motion made by Councilman Anderson, seconded by Councilman Taylor, to read through the first and second reading, by title only, of the Stone Point subdivision with the proposed classification of RUA. Motion carried unanimously.

The City Attorney stated that Council must wait at least fourteen days before the next reading of this Ordinance.

## **9. Unfinished Business**

### **A. Status Report on Beulah Inc., Property Purchase**

The City Attorney reported that there is a meeting scheduled for February 22, 1995. They are still reviewing the deed and there is one parcel that they are having difficulty proving that the City owns. The City Attorney further reported that until the attorneys involved can determine ownership, the contract cannot be signed.

### **B. Consider New Street Light for Mulberry Drive**

Councilman Parkinson stated that Potomac Edison recommended that two lights be installed. Councilman Parkinson further stated that the Police Chief and the City Engineer agree that one street light would be appropriate if it were placed in the correct position.

Motion made by Councilman Parkinson, seconded by Councilman Leeworthy, to approve one street light on Mulberry Drive and the Police Chief and the City Engineer determine the best position for the light. Motion carried unanimously.

### **Property Demolitions**

Mayor Sparks asked that the City Planner read aloud the properties to be considered for demolition of which the Council received no comments from the owners.

The City Planner read as follows:

228 S. Water Street, 313 E. Burke Street, 211 Carroll Street, 315 E. Race Street.

Motion made by Councilman Taylor, seconded by Councilman Barrett, to move forward with the demolitions of the properties that the City Planner listed. Motion carried unanimously.

### **Communications**

#### **A. Consent Agenda**

##### **10.** Receive and File Minutes of the Following:

A. Planning Commission—January 18, 1995

B. Main Street—December 19, 1994

C. Historic Preservation Review Commission—December 5, 1994

11. Letter from the Knights of Columbus, Martinsburg Council No. 1169, requesting permission to hold its annual Tootsie Roll Drive upon the streets of Martinsburg on April 21, 22 and 23, 1995. Approve.

12. Letter from Evans Run Art Association requesting permission to use the public square on May 20, 21 for an Arts and Craft Show—approved.

13. Letter of Resignation from Evelyn Rouse, Parking Supervisor—approve.

14. Letter of Appreciation from the Berkeley County Office of Emergency Services for assistance of the Fire Department Fire Suppression Coverage—Receive and forward to Fire Department.

15. Letter from the March of Dimes requesting permission to hold its annual Walk America on Sat., April 29, 1995 beginning at 9AM. Approve

16. Letter from the Leukemia Society of America requesting permission to make residential solicitation for funds from March 1-March 31, 1995. Approve

17. Letter from Dudley Baptist Church requesting use of Raleigh Street from Martin to Henry on April 20, 1995 for the purpose of a Health Fair. Approve.

18. Resolution to amend the text of the Martinsburg Stormwater, Sediment and Soil Erosion Control Ordinance—Receive and File.

19. Annual Report of the Fire Department for 1994—receive and file.

Motion made by Councilman Anderson, seconded by Councilwoman Files, to approve the consent agenda items 10-19.

Councilman Taylor discussed item number twelve. He stated that he had no problem with them using both sides of the square and N. Queen Street. However, they also requested the use of the parking lot behind the Huntington Bank for the crafters to park their vehicles. Councilman Taylor also expressed concern because they were asking that the City of Martinsburg not collect Business and Occupation taxes. Councilman Taylor felt that they should be required to pay the B&O Taxes.

Councilman Richard Wachtel stated that the City has closed the parking lot for Main Street's antique car show and other events. That did not cause any problems.

Councilman Anderson felt that the City Manager needed to respond to the request in writing to address the B&O tax issue.

Councilman Taylor also expressed concern for the request from Dudley Baptist Church. He stated that this is an emergency route that the fire and rescue units take.

The Fire Chief advised that he was opposed to the request as this is their main thoroughfare to the south and, and the large rescue and fire apparatus would have to be rerouted.

Councilman Anderson rescinded his motion, and Councilwoman Files rescinded her second to approve the consent agenda items 10-19.

