

City Of Martinsburg
Special City Council Meeting Minutes
Thursday, July 28, 2016
5:00 P.M.

With a quorum present, the special session of the Martinsburg City Council was called to order by Legal Counsel Kin Sayre at 5:00 p.m. The following Council Members were present: Gregg Wachtel, Harriet Johnson, Dennis Etherington, Kevin Knowles, Ken Collinson, Mark Baker, and Jason W. Baker. Also present were: Mark Baldwin, City Manager; Kin Sayre, Legal Counsel; Gena Long, City Recorder, Police Chief Maury Richards, and Finance Director Mark Spickler.

Motion made by Councilman Knowles, seconded by Councilman Collinson, to Councilman Wachtel to lead the meeting in the Mayor's absence. Motion carried unanimously.

3. Approve July 14, 2016 Regular Meeting Minutes

Motion made by Councilman Knowles, seconded by Councilman Collinson, to approve the minutes. Motion carried unanimously.

4. Presentations

5. Petitions from Citizens

Ms. Heather Deaner, Hedgesville, was opposed to allowing Ms. Montgomery to continue to be employed by the Martinsburg/Berkeley County Public Library system. She stated that Ms. Montgomery's policies limit access and cause parents to be fearful of fines or expulsion for any small offense.

Ms. Betty Krenick, Hedgesville, WV read the following:

I have known Martinsburg for 26 years as a visitor while my husband, one of the Martinsburg Jazz Orchestra rehearsed with the band in Hedgesville High School. We moved to Hedgesville in 2005. I still go to the War Memorial Park in June to listen to the band's performance.

I've been a patron of the Library for 10 years and a donor for five years. So, it saddens me to see what has been happening in the last 4 months. It's your responsibility to make Martinsburg an attractive investment for small businesses. The recent disputes surrounding the Library are contributing to bad public relations.

It appears to us that the Council has not done anything to prevent this situation from happening in the first place. And it would appear that you have done nothing to fix it.

At the last meeting, the Mayor claimed to have no power. I suggest you amend the City Ordinance, Article 147, to outline your responsibilities for oversight of the Library Board. Your apparent lack of oversight has allowed this situation to occur. "You break it, you own it."

Ms. Anne Pearson, Iroquois Trail, read the following:

City Council Members:

One of the finest ways to remember a deceased friend or loved one is by making a memorial donation to a public library.

At the Martinsburg Public Library, patrons could donate some money and select or suggest books to be purchased. The reference librarian would make sure the book or books were bought, would place book plates, noting the donor's name and the name of the remembered person in the front of each book, and the books would then be cataloged and added to the library collection for circulation among the patrons.

Thank you notes were sent to the survivors. It was here that a very special connection was created between the library and the family.

Finally, the information about the memorial gift would be entered into a one of several volumes of memorial donation notebooks. These notebooks were kept in a prominent place for all to view when in the library. If, for example, a member of the surviving family came into the library, they could look in a notebook, see the titles of the books that were bought in honor of their loved one and find the books, see the bookplates, check the books out and remember their loved one. What a precious experience!

Perhaps, Councilmember Gregg Wachtel, Councilmember Mark Baker? Do you remember Edward Patö Dockeney who served as Mayor and on the City Council? Do you remember Nancy, his beloved wife who was killed in 2003 in an accident? Thousands of dollars were donated to the Martinsburg Library in her name and Betty Gunnoe spent countless hours selecting special books in memory of Nancy.

Betty entered all the information into the Memorial Donation Notebooks including the dates, who they were in honor of, who they were given by, and the authors and titles. And now these Notebooks are lost? What do you think her husband would think if he knew that they were indiscriminately tossed by someone because she didn't care about memories of deceased loved ones of a community she still does not know? In recent months, more than one patron has asked about the books and has been referred from one person to another to another to another and no one knows where they are. Where are they? Have they been trashed along with the books which were donated to the library in the memory of loved ones? Is this the result of the Library Board's non-involvement with the day-to-day activities of a Library Director who has no regard for the community and those things that are held dear? City Council Members, I urge you, I plead with you, to take this to the Mayor and ask him to get rid of the Board and the Library Director, Sheridan Montgomery, before any more cherished valuables are carelessly and thoughtlessly discarded.

Mr. Vernon Pearson read the following into the record:

Due to limited time constraints I will dispense with formal greetings and ask that my written remarks be entered into the minutes as if read without objection.

In our last meeting, the Mayor said that he was powerless to do anything about the Library Board. I asked what rule of law prevented him from doing anything.

Robert Frankenberry and I met with the Prosecuting Attorney; Pamela Games-Neeley this week in preparation for legal matters against the Library Commission, that we are hoping can be avoided. Chazz Printz, legal counsel for the Library Board, has said "No one really wins when things are litigated." Unfortunately, should legal action take place, this Council would be subpoenaed to give testimony.

