

**CITY OF MARTINSBURG
REGULAR COUNCIL MEETING
June 9, 2011
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: Rodney Woods, Gregg Wachtel (6:32), Dennis Etherington, Max Parkinson and Roger Lewis. Not present was Richard Yauger and Betty Gunnoe. Also present were: Mark S. Baldwin, City Manager, Kin Sayre, City Attorney, Gena Long, City Recorder, Jeffrey Wilkerson, Public Works Director, Michael Covell, City Engineer/Planning Director and Steve Knipe, Utilities Director, Kevin Miller, Police Chief, Paul Bragg, Fire chief and Mark Spickler, Finance Director.

3. SALUTE TO FLAG

Councilman Parkinson led the Pledge of Allegiance to the Flag.

4. PRAYER – Pastor Walter Bowers—Calvary Methodist Church.

The invocation was given by Pastor Bowers.

5. Approve May 5, 2011 special Council meeting minutes.

Motion made by Councilman Parkinson, seconded by Councilman Woods, to approve the May 5, 2011 special council meeting minutes as presented. Motion carried unanimously.

6. Approve May 12, 2011 special joint Berkeley County Council/Martinsburg City Council meeting minutes

Motion made by Councilman Parkinson, seconded by Councilman Etherington, to approve the May 12, 2011 special joint Berkeley County/Martinsburg City council meeting minutes as presented. Motion carried unanimously.

7. Approve May 12, 2011 regular Council meeting minutes.

Motion made by Councilman Etherington, seconded by Councilman Parkinson, to approve the May 12, 2011 regular council meeting minutes as presented. Motion carried unanimously.

8. Approve April 2011 Administrative and Financial Report

Motion made by Councilman Lewis, seconded by Councilman Parkinson, to approve the April 2011 Administrative and Financial Report. Motion carried unanimously.

9. PRESENTATIONS

(a) Administer Oath of Office to Patrolman James Crites, Patrolman Craig Richmond and Patrolwoman Ashley Griffin

City Recorder Gena Long delivered the oath of office to Patrolman James Crites, Craig Richmond and Patrolwoman Ashley Griffin.

Mayor Karos thanked the officers for choosing a career in law enforcement with the City of Martinsburg.

(b) Make comment on ABC Application—Fat Tuesday’s; 1211 N. Queen Street.

Mr. James Ray presented his request, explaining that the establishment will serve New Orleans cuisine and American food with a raw bar on Tuesday evenings. The hours will be from 10:00 AM until 2:00 AM. Mr. Ray stated that the bar will have no smoking and no machines. The request, he stated, was approved about one year ago, but due to an injury, he was unable to open the business. Mr. Ray stated that he had been working with the Planning Department to get everything in order.

Police Chief Kevin Miller indicated that he has no issues with the application.

Motion made by Councilman Wachtel, seconded by Councilman Parkinson, to forward the application to the WVABCA Licensing Department with no further comment. Motion carried unanimously.

(c) Make comment on ABC Application—Orioles’ Nest 313; 940 Foxcroft Avenue.

Ms. Jakki Van Metre presented her request, stating that the Council had approved the establishment in another location, but due to concerns from the neighboring residential location, she is requesting another location. She indicated that the establishment is a bona fide fraternal order and donates to the Hedgesville High School, Martinsburg High School and City Police Force.

Motion made by Councilman Lewis, seconded by Councilman Parkinson, to forward the application to the WVABCA Licensing Department with no further comment. Motion carried unanimously.

10. PETITIONS FROM CITIZENS

- Ms. Bonnie Slaton, 114 S. Raleigh Street, spoke regarding the brick wall outside of her residence. Ms. Slaton stated that the wall had been hit with a vehicle and she would like to repair it, but cannot get a building permit without Council approval because the wall is in the City right-of-way.

City Legal Counsel Kin Sayre indicated that the request was approved in 2006 when the wall had been struck and suggested that the city request that the City be added to Ms. Slaton’s home owner’s insurance policy as an additional insured.

Motion made by Councilman Lewis, seconded by Councilman Parkinson to allow Ms. Slaton to rebuild the wall with the contingency that the City of Martinsburg be named as an additional insured on Ms. Slaton’s home owner’s insurance policy. Motion approved unanimously.