Motion made by Councilman R. Wachtel, seconded by Councilwoman Leeworthy, that the entire consent agenda be accepted with the exception of the requests from Dudley Baptist Church and Evans Run Art Association. Motion carried unanimously.

## **B. Other Communication**

### **20. Letter from Berkeley County Development Authority Requesting Notice of Market House Sale an Conditional Lease Status**

Mayor Sparks stated that the Market House Restaurant business was for sale and the Berkeley County Development Authority was mistaken and thought that the building was for sale. Mayor Sparks further stated that the building was not for sale.

### **21. Letter from the Friends of WNPB Requesting a Resolution Supporting Public Broadcasting**

Councilman R. Wachtel did not feel that the Council should adopt a resolution in favor of putting tax dollars into something that competes against private industry.

The Council took no action on this matter.

## **22. Report of the City Manager**

### **Snow Removal Plan**

The City Manager reported that the various department heads that had to plow the recent snow wished to thank the Council for approving the new snow plan.

### **A. Recycling/Composting Update**

The City Manager advised that there was a meeting with West Virginia University and a few sites have been reviewed for the composting. There has been no determination made.

The City Manager reported that four individuals were interviewed for Recycling Coordinator and one of the four will be considered for employment.

### **B. Yard Sales**

The City Manager stated that toward the end of 1994 the City had received several complaints about permanent yard sales. The City Manager suggested Council consider revising the prior Ordinance.

Councilman R. Wachtel suggested contacting the codifier for sample ordinances.

### **C. Fire Fee/Garbage Collection**

The City Manager stated that the City is going to start aggressively pursuing the collection of delinquent fire and garbage fees. The City Manager further stated that he has instructed the Finance Officer to begin this process immediately as it has been two years since there has been strong enforcement. The City Manager reported that \$463,065.40 is owed to the City. Further, some part of that figure has a number of liens that have been filed. Of that figure, approximately \$190,000 is fire fees and \$272,000 is garbage fees.

The City Attorney stated that historically thirty-five to forty percent of that figure is not collectible.

Councilman Taylor suggested the City begin to garnish wages to help in the collection of these past due fees.

The City Manager reported that they will begin these collections within the next week.

The Finance officer advised that the individual that was pursuing these collections was filling in for a vacant City position and this the reason for being behind with these collections.

Mayor Sparks stated that he City must move forward with these collections, and approximately three to four years ago, the City wrote off \$350,000 because of the statute of limitations. Mayor Sparks indicated that he did not want the City in a position where more delinquent fees would have to be written off.

#### **D. Report on Downtown Pigeon Problem**

The City Planner advised that the Code Enforcement official met with the various pest control companies regarding pigeon control in Martinsburg.

Mr. Darby Dean, Code Enforcement Official with the City of Martinsburg, stated that the pigeon problem in downtown Martinsburg is centered in two locations: The Gateway Building at the intersection of Queen and Martin Streets and the Berkeley County Courthouse and the building owned by Charles Kiser. Mr. Dean further state that he has been in contact with the owners of the Gateway Building who are in McLean, VA and they have no one available to clean the sidewalks. Mr. Dean advised that the City of Martinsburg was in receipt of four proposals and the representatives were present tonight to discuss them with Council.

Councilman Parkinson wanted an immediate effect as far as extermination.

Mr. Dean felt that trapping was the best approach.

Mayor Sparks advised that the State of West Virginia was going to offer a proposal, but due to inclement weather, they were not able to attend. The meeting has been rescheduled for Thursday, February 16, 1995.

Mr. Tom Miller, Hughes and Company addressed Council and discussed the following proposed control service:

1. Initial treatment shall be to trap and net pigeons in their roosting areas and place them in coops. The birds will then be transported entirely out of the Martinsburg area and be disposed of in a humane manner. The goal is to immediately reduce the size of roosting flocks. This service would continue for approximately two (2) weeks, during the hours of 7 p.m. and 10 PM.
2. Baiting selected roof tops would then commence with a chemosterilant. This chemical is a reproductive inhibitor which causes temporary sterility without harming the bird. For the full effect, the female pigeons must feed on the chemosterilant for then (1) days, which then inhibits fertility for about six (6) months. Emphasis on baiting must occur in February and March, when reproduction is at its lowest level and again in August and September. Pre-baiting must be done at selected sites for one month before the chemosterilant is exposed. This is a long-term program, but appreciable reduction in the pigeon flocks will be realized. Monthly maintenance must occur continuously through the year(s) to maintain the program.

