

**City Of Martinsburg
Regular Council Meeting
Thursday, November 12, 2015
The J. Oakley Seibert Council Chambers**

With a quorum present, the regular session of the Martinsburg City Council was called to order by Mayor George Karos at 6:30 p.m. The following Council Members were present: Don Anderson, H.D. Boyd, Dennis Etherington, Kevin Knowles, Gregg Wachtel, Ken Collinson and Jason W. Baker. Also present were: Mark Baldwin, City Manager; Kin Sayre, Legal Counsel; Gena Long, City Recorder; Police Chief Maury Richards, Jeff Wilkerson, Public Works Director; Michael Covell, City Engineer/Planning Director, Steve Knipe, Utilities Director, Fire Chief Paul Bragg, Nancy Strine, Community Development Director and Mark Spickler, Finance Director.

3. Salute to Flag

Councilman Etherington led the Salute to the Flag.

4. Prayer—

Steve Sosson, Beth El Congregation led the invocation.

5. Approve October 8, 2015 Regular Meeting Minutes

Motion made by Councilman Etherington seconded by Councilman Wachtel, to approve the October 8, 2015 Regular Meeting Minutes. Motion carried unanimously.

6. Approve October 27, 2015 Special Council Minutes

Motion made by Councilman Etherington, seconded by Councilman Knowles, to approve the October 27, 2015 Special Meeting Minutes. Motion carried unanimously.

7. Approve September 2015 Administrative and Financial Report

Motion made by Councilman Collinson, seconded by Councilman Wachtel, to approve the September 2015 Administrative and Financial Report. Motion carried unanimously.

Mayor Karos announced that the ordinances in reference to the rezoning of 750 Baltimore Street and the draft non-discrimination ordinance are not on this meeting's agenda. Those wishing to speak on those issues could do so, however, those items are not to be decided on or discussed by Council at this time.

8. Presentations

a. Resolution of Appreciation—Retired Fire Lieutenant John Holben

Mayor Karos read the Resolution and presented it to Retired Lt. Holben

b. Administer Oath of Office to Firefighter/EMT-Paramedic Benjamin Hubbard

The City Recorder administered the Oath of Office to Firefighter/EMT-Paramedic Benjamin Hubbard

c. Administer Oath of Office to Fire Lieutenant Mark Stroop

The City Recorder administered the Oath of Office to Fire Lieutenant Mark Stroop.

d. Administer Oath of Office to Police Officer Teresa Gibbons

Officer T. Gibbons was not present.

e. Proclamation—National Hunger and Homelessness Awareness Week

City Recorder Long read the Proclamation and presented it to Nan Stevens, West Virginia Housing Development Fund.

f. Proposal for Indoor Recreation Facility/Rock Climbing Facility in Downtown Martinsburg—Branche Keesecker, Climbing New Heights

Mr. Keesecker was not present.

g. Presentation Regarding Inaugural Martinsburg International Festival—Panhandle Home Health & Boys and Girls Club of the Eastern Panhandle (See Item 17B)

Christina Johnson, Panhandle Home Health, and Stacie Rohn, Boys and Girls Club of the Eastern Panhandle presented this request. Ms. Johnson stated that the event is slated for May 21, 2015, originally from noon until 10 PM. After speaking with Police Chief Richards, Ms. Johnson stated that they will be reducing the time frame based on his recommendations, and ending at 8 PM.

Ms. Rohn stated that she hopes the event will foster a sense of community and celebrate diversity by showcasing all of the good that is happening in Martinsburg. She went on to add that the Boys and Girls Club is celebrating its 50th anniversary and Panhandle Home Health is celebrating its 40th. Combining the experience of the two organizations is 90 years of helping the community. She also thanked Councilman Anderson who was one of the founding members of the Boys and Girls Club.

Ms. Rohn described the event, stating that there will be vendors, sale of craft beers and food. She stated that they will be seeking the assistance of community organizations, particularly Main Street Martinsburg and the CVB, for guidance and help with planning and volunteerism.

The Mayor, with the consent of Council moved Item 17B up on the agenda.

17 b. Approve/deny International Festival for May 21, 2016 from noon until 10 PM, including the closing of a portion of Queen Street and letter of endorsement to the ABC Commission for craft beer sales

Councilman Knowles asked if the Chief of Police was okay with the event. Chief Richards stated that he believed it will be a fantastic event and will further discuss the appropriate opening and closing times with Ms. Johnson and Ms. Rohn.

Mayor Karos added that he was also concerned with the time and is glad to hear they are working with the Police Department as well as established organizations such as Main Street. He reminded the applicants to also work with the Martinsburg Fire Department. Chief Bragg stated that he has no concerns about the event at this time.