- Mr. Mike Folk, Berkeley County resident, discussed the City appointed members of the Airport Authority. Mr. Folk discussed the current fixed-based operator (FBO), Arcadia. In February, Arcadia was the operator of a plane seized in the Congo under suspicion of gold-smuggling. Mr. Folk explained that there were millions of dollars of cash and gold on board.

Mr. Folk indicated a previous time he had spoken to the Council, citing ethics problems with Commissioners Cox and Wachtel. He stated that Mr. Cox cannot vote on any issues and Mr. Wachtel, as the Chairman is not a voting member. Until Councilman Woods was appointed, there were no voting members on the Airport Authority. Mr. Folk pointed out that, by Mr. Wachtel's admission, he has accepted advertising dollars from Arcadia.

Mr. Folk cited the adage that "if you do what you always did, you get what you always got." He stated that he believes Mr. Wachtel and Mr. Cox should not be reappointed. He mentioned Mr. Wachtel stating that, on the issue of evening meetings, the meetings have been held during the day since the 1970's. Mr. Folk stated that the City needs people with fresh ideas because many of the businesses in the airport have closed their doors and declared bankruptcy.

Mr. Folk stated that the Airport Authority had temporarily approved Aerosmith, the old operator to come back to the Airport. The company, he stated, has several federal and state tax liens and in 2008, Aerosmith was found guilty of breach of several contracts. Mr. Folk stated that he believes the Airport Authority could find local fuel providers or take over the fuel provision themselves, as other airports have done.

Councilman Lewis asked Mr. Folk what his point is, what is he asking the Council to do. When asked if he is a resident of the City, Mr. Folk stated he lives just outside the City. Councilman Lewis asked again, what Mr. Folk is asking the Council to do.

Mr. Folk stated that he has already stated his point.

Mayor Karos brought the meeting back to order and asked the two gentlemen to come to order.

Mr. Folk stated that Mr. Wachtel has received several thousand dollars a year in advertising money from Arcadia Aviation, and "pay to play" is wrong. Also, Mr. Wachtel as Chair, has made no improvements. Mr. Folk stated, again, that Mr. Cox has a standing order from the Ethics Commission that he cannot vote on the majority of issues because of other interests. Mr. Folk also stated that Mr. Keller, the Legal Counsel for the Airport Authority, has similar conflicts. He stated that is his point is, don't reappoint Mr. Wachtel and Mr. Cox.

- Ms. Elaine Mauck, Berkeley County Councilwoman, stated that she had trouble accessing the agenda on the City's website. The City indicated they are aware of the issues and are working to correct them. Ms. Mauck also suggested that the City be careful when approving or reviewing agenda items from Comcast, as each of their enhancements take programming away from individuals with older televisions.

Mayor Karos agreed.

- Mr. Bob Segers, Berkeley County resident, agreed with Mr. Folk regarding the Airport Authority and discussed his personal experiences with the airport. Mr. Segers stated that he

retired from United Airlines as a 747 Captain and fifty-five years ago he “signed on” at this airport. He stated that he built a big hanger in the airport, Cardinal Air. He also stated that there were Independence Air jets parked there until they could be moved out and sold, which he was a party to. He indicated that this existing Authority cancelled a lease with Aviation Experts, which robbed him of his primary customer, and he was forced into a “fire sale with a New York Carpetbagger,” Arcadia Aviation. He stated that if there are questionable operations with the City appointed members of the Airport Authority, the City is responsible, as they have been warned. He said the Council “could just go ahead and appoint who they want to,” but he believes the Authority can be turned around by appointing the right people.