Let's work to avoid this.

I submit to you that under WV Code 6-6-7(1) that the Directors of the Library Commission are not county officers and therefore are not covered by the code related to removal of appointed offices and therefore can be dismissed as Directors in the same manner that they were appointed, in such that, the Mayor and the City Council as the governing authority have all rights and privileges to take such action.

Furthermore, the Directors do not take an Oath of Office and therefore are not deemed as officers.

In absence of any law prohibiting the governing authority to remove an appointed person of their position, the governing authority may remove such person in the manner in which they were appointed to the position.

Even though WV 10-5-1(f) states "A director may be removed for just cause in the manner provided by the bylaws of the Library Board."

The statement is neither all-inclusive or all-exclusive in the manner in which a Library Commission Director may be removed.

I therefore, respectfully request that a member of the Council make a motion to table an action for the next City Council meeting to remove the Directors of the Library Commission immediately.

Ms. Julie Keller, Richard Street, stated that she was disappointed in Council's inaction in the matter of the Library. She stated that it is important to keep knowledge for children from becoming out of reach.

Ms. Consuelo Newman, Martinsburg, read the following into the record:

We are here today because as of this date, we have yet to move one inch forward in resolving the matter of Ms. Montgomery's employment. The Council and the Library Board seem to have created a life estate for Ms. Montgomery. Ironically, in an at-will state, where with extraordinary ease and haste she has eliminated, in various ways, 2/3 of the library staffs of four libraries, encompassing decades of service. She, on the other hand, after 6 months, cannot be fired. This is according to the head of the Library Board who says that the Library has the power to hire, but necessarily to fire, and this is mirrored by the City Council where you, Mayor Karos, tell us that you can appoint Board members but may not be able to remove them. What extraordinary statements. One can only wonder what power is being wielded here? Is it possible that Bowles Rice, which represents the Library board in employment matters, also represents the City Council and that Sara Douglass's husband also works for the firm, is it possible that there is some conflict of interest here?

The only question I have is why. There are so many whys amassing themselves, that it seems as though they are spawning right in front of our eyes.

The City told the Library Board to address the community's concerns before the next library meeting, and, after waiting weeks for this to happen, we were told that a board meeting would occur this past Friday, at 1 PM, at time which is so convenient for working families. On the library website, it was listed as being open to the public. On the door of the library, however, it was listed as a closed meeting. More than 20 of us, nevertheless, came and waited to hear this pronouncement: Ms. Montgomery was to self-assess her performance and that current employees would bring up the guard. So, Sheridan Montgomery is to tell us what a stellar job she has done and will be backed by employees that are either grateful that she has hired them, or afraid that she will fire them, if they don't.

The regularly scheduled meeting, where Sara Douglass has told us that our questions will be answered, has been cancelled.

I consider this a slap in the face, not only to the community, to the City Council as well. We are here to ask that you do your jobs, which unfortunately, the library board members are unable to do. Sheridan Montgomery is about to be the only employee in West Virginia who is tenured for life.

Mr. Michael Law, Hedgesville, stated that the Library system is in total disarray and that County residents have no say in how County funds are spent. He stated that Sheridan Montgomery should be immediately dismissed from employment.

Mr. Terrance Wendall, Back Creek Valley, stated that he is appalled by the process used for weeding and disposition of books and other materials. He stated that there seems to be some confusion, as the lists of books do not separate out those that have been lost or stolen from those that went to the shredder. He asked Council to take immediate action to stop the removal of materials from the buildings and request an independent appraisal to determine the value of the items.

Ms. Colleen Moore, Equestrian Way, presented a letter from library affiliates expressing concern with the library director, addressed to the Trustees of the Martinsburg Berkeley County Library Board, as follows:

On behalf of the affiliates of the Martinsburg Berkeley County Public Library (MBCPL), I feel the time has come to inform you about the negative impact the current director has had on the five libraries of Jefferson and Morgan Counties: Shepherdstown Public Library, South Jefferson Public Library, Bolivar-Harpers Ferry Public Library, Morgan County Public Library and Paw Paw Public Library.

As you may already know, MBCPL, is our "service center" and, as such, is paid an extra \$48,099 to provide services to the affiliate libraries. These services include courier, payroll and inter- and intra-library loan handling. We also look to the MBCPL to provide a forum wherein the three counties can discuss and agree upon what is best for the patrons of the Eastern Panhandle. We had many such meetings under the previous director, and as a group, we agreed on approaches that champion the basic tenants of librarianship: the right to read, the right to access information, the right to privacy and the right to do all of these things in an atmosphere that is comfortable, welcoming and reflects the community it serves.