Motion made by Councilman Wachtel, seconded by Councilman Baker, to approve the International Festival for May 21, 2016 from noon until 8 PM, including the closing of a portion of Queen Street and letter of endorsement to the ABC Commission for craft beer sales. Motion carried unanimously.

9. Public Nuisance Hearing—634 Winchester Avenue

The public hearing began at 6:43 PM.

City Attorney Kin Sayre introduced the situation to Council, stating that then-Chief of Police Kevin Miller filed a complaint requesting that the property be declared a public nuisance and that Council seek abatement from the Berkeley County Circuit Court. Mr. Sayre stated that the City will call Lieutenant Miller and City Engineer/Planning Director Michael Covell as witnesses. He also stated that Mr. Steve Nines, property owner, is present and will have the ability to present evidence and have others speak on his behalf. Members of the public will also have the opportunity to speak about the property. If Council decides this property is, indeed, a nuisance, the body can petition the Berkeley County court to abate by demolition or injunction to cease use of the property.

Martinsburg Police Lieutenant and former Chief of Police Kevin Miller approached Council. Mr. Sayre established the conditions of the filing of the petition by Lt. Miller. Lt. Miller stated that he did have cause to file this petition due to numerous complaints for intoxication, fighting at the premises, juveniles skipping school and climbing onto the roof of the property, and the presence of known substance abusers and prostitutes. Lt. Miller stated that he was aware that Mr. Nines was the property owner. He described the property as being in complete disarray and currently boarded up by the City. He did state that the property had to be re-secured at least one time, as the boards had been removed.

Mr. Nines stated that when he bought this property it had been vacant for many years and he inherited some of these issues with the property. He stated that the walkway is often used as a thoroughfare, for both those engaging in nefarious activities and parents walking their children to school. He stated that he has seen prostitutes, but mostly on the far south end of Winchester Avenue, in or around two particular hotels. He argued that the individuals referred to in the complaints are actually coming from 632 Winchester Avenue, the neighboring property.

Mr. Nines asked Lt. Miller if he (Mr. Nines) had been at the property with the individuals of concern and if he had been intoxicated. Lt. Miller stated that on numerous occasions Mr. Nines was present and intoxicated. He also stated that the individuals in question were in the rear yards of both properties, but that there was a significant increase in complaints when Mr. Nines took ownership of the property.

Mr. Nines asked if there were calls prior to 2013, when he acquired the property. Lt. Miller stated that there might have been, he was not sure.

City Engineer/Planning Director Michael Covell was the next witness for the City. He stated that he was familiar with the property and Mr. Nines. He stated that he has documents that state that Mr. Nines has owned the property since 2013, however, the Planning Department did not become aware of issues at the property until spring of 2014, when the Department conducted an investigation on the state of general disrepair of the property, disabled vehicles on the lawn, etc. He stated that the Code Enforcement Official worked with the property owner; however, there are three violations and one citation on record for the car, rubbish, exterior conditions, the sidewalk, overgrowth of weeds and the roof. The citation was for an accumulation of rubbish earlier in 2015.

Mr. Sayre asked if the issues had been resolved, and Mr. Covell stated that they have not. He agreed that the property could be considered a detriment to the health, safety and welfare of the public, which are conditions at the core of Property Maintenance Codes.

Mr. Sayre asked if the property is currently secure. Mr. Covell stated that it is secure at the behest of the City of Martinsburg, not Mr. Nines. Some efforts were made by Mr. Nines, according to Mr. Covell, but the City completed the securing of the premises. He also stated that the property did have to be re-secured as recently as in the past two weeks, as individuals were continuing to access the property, despite the property being boarded up, posted as unfit for human habitation and condemned.

Mr. Nines stated that he had gone to court for these issues. Mr. Covell agreed they had been to court several times. Mr. Nines went on to say that he had met all court-ordered deadlines, he had secured a building permit and the building inspectors had indicated that it could be made fit for human habitation, the only requirements remaining were water and electric.

Mr. Sayre reminded Mr. Nines that he was able to ask questions at this time, not testify.

Mr. Nines asked if Mr. Covell was aware of the efforts he had been making to rehabilitate the property, such as the removal of trees and making "every effort" to repair the structure. Mr. Covell stated that he is aware of the trees, but he would argue that Mr. Nines has made *some* effort, not every effort. Mr. Nines replied that he has a job and can only physically devote 1-2 days per week to the property, but that he has met all imposed guidelines, including paying the citation he received when others littered on his property.