11. RECEIVE AND FILE REPORTS-MINUTES-CORRESPONDENCE OF THE FOLLOWING:

- (a) Letter from Comcast explaining enhancement of service to Martinsburg Comcast customers.
- (b) Berkeley County Development Authority Meeting Minutes—April 13, 2011
- (c) Martinsburg-Berkeley County Parks and Recreation Board Minutes—April 19, 2011 and South Berkeley Recreation Center Committee Minutes—March and April 2011
- (d) Letter of resignation from the Eastern Panhandle Transit Authority (PANTRAN) from Rodney Woods.
- (e) Petition from citizens demonstrating support for the construction of a sidewalk along Tavern Road.
- (f) Letter from U.S. Department of Housing and Urban Development regarding for CDBG and HOME.
- (g) Letter from Comcast indicating scheduling change for cable television customers.
- (h) Historic Preservation Review Commission meeting minutes—May 02, 2011.
- (i) Eastern WV Regional Airport Authority’s 3rd Quarter FY 2010-2011 Budget Report and Audit Report of the Airport Authority, FY 2009-2010.

Motion made by Councilman Wachtel, seconded by Councilman Parkinson, to file and receive items 11a through 11i. Motion carried unanimously.

12. REPORTS OF CHAIRPERSONS OF COUNCIL STANDING COMMITTEES

There were no reports of chairpersons of council standing committees.

13. REPORT OF MAYOR

Mayor Karos announced that he may be calling a special Council meeting near the end of June, details will be forwarded at a later time.

(a) Reappoint A. Stephen Cox to the Airport Authority—Term 7/1/11-6/30/14.

Motion made by Councilman Lewis to reappoint A. Stephen Cox to the Airport Authority for the term beginning on 7/1/11 and ending 6/30/14. As there was no second, the motion died.

(b) Reappoint Rodney Woods to the Airport Authority—Term 7/1/11-6/30/14

Motion made by Councilman Lewis, seconded by Councilman Parkinson to reappoint Councilman Rodney Woods to the airport Authority for the term beginning 7/1/11 and ending 6/30/14. Motion carried unanimously.

(c) Reappoint Richard Wachtel to the Airport Authority—Term 7/1/11-6/30/14

Motion made by Councilman Lewis, seconded by Councilman Etherington to allow Councilman Wachtel to abstain, as Richard Wachtel is his brother. Motion carried unanimously.

Motion made by Councilman Lewis, seconded by Councilman Parkinson to reappoint Richard Wachtel to the Airport Authority for the term beginning 7/1/11 and ending 6/30/14. Motion carried unanimously.

(d) Reappoint Mark S. Baldwin to the Eastern Panhandle Regional Planning and Development Council (Region 9)—Term 7/1/11-6/30/12

Motion made by Councilman Lewis, seconded by Councilman Parkinson to reappoint Mark S. Baldwin to the Eastern Panhandle Regional Planning and Development Council (Region 9) for the term beginning 7/1/11 and ending 6/30/12. Motion carried unanimously.

(e) Reappoint Kevin Knowles to the Eastern Panhandle Regional Planning and Development Council (Region 9)—Term 7/1/11-6/30/12

Motion made by Councilman Woods, seconded by Councilman Lewis to reappoint Kevin Knowles to the Eastern Panhandle Regional Planning and Development Council (Region 9) for the term beginning 7/1/11 and ending 6/30/12. Motion carried unanimously.

(j) Reappoint Sally G. Jackson to the Library Commission—Term 7/1/11-6/30/16

Motion made by Councilman Wachtel, seconded by Councilman Parkinson to reappoint Sally G. Jackson to the Library Commission for the term beginning 7/1/11 and ending 6/30/16. Motion carried unanimously.

(k) Appoint Ms. Natalie Hoffman as a City representative to the HOME Consortium Council, effective immediately. Term expires June 30, 2013.

Motion made by Councilman Lewis, seconded by Councilman Parkinson to appoint Natalie Hoffman as City Representative to the HOME Consortium Council for the term to be effective immediately and ending on 6/30/13. Motion carried unanimously.

14. REPORT OF CITY ATTORNEY

There was no report of the City Attorney.

15. REPORT OF CITY MANAGER

A. City Projects Update

City Manager Mark Baldwin explained that the Raleigh Street Project is making progress, with Contract 1 being underway and Contract 2 has been awarded. He also stated that the Oatesdale Park Ballfield portion of the project is completed and commended all that put forth time, services and

resources to see the project completed, stating that every part involved went above and beyond what was expected.

Mr. Baldwin discussed the Town Square Pedestrian Plaza, stating that the project is expected to commence in late June and be completed by the end of October or the beginning of November, hopefully with substantial improvement by the Apple Harvest Festival.