Since the hiring of the new director, we have witnessed the mounting distress of the communities in Berkeley County, and have heard many personal stories from both patrons and staff that are alarming, to say the least.

As affiliates, we have been reticent to step forward since this is a Berkeley County issue; however, we feel compelled to share our greatest concerns at this time. Many years ago, the three counties decided to share a library card, and to treat our nine libraries as one large collection. We all share the patrons residing in the Eastern Panhandle, and all patrons have been, until now, entitled to similar borrowing privileges--those that we agreed upon as a consortium and with a consensus of the group. Those privileges were reasonable, manageable and flexible, according to each location's discretion, but they were accorded to all patrons, regardless of where they resided in the Panhandle, or the color of their library card.

While we have no control over the policies recently implemented at MBCPL, what we have witnessed is the increasing restriction of access to information; including the discarding of tens of thousands of items without offering them to other libraries in our system first; the limiting of checkouts from 30 to 10 per patron; the limiting of renewals from 2 to 1; the restriction placed on new borrowers to 3 items out at a time for 90 days; the limiting of computer use to one hour per day per patron; the limiting of what patrons can access via computer (e.g. "too much time on social media"); and the imposition of a \$5 fee on interlibrary loans beyond 2 per month (which our policies state is a free service).

Not once were the affiliates consulted on any of these changes. This means that "our" patrons who do happen to reside in Berkeley County, with an MBCPL library card, are being penalized by virtue of their zip code.

While we cannot speak to the apparently "hostile workplace environment" being described, we can speak to Ms. Montgomery's unprofessional and rude behavior encountered by affiliate directors. These include lack of communication with the affiliates; unanswered emails, unanswered questions and no consortium meetings with the affiliates. Shepherdstown had had one site visit from Ms. Montgomery and a scheduled visit to the monthly board meeting failed to materialize without explanation. We are still awaiting our signed affiliate agreements--a requirement on the part of the Service Center. One phone call requesting a rationale for the unilaterally imposed \$5 interlibrary loan fee was shut down with an aggressively-stated "that's the new policy!"--in essence, "deal with it."

The affiliate library directors have been increasingly concerned, and have kept our own individual boards informed. They too, are troubled by the situation.

We trust you will do what is best for the citizens of Berkeley County, who, in the library world are our citizens, too.

Mr. David Anderson, Music Court, asked that while the sidewalks on Mall Drive were being improved, he would like for Council to consider improving the ADA accessibility to the Children's Park by constructing a sidewalk from Wall Street, and would like for Ken Collinson to lead the investigation of this matter.

6. Receive and File Reports, Minutes and Correspondence of the Following:

- a. Martinsburg-Berkeley County Parks and Recreation June 22, 2016 Meeting Minutes
- b. Correspondence from Lemanowicz, LLP regarding notice of Visual Impact Assessment (öBalloon Testö) for proposed communications tower on Saturday, August 6, 2016 from 7 AM until 4 PM.

7. Reports of Chairpersons of Council Standing Committees

8. Report of Mayor

9. Report of City Attorney

City Attorney Kin Sayre stated that he would have a draft parade and assembly ordinance for review in the next week or two.

10. Report of City Manager

11. Unfinished Business

a. Third and Final Reading of Ordinance 2016-19 to Amend and Re-enact Portions of the Codified Ordinance of the City of Martinsburg, Part Seventeen—Building and Housing Code, Article 1711—West Virginia State Building Code, Section 1711.1—Adoption; and Repealing Ordinance 2013-06 of the City of Martinsburg, West Virginia

Motion made by Councilman Knowles, seconded by Councilman Etherington, to pass Ordinance 2016-19 through the third and final reading, by title only, and adopt. Motion carried unanimously.

b. Third and Final Reading of Ordinance 2016-20 Amending Ordinance 2015-08 Which Established Job Descriptions for Employees of the City of Martinsburg, West Virginia

Motion made by Councilman J. Baker, seconded by Councilman Collinson, to pass Ordinance 2016-20 through the third and final reading, by title only, and adopt. Motion carried unanimously.

c. Third and Final Reading of Ordinance 2016-21 Amending the City of Martinsburg Code, Part Five—General Offenses; Article 521—Liquor Control, by Amending and Reenacting Sections 521.03, 521.07 and 531.09, and Adding Section 521.15 to Allow for Sunday Alcohol Sales after 10 AM

Motion made by Councilman Knowles, seconded by Councilman Collinson, to pass Ordinance 2016-21 through the third and final reading, by title only, and adopt. Motion carried unanimously.