Mr. Covell disagreed and stated that Mr. Nines was not complaint and has not satisfied all of the requirements. Mr. Nines responded that the judge had declared him free go to work on his property. Mr. Covell agreed that, after the 6th time in Court, it became apparent that other options of enforcement would be necessary. Mr. Nines stated that the building permit he had acquired was placed in his window on June 19, soon after which his property was boarded up. He stated that he felt he was no longer allowed to access the property.

Mr. Nines asked if Mr. Covell was aware that he had signed documents allowing the Police to enforce "No Trespassing" orders at the premises. Mr. Covell replied that he is aware of the signed statement allowing the City of Martinsburg to gain access to the property.

Mr. Nines expressed frustration at being prohibited to access his property after he had received a permit to work there. He felt he had been led on. Mr. Covell responded that Mr. Nines qualified to be issued a permit and, as a property owner, he has full access to his property. Mr. Nines stated that he did not believe he was allowed to access the property.

Mr. Nines added that, since June, he had removed trees so that he could properly fix the roof and cleaned up the lot. Mr. Covell answered that the roof still is in need of repair, the house has not been painted and there is currently no ability to have electric in the structure.

Mr. Nines asked for confirmation, again, that he is allowed access to the property. He stated that he had asked Code Enforcement Official Tim Snyder, and he was not sure. Mr. Covell answered that property owners always have access to their properties.

Ms. Jeanie Morton, owner of 630 Winchester Avenue, spoke about her issues with the property at 634 Winchester Avenue. She stated that she had not personally met Mr. Nines, but had seen him having parties with his friends at the address on several occasions. She added that when complaints were filed with the Police Department, some of the individuals had moved to 632 Winchester Avenue, but the issues had begun at 634. She stated that, as of March, the issues had become intolerable and she and another neighbor had contacted Councilman Knowles. She stated that her tenants at 630 Winchester Avenue were regularly approached by prostitutes or those panhandling for money and cigarettes. She has lost prospective tenants as these activities are not conducive to business use. Mr. Morton stated that she has been working with a detective in the Police Department who informed her that, as of August, he had issued 11 citations. The property has not remained secure; she has had to call police to re-secure it very recently. The prostitutes are still an issue and she feels that as long as that structure is there, people will be attracted to it, and that it is a detriment to the entire block.

Mr. Sayre asked Ms. Morton if she feels that the activities and condition at the property annoy, endanger or offend the public decency of individuals at her property. She agreed absolutely.

Councilman Anderson asked if there are still prostitutes in the neighborhood. Ms. Morton stated that she has had tenants complain that they knock on their car windows.

Councilman Baker asked if the prostitutes are living at 634 Winchester Avenue. Ms. Morton stated that she does not know for sure. Councilman Baker stated that prostitutes are a problem on Winchester Avenue, in general, that he is often making them move along from the doorstep of his own rental on Winchester Avenue. He said they will hang out anywhere they are not likely to be pushed away. He asked why Ms. Morton believes demolishing this house will relieve the issue of prostitutes in the neighborhood. Ms. Morton replied that it will make this part of Winchester Avenue a little better. She also asked Council to consider options for deterring prostitutes, such as confiscating the vehicles of customers.

Councilman Baker stated that he has seen more of a nuisance element at Family Dollar, Rite Aid and other businesses in the area. He stated that he has not checked, but would imagine the call frequency is higher at those locations than at 634 Winchester Avenue. He stated that he has seen them in front of 634 Winchester Avenue and 630 Winchester Avenue, Ms. Morton's building, because they use the back alley to get to where they are going.

Mr. Nines asked Ms. Morton if he has ever asked her for money or cigarettes. She stated that she is not complaining about Mr. Nines personally panhandling.

Mr. Nines asked if Ms. Morton has an interest in 634 Winchester Avenue. She stated that she does not, but she would prefer to see the property as a parking lot, because she does not feel the structure is salvageable.

Mr. Nines asked if Ms. Morton felt these issues would continue, regardless of the status of 634 Winchester Avenue. Ms. Morton stated that she does not know, she is interested in forming a community committee to deal with the problems of Winchester Avenue, in general.

Mr. Nines asked why Ms. Morton was singling out his property, which has been vacant for years, as the cause of the issues on Winchester Avenue. He stated that he has also been approached and even assaulted for attempting to discourage trespassing on his property. He feels that the individuals causing the issues are actually gathering at 632 Winchester Avenue, next door to him.