Mr. Baldwin discussed the City Hall Energy Efficiency Grant Project, stating that new lighting has been installed in City Hall, the Water Department and the Fire Department, new garage doors have been installed at the Fire and Water Departments and the HVAC units are to be replaced shortly at City Hall and the Fire Department. He also stated that outdoor decorative lighting is soon to be replaced.

16. UNFINISHED BUSINESS

There was no unfinished business.

17. NEW BUSINESS

(a) Appointments to the following positions:

(1.) **City Recorder**

Motion made by Councilman Lewis, seconded by Councilman Woods to reappoint Gena Long as City Recorder for FY 2011-2012. Motion carried unanimously.

(2.) **Police Court Judge(s)**

Motion made by Councilman Etherington, seconded by Councilman Parkinson to appoint Steve Kershner as Police Court Judge and David Alter and Robert Trumble as alternate Police Court Judges. Motion carried unanimously.

(3.) **City Treasurer**

Motion made by Councilman Lewis, seconded by Councilman Woods to appoint Councilman Max Parkinson as City Treasurer. Motion carried unanimously.

(b) Approve/deny use of City property by WVU Division of Forestry, located near Green Hill Cemetery, for a WVU Wetlands Study.

Ms. Patricia Faulkner, West Virginia University, explained that the WVU Division of Forestry is requesting the use of City property to collect data on various ecosystem aspects beginning the summer of 2011 and ending in December 2012. If approved, she stated a report will be provided to the City detailing the findings.

Mayor Karos asked that the University provide an agreement and a certificate of insurance.

Mr. Sayre stated that he could prepare an agreement and forward it to the University.

Motion made by Councilman Wachtel, seconded by Councilman Etherington to approve the use of City property located near Green Hill Cemetery by the WVU Division of Forestry for the purposes of a Wetlands study. Motion carried unanimously.

(c) Approve/deny Main Street Martinsburg Sculpture Event, March 2012-2013, various downtown locations.

Mr. Randy Lewis explained that Main Street Martinsburg is request permission to hold an outdoor sculpture event in various downtown locations in conjunction with WSG Galleries. He stated that he feels this is a great avenue for tourism as great downtowns have a strong cultural component. Mr. Lewis stated that the search for sculptures will be a nationwide search.

Mr. Baldwin reminded Mr. Lewis that the City can give permission for installations on City property, but Mr. Lewis will be responsible for contacting other property owners. Mr. Baldwin also asked for confirmation that administration for this event will be handled solely by Main Street Martinsburg, to which Mr. Lewis agreed.

Motion made by Councilman Lewis, seconded by Councilman Woods to approve Main Street Martinsburg's Sculpture Event, to be held between March of 2012 and February 2013 in various downtown locations. Motion carried unanimously.

(d) Approve/Deny Resolution 2011-07 concerning the extension of the cable television franchise held by Comcast of CA/MD/PA/VA/WVA, LLC for the purpose of permitting the City of Martinsburg, WV and the franchisee to complete renewal discussions.

Mr. Sayre stated that this request is just for an extension to the franchise agreement, the City does not control programming.

Councilman Wachtel reminded the Council that this is not an exclusive agreement.

Councilman Woods expressed concerns about Comcast not carrying the WV Public Television station on basic cable, but stated that his research had indicated that it was the WV Public Television that had requested to be made available only on digital programming packages, and that it was not the decision of Comcast. Councilman Lewis stated that he thinks Comcast should be asked to make the WVPT available on the basic line.

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to approve Resolution 2011-07 concerning the extension of the cable television franchise held by Comcast of CA/MD/PA/VA/WVA, LLC., for the purpose of permitting the City of Martinsburg an the franchisee to complete renewal discussions. Motion carried unanimously.

(e) Approve/deny Resolution 2011-08 Revision #4 for the General Fund for FY 2010-2011.

Motion made by Councilman Lewis, seconded by Councilman Woods to approve Resolution 2011-08, Revision #4 to the General Fund for FY 2010-2011. Motion carried unanimously.