12. New Business

a. First and Second Reading of Ordinance 2016-22 Amending the City of Martinsburg Code, Part Five—General Offenses, Article 545—Weapons and Explosives, by Amending and Reenacting Section 545.10—Fireworks; Definition, Sale, Possession and Discharge

Motion made by Councilman Collinson, seconded by Councilman Etherington, to pass Ordinance 2016-22 through the first and second reading, by title only. Motion carried unanimously.

b. First and Second Reading of Ordinance 2016-23 Amending Ordinance 2016-20, which Established Job Descriptions for Employees of the City of Martinsburg, West Virginia

Motion made by Councilman Etherington, seconded by Councilman Collinson, to pass Ordinance 2016-23 through the first and second reading, by title only. Motion carried unanimously.

City Attorney Kin Sayre explained that this will allow for the hiring of three additional police officers until the Burner case has been resolved and, with the ability to promote to the ranks of Sergeant and Corporal, the strength will readjust through attrition back to 30 officers.

c. Approve Resolution 2016-20—FY 2016-2017 General Fund Budget Revision #1

Motion made by Councilman Etherington, seconded by Councilman Collinson, to approve Resolution 2016-20. Motion carried unanimously.

d. Approve Resolution 2016-21—FY 2016-2017 Coal Severance Fund Budget Revision #2

Motion made by Councilman Etherington, seconded by Councilman Knowles, to approve Resolution 2016-21. Motion carried unanimously.

e. Approve/deny purchase of salt canopy for the Public Works Department--\$20,921.11 (\$21,551.63 insurance reimbursement)

Motion made by Councilman Collinson, seconded by Councilman Etherington, to approve the purchase of a salt canopy. Motion carried unanimously.

City Manager Mark Baldwin explained that the figure is just to purchase the canopy and that the City will also seek bids for construction.

f. Authorize bid for new garbage truck for Sanitation Department

Motion made by Councilman M. Baker, seconded by Councilman J. Baker, to authorize the bid. Motion carried unanimously.

g. Authorize Mayor to compose and send letter to local legislature regarding recent changes to fireworks legislation

Motion made by Councilman M. Baker, seconded by Councilman Etherington, to authorize the Mayor to send the letter. Motion carried unanimously.

h. Approve/deny request from Martinsburg Renew to close a portion of W. Martin Street, between Tuskegee and Kentucky, on Saturday, September 17 from 4PM until 8 PM, for a neighborhood block party, contingent upon proof of adequate liability insurance

Motion made by Councilman Knowles, seconded by Councilman Knowles, to approve the request.

Councilman M. Baker pointed out that this is two blocks, one of which holds 75 homes and this may cause significant traffic and ingress/egress issues.

Police Chief Richards agreed that there is a traffic issue and that two driveways serving multiple residences will be impacted. He suggested alternative locations, such as Leeland Park. He added that he believes this is a great initiative but is concerned with the traffic issues. He asked that Council consider street closures when drafting an events ordinance in the near future.

Motion made by Councilman M. Baker, seconded by Councilman Etherington, to table the request in order to address concerns or amend request. Motion carried unanimously.

Councilman M. Baker stated that he is not opposed to the event, but would like for the requestor to consider the location, as the proposed location creates traffic issues.

Councilman Knowles added that rules for street closure and events should be consistent all over town.

i. Approve/deny settlement order in the matter of Theodore K. Oates, II, M.D., a resident of the State of New York and Ann S. Oates, a resident of the State of New York v. West Virginia Department of Transportation, Division of Highways, a political subdivision of the State of West Virginia, Paul A. Mattox, Jr., P.E. as Secretary of Transportation and Commissioner as Highways, and the City of Martinsburg, West Virginia, a municipal Corporation in the amount of \$20,000

Motion made by Councilman Knowles, seconded by Councilman Etherington, to approve the settlement order. Motion carried 5-1, J. Baker voting no.

j. Discuss Caperton Train Station office suite elevator and take action as necessary

Mr. Baldwin explained that the current elevator is in need of upgrading, and it is difficult to find replacement parts. He stated that Landmark Elevator has provided a quote, which is part of the existing agreement and is an upgrade to current equipment, not replacement of the entire system. He recommended the needed and optional upgrades, for a total of approximately \$45,000

Motion made by Councilman Etherington, seconded by Councilman Collinson, to accept the quote from Landmark Elevator for the required and optional equipment upgrades. Motion carried 5-1, J. Baker voting no.

Mr. Baldwin also informed Council that the air conditioning in the Market House is down and a new unit is required and that vendors are sending quotes. Since this is an emergency situation, Council can expect a telephone poll in the near future.

13. Executive Session

Meeting adjourned with unanimous consent at 5:40 PM.

Gena Long, City Recorder

George Karos, Mayor