Under the proposal from Hughes and Company the success of this program would be based on the following recommended activities of the City officials and property owners.

1. The City of Martinsburg should maintain their present system of notifying property owners of code violations.
2. Property owners should board up all broken windows and doors, both on the sides of the buildings and on the roof tops. This should be done after the initial treatment has occurred. All other pigeon accesses into the buildings should be repaired or boarded up.
3. The program would require Hughes technicians to enter abandoned building at night. It is requested that police escorts be provided by the City to clear abandoned areas of any unwanted persons. The Buildings should be made available to Hughes and Company employees by the property owners on all required days during the hours of 7PM and 10PM.
4. All inquiries made by the media and special interest groups must be directed to the City officials. If comments are required from Hughes and Company, then the City should contact the Corporate Entomologist and Sanitarian.

Mr. Miller felt this program was the most humane and efficient means of controlling Martinsburg's pigeon population. The cost for the first year initial and monthly service was \$5,500.

Mr. Larry Hines, Full Circle Consulting, stated that there are no quick and easy solutions in addressing the pigeon problem. Mr. Hines discussed their proposal as follows:

1. Establish up to three live trapping stations on rooftops in downtown Martinsburg. These stations would be on buildings owned by the City, County or cooperating businesses or owners.
2. Operate and maintain the live trapping stations for two months. Maintenance would include removal of trapped pigeons, baiting and cleaning in and around traps.
3. Dispatch pigeons in a humane manner and dispose of carcasses as prescribed by law.
4. Train up to two city employees and perform the aforementioned duties. After the two month operational period, the traps become the property of the City of Martinsburg and can be maintained by the trained employees.
5. Compile and long-term pigeon management plan. This plan would identify roosting, nesting and feeding areas in and around Martinsburg and prescribe specific management techniques for problem areas.

6. Provide consultation concerning trapping efforts until October 1, 1995.

Mr. Hines advised that the cost of this proposal would be \$2,500.00

Mr. Tim Redding, J.C. Ehrlich Co., discussed the following proposal with Council:

Eight live traps would be placed at strategic locations in low-profile areas throughout the flat roof areas of the North Queen Street area. The traps would be pre-baited with untreated whole kernel corn, with service visits every three days to freshen the corn and the water supply. During this pre-baiting phase, the doors of the traps would remain open. After bait acceptance has been established, corn would be placed inside the traps and the doors would be armed to allow the birds to enter but not exit. Live trappings would commence, with the birds being removed on an every other day basis, taken to their local office and humanely eliminated.

The entire trapping program would consist of sixteen site visits. The birds would be removed live; no toxic materials whatsoever would be used in this control program eliminating the concern that non-target birds would be affected by the toxic material and die on the property.

The cost to provide the trapping control program is \$1,360. The price includes all labor, materials, transportation and insurance costs.

Mr. Mark Shibley, Tri-State Termite and Pest Control Co., Inc., stated that their approach is more of a quick knockdown. Tri-State will guarantee their work for two years. The cost is \$360 per building.

Mayor Sparks felt that the Council should hear from the State before any decisions are made. Mayor Sparks also felt that Mr. Charles Kiser and the County Commission should be approached to share in the expense.

Mayor Sparks informed the various companies that they would be notified within the week.

### **23. New Business**

#### **A. Consider Street Light Request for Red Hill Road**

#### **B. Consider Street Light Request for 201 N. Tennessee**

The City Manager advised that Potomac Edison recommended installing 100-watt high pressure sodium street lights on poles M48229, M47068, and M105361J on Red Hill Road and installing a light on pole M2957 on West Race Street between North Tennessee and North Rosemont Avenues.