(f) Approve/deny Berkeley County request for an additional thirty days to submit evidence on appeal of the Shadetree Commission's decision to deny removal of trees in front of 100 W. King Street—See attached letter.

Motion made by Councilman Lewis, seconded by Councilman Parkinson to approve Berkeley County's request for an additional thirty days to submit evidence on appeal of the Shadetree

Commission's decision to deny removal of trees in front of 100 W. King Street, per attached letter. Motion carried unanimously.

(g) Approve/Deny change order for the block building for the Martinsburg Police Department firing range-roll up door, electrical and roof design. \$11,531.00--BHC, INC.

Motion made by Councilman Wachtel, seconded by Councilman Woods to approve the change order for the block building for the Martinsburg Police Department firing range roll up door, electrical and roof design in the amount of \$11,531.00 payable to BHC, INC. Motion carried unanimously.

(h) Authorize City Legal Counsel to draft an Ordinance raising parking meter fines from \$2.00 to \$5.00 and after 72 hours the unpaid ticket be raised from \$5.00 to \$10.00 and after thirty days the fine for the unpaid ticket to be \$25.00.

Mayor Karos requested that this item be tabled for a future date.

Motion made by Councilman Wachtel, seconded by Councilman Woods, to table the matter.

Motion carried unanimously.

(i) Approve/deny City of Martinsburg Fire Department Standard Operating Procedure for Emergency Medical Services Patient Refusal.

Motion made by Councilman Lewis, seconded by Councilman Parkinson, to approve the City of Martinsburg Fire Department Standard Operating Procedure for Emergency Medical Services patient refusal. Motion carried unanimously.

(j) Approve/deny City of Martinsburg Fire Department Standard Operating Procedure for Emergency Medical Services Transport Destinations.

Motion made by Councilman Wachtel, seconded by Councilman Etherington to approve the City of Martinsburg Fire Department Standard Operating Procedure for Emergency Medical Services transport destinations. Motion carried unanimously.

(k) Approve/deny Mutual Aid Agreement between the City of Martinsburg Fire Department and Berkeley County, WV.

Motion made by Councilman Wachtel, seconded by Councilman Woods to approve the Mutual Aid Agreement between the City of Martinsburg Fire Department and Berkeley County, WV. Motion carried unanimously.

(l) Approve/deny Mutual Aid Agreement between the City of Martinsburg Fire Department and Jefferson County, WV.

Motion made by Councilman Etherington, seconded by Councilman Parkinson to approve the Mutual Aid Agreement between the City of Martinsburg Fire Department and Jefferson County, WV. Motion carried unanimously.

(m) Approve/deny revisions to the FY 2011-2012 CDBG and HOME Annual Action Plan.

Mr. Baldwin explained that the annual plan had been approved previously, but that this request takes into account the final numbers from Housing and Urban Development, which have decreased from projected amounts. He stated that the decreased amount will not be taken from the programs,

but will be taken from the amounts expected to be used for the Valley Street storm drain project. That money will be recovered from extra monies in the CDBG or General Fund surplus.

Motion made by Councilman Woods, seconded by Councilmen Etherington and Wachtel, to approve revisions to the FY 2011-2012 CDBG and HOME Annual Action Plan. Motion carried unanimously.

(n) Approve/deny funding in the amount of \$10,000 for the Hospice of the Panhandle, Inc. "Building the Dream" campaign. Funds to be allocated as part of the General Fund Revision #1 for the FY 2011-2012 Budget.

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to approve funding in the amount of \$10,000 for the Hospice of the Panhandle, Inc. "Building the Dream" campaign with funds to be allocated as part of the General Fund Revision #1 for the FY 2011-2012 budget. Motion carried unanimously.

(o) Approve/deny WVDOT the use of City owned space at the Market House for Town square Pedestrian Plaza project.

Motion made by Councilman Woods, seconded by Councilman Etherington, to approve WVDOT the use of City owned space contingent upon available space. Motion carried unanimously.

Mr. Baldwin stated that, currently, there are several spaces available.

(p) Update on fire damaged properties located at 112/114/116 North Church Street.

City Engineer/Planning Director Mike Covell explained that notice has been provided to the owners that, if these properties are not mitigated, the City will take steps to demolish and liens will be placed to recover the cost. Mr. Covell stated that the project is currently out for bid. He indicated that one structure is underway, and if the owners can provide proof that they can comply, the City will only demolish two of the structures.

Mr. Sayre agreed that the City has followed the proper steps in notifying the home owners.

Mr. Baldwin commented that the special meeting at the end of June may be held in order to approve the contracts after the bid opening, in order to expedite the process.

(q) Approve/deny 3 Stage Hydrostatic Fan with motor for City of Martinsburg Water/Sewer Department—Atlantic Machinery, Inc.--\$16,347

Motion made by Councilman Lewis, seconded by Councilman Parkinson, to approve a three stage hydrostatic fan with motor for the City of Martinsburg Water/Sewer Department, payable to Atlantic Machinery, Inc., in the amount of \$16,347.00. Motion carried unanimously.

(r) Approve/deny Eastern Panhandle Bluegrass Association's Bluegrass Jams at Caperton Train Station on Sunday afternoons from 4:00PM until 7:00 PM, contingent upon certificate of insurance.

Motion made by Councilman Woods, seconded by Councilman Etherington, to approve the Eastern Panhandle Bluegrass Association's Bluegrass Jams at Caperton Train Station on Sunday afternoons

from 4:00 PM until 7:00 PM on Sunday afternoons through December, contingent upon certificate of insurance. Motion carried unanimously.

**(s) Approve/deny cycling event in Down Town Martinsburg Saturday, August 27, 2011—
Antietam Velo Club.**

Police Chief Miller stated that he believes this is an excellent event for Martinsburg, but is the weekend after the Annual Bike Night, which might put undue stress on downtown merchants. He advised tabling the item until the applicant could be contacted for a different date.

Motion made by Councilman Wachtel, seconded by Councilman Woods to table this item for further discussion. Motion carried unanimously.

**(t) Approve/deny closing a portion of Tuskegee between Martin Street and Burke Street on
Friday, August 5, 2011 from 4:00 PM until 9:00 PM for purposes of a community event—
Trinity Temple Church of God—contingent upon certificate of insurance.**

Motion made by Councilman Lewis, seconded by Councilman Etherington to approve closing a portion of Tuskegee between Martin Street and Burke Street on Friday, August 5, 2011 from 4:00 PM until 9:00 PM for purposes of a community event held by Trinity Temple Church of God, contingent upon certificate of insurance. Motion carried unanimously.

Police Chief Miller indicated that the Police Department anticipates no issue with this request, that the street will be closed so the area will be safer for the young children expected.

**(u) Approve/deny authorization of payment of \$22,000 to Martinsburg Little League for
compensation of controlled access right of way—Raleigh Street Extension**

Mr. Baldwin explained that \$22,000 of Raleigh Street Extension funds has been allocated to the Little League Association as they are losing a small piece of property to the Extension. Those funds will be included on a check expected by the City, and Mr. Baldwin asked that the Council allow the City to forward the Little League Association immediately, with the expectation to retain the funds when they arrive from the WVDOT.


Motion made by councilman Woods, seconded by Councilman Etherington, to approve authorization of payment of \$22,000 to the Martinsburg Little League for compensation of controlled access right of way, Raleigh Street Extension. Motion carried unanimously.

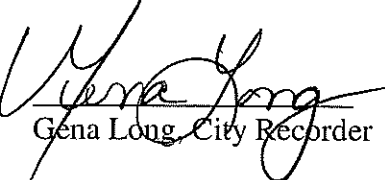
16. EXECUTIVE SESSION

- A. DISCUSS PENDING LEGAL MATTERS WITH COUNSEL (IF NECESSARY)**
- B. DISCUSS PERSONNEL MATTERS (IF NECESSARY)**
- C. DISCUSS REAL ESTATE MATTERS INVOLVING COMPETITIVE BIDS (IF NECESSARY)**

Motion made by Councilman Etherington, seconded by Councilman Wachtel to enter executive session for purposes of discussing legal matters at 7:42 PM.

Motion made by Councilman Parkinson, seconded by Councilman Woods to exit executive session at 8:00 PM. Meeting adjourned unanimously.


George Karos, Mayor


Gena Long, City Recorder