Motion made by Councilman Richard Wachtel, seconded by Councilwoman Gunnoe, that the City move forward with both projects. Motion carried unanimously.

#### **C. Consider Elimination of Gaither Unemployment Fund**

The City Attorney reported that when Ms. Gaither was working in Maryland, she was terminated and the unemployment came back on the City of Martinsburg. Later, as she pled guilty there was a reluctance on the Council's part to pay the unemployment claim. The City set up a separate account in the event that they would have to pay the claim.

Motion made by Councilman R. Wachtel, seconded by Councilman Taylor, to close the account and the monies be transferred to the proper municipal account. Motion carried unanimously.

#### **D. Set Date for 95/96 Budget Hearings**

Mayor Sparks set the public hearing to discuss the levy rates on March 16, 1995 at 5:30 pm and the budget hearing meeting for March 23, 1995 at 5:30 PM.

#### **E. Set Date for Police Levy Public Meeting**

Councilman R. Wachtel felt that the Council should not hold a public hearing until sixty or ninety days after the upcoming school bond election.

Councilman R. Wachtel suggested asking the citizens to vote in 1996 to renew the Police Levy for three years beginning in 1997.

The Police Chief advised that there currently exist four vacancies within the department.

The City Manager stated that when the meeting is held, it will give the Police Chief a good opportunity to inform the public about what has been accomplished as far as training, etc., from the funds in the levy.

#### **F. Approve Adjustments to Recycling Grant Funding**

The City Manager reported that he met with the Recycling Committee and they wish to utilize the \$20,000 that the State has indicated cannot be used for salaries and wages, and apply that towards the purchase of a baler for plastics and cardboard.

Mayor Sparks stated that corrugated is currently selling for \$115 per ton, and he felt that two additional employees could be hired for baling and other Public Works matters.

Motion made by Councilman R. Wachtel, seconded by Councilwoman Gunnoe, to purchase the baler. Motion carried unanimously.

### **24. Report of City Attorney:**

#### **A. Third and Final Reading of Ordinance 1995-01 Establishing a Records Manual for the City of Martinsburg**

Motion made by Councilman R. Wachtel, seconded by Councilwoman Gunnoe, to read through the third and final reading of Ordinance 1995-01, by title only, and adopt. Motion carried unanimously.

**B. Third and Final Reading of Ordinance 1995-02, which Regulates Streets and Sidewalks in the City of Martinsburg**

Motion made by Councilwoman Gunnoe, seconded by Councilman Barrett, to read through the third reading of Ordinance 1995-02, by title only, and adopt. Motion carried unanimously.

**C. Third and Final Reading of Ordinance 1995-03, which amends the assigned strength of the City Workforce.**

Motion made by Councilman G. Wachtel, seconded by Councilwoman Gunnoe, to read through the third reading of Ordinance 1995-03, by title only, and adopt. Motion carried unanimously.

**E. Third and Final Reading of Ordinance 1995-06, for the Zoning of Alabama Avenue (RUB).**

Motion made by Councilman Taylor, seconded by Councilwoman Gunnoe, to read through the third reading of Ordinance 1995-06, by title only, and adopt. Motion carried unanimously.

**F. First and Second Reading of Ordinance 1995-04, which Provides for the Regulation of Trailers, Semi-Trailers and Storage Shipping**

Mayor Sparks advised that if there is a problem with this ordinance it can be discussed prior to the third and final reading.

Motion made by Councilman G. Wachtel, seconded by Councilwoman Leeworthy to read through the first and second reading of Ordinance 1995-04, by title only. Motion carried unanimously.

**G. First and Second Reading of Ordinance 1995-07, which Regulates Fencing Around Stormwater Retention Ponds**

Motion made by Councilman Taylor, seconded by Councilwoman Gunnoe, to read through the first and second reading of Ordinance 1995-07, by title only. Motion carried unanimously.

**H. First and Second Reading of Ordinance 1995-08, which Adopts the 1993 BOCA Code, Twelfth Addition as the State Building Code.**

Motion made by Councilwoman Gunnoe, seconded by Councilwoman Leeworthy to read through the first and second reading of Ordinance 1995-08, by title only. Motion carried unanimously.

**I. First and Second Reading of Ordinance 1995-09, which Adopts the 1994 Edition of the West Virginia State Fire Code and also Incorporates the 1994 Edition of the National Fire Code.**

Motion made by Councilman Taylor, seconded by Councilwoman Gunnoe to read through the first and second reading of Ordinance 1995-09, by title only. Motion carried unanimously.

## **25. Report of the Mayor**

### **A. Appointments**

#### **Ticket Station**

Mayor Sparks reported that within the last year, there has been a movement to relocate the railroad ticket station. Mayor Sparks felt that moving the ticket station out from the downtown area would be a devastating blow to the revitalization of downtown Martinsburg.

Mayor Sparks appointed the following individuals to a Committee to look into the matter of retaining the ticket station in downtown Martinsburg:

Councilman R. Wachtel, Councilman G. Wachtel, Councilman Karos, Councilwoman Gunnoe, Councilwoman Leeworthy, Councilman Barrett, Councilman Taylor, Mr. Vic Roberts—Advisor, J. Oakley Seibert, City Attorney

### **B. Proclamation—Child Safety Awareness Week**

The City Recorder read the proclamation signed by Mayor Sparks proclaiming February 12, 1995 through February 18, 1995 as Child Passenger Safety Awareness Week.

## **26. Report of the City Council Members**

### **Taylor**

Councilman Taylor felt that the Mayor should write a letter of commendation to the employees that were involved in the snow removal and place it in their personnel file.

### **G. Wachtel**

Councilman G. Wachtel asked that the RFP for the new Zoning Ordinance be placed on the March Council agenda.

### **Parkinson**

Councilman Parkinson advised that he is receiving several calls on the paving status of Hillcrest Drive. Councilman Parkinson further advised that Hillcrest Drive was rated a number four in the Comprehensive Plan. Councilman Parkinson asked the City Manager to check that area to ascertain how far down Hillcrest Drive should be paved.

Councilman Parkinson stated that the lower area of Briarwood is still having problems with the creek on Mill Race Drive. Councilman Parkinson further stated that the problem has become rather complicated and the City Manager suggested contacting the Corps of Engineers and the Department of Natural Resources to study the situation.

### **R. Wachtel**

Councilman R. Wachtel reported that Evelyn Rouse, Parking Supervisor, has requested that the City of Martinsburg consider paying \$1,000 toward her health insurance premium for a one-year period following the effective date of her retirement. Councilman R. Wachtel advised Council that he informed Ms. Rouse that this had not been done in the past, but she asked that this matter be addressed.

Councilman Anderson stated that he thought very highly of Ms. Rouse, but he did not feel that the Council should set a precedent approving this request.

Motion made by Councilman R. Wachtel, seconded by Councilwoman Leeworthy, to pay \$1,000 of Evelyn Rouse's health insurance premium over a twelve month period following the effective date of her retirement.

Motion failed 9-1, Leeworthy yes.

### **Gunnoe**

Councilwoman Gunnoe asked that the City bag the meters in the rear lot for Council members to park on Council night.

Motion made by Councilwoman Gunnoe, seconded by Councilman Barrett that the City bag the meters on Council night, and mark the bags "Reserved for Council Members Only" Motion carried, R. Wachtel, no.

### **Twig**

Councilman Twigg hoped that Council would consider reserving the first \$100,000 or \$200,000 of the unencumbered balance before approving funding for any outside agencies, to be used for street improvements.

### **27. Executive Session**

Motion made by Councilman Yauger, seconded by Councilman Barrett, to go into Executive Session at 11:21 PM. Motion carried unanimously.

Motion made by Councilman Karos, seconded by Councilman Taylor to go out of Executive Session at 11:40 PM.

Motion made by Councilman Karos, seconded by Councilman Taylor to adjourn at 11:40 PM. Motion carried unanimously.

[Minutes signed by City Recorder Sharon Flick and Mayor Earnest L. Sparks](#)