Ms. Simone Hawthorne, a tenant at 630 Winchester Avenue, testified that she is there all day, every day. She said, thanks to the efforts of Councilman Knowles and the Police Department things have gotten somewhat better. She said it is true that the individuals went to 632 Winchester Avenue after the no trespassing order was enforced at 634 Winchester Avenue, but that the owner of 632 Winchester Avenue realized he had a problem tenant and he was evicted immediately. She said it does make a difference that something is being done with 634 Winchester Avenue, and she is sorry that the property was supposed to be Mr. Nines's home, but she has seen no renovation or painting being done at the property. Ms. Hawthorne stated that she is afraid of the individuals hanging around at Mr. Nines's property and could not even leave her office at times. She stated that prostitutes use this home as a pick-up point, but that it has gotten considerably better since the home has been boarded up and the police have been running them off.

Mr. Nines referenced the former tenant at 632 Winchester Avenue, asking if things got better after he was evicted. Ms. Hawthorne stated that the problem had not gone away because these individuals are accustomed to having an address at 634 Winchester Avenue, but that when the police started paying attention, the tenant at 632 Winchester Avenue invited them over. When Mr. Nines asked why his address is being singled out, Ms. Hawthorne replied that the issue at 632 Winchester Avenue was reacted to and resolved immediately, and did not remain a nuisance.

Mr. Nines asked Ms. Hawthorne if she had noticed that there are more panhandlers at the Dollar General than at his property. Ms. Hawthorne replied that the prostitutes and panhandlers hang out at 634 Winchester Avenue to gauge the best times to go across the street to the Dollar General.

Mr. Bill Freeman, representing the owner of 632 Winchester Avenue, stated that the problem tenant was evicted from that address before the City had to intervene at all. He stated that he had addressed the issue as soon as it became apparent, so casting blame on the owners or tenants of 632 Winchester Avenue is preposterous. Mr. Freeman stated that the cellar at 634 Winchester is, and always has been, unsecure, and that the issues really began when Mr. Nines acquired the property.

Ms. Katie Reed, State Circle and Mr. Nines's sister, stated that the property should never have been sold as it was. She said when they went to the property when Mr. Nines's acquired it; it was in totally disarray, obviously lived in and full of trash and beds. Mr. Nines has since removed the trash and worked on the repairs as he is able. She said her brother tries his best. She understands there are issues; she has ran people off the property herself and she does not shop on Winchester Avenue because of the issues. But the issues of the area are not due to Mr. Nines, she said the property was damaged when it was the property of the City.

Mr. Sayre clarified that the City of Martinsburg has never had ownership of this property, that it was acquired in a tax sale by the State of West Virginia.

Bess Day, 800 Winchester Avenue, stated that owners have a responsibility to their properties and their neighborhoods, regardless of their living situations. She stated that there are numerous properties on Winchester Avenue not plagued by rubbish, prostitutes and substance abusers. She stated that neighbors have the right to safe enjoyment of their properties and that the City of Martinsburg is forced to pour resources into these properties with uncooperative owners.

Mr. Steve Nines, no fixed address and owner of 634 Winchester Avenue, stated that this property has been vacant for many years and, since acquiring it, he has made efforts to clean it up. He has ordered individuals off the property. He said he is not a slum lord, and his home is not a slum house, it is supposed to be his home. He said some places on Winchester Avenue are not subject to these activities because of their location, but his home is across from a plaza which appeals to panhandlers and prostitutes. He said he has never had issues with his property on the north end of Martinsburg and he did not intend for this house to be a problem. He said he wanted it to be beautiful; he had purchased it in order to rebuild it and his life. He stated he is living in the woods, currently, so he can save the money to repair the structure. He said he had never met these people that cause issues at his house, that they came with the house. He stated that he is friendly to everyone, that he did not immediately recognize these women as prostitutes and was unaware until he was informed by the police. He stated that the City was very clear about what needed to be accomplished when they addressed this property with him in 2014. He stated that he attempted to be in compliance, signing No Trespass orders to help law enforcement remove vagrants and undesirable characters from the property. Mr. Nines stated he has attempted to work with the City, he has paid his citations and cleaned up his yard. He stated that he was not aware he was allowed into the property when it was boarded up, and his ladder was taken by the City. He stated that the structure is well constructed and very old, that there is no reason to raze it.

Mr. Sayre stated that the presentation of evidence is concluded and pointed out the standards in City of Martinsburg Codified Ordinance, Article 1101. He stated that Council must consider the evidence presented by Mr. Nines, Lt. Miller, Mr. Covell and neighbors to determine if this property is, in fact, a nuisance and if it wishes to move forward to Circuit Court.

Councilman Baker asked Mr. Nines what his goal is with the property; if it is not declared a nuisance, does he wish to continue to fix it up or sell it. Mr. Nines replied that he wishes to fix the roof, clean up the property and offer it for sale.

Councilman Baker asked if the taxes have yet been paid as the property is due for tax sale in the very near future. Mr. Nines state that they have not, but he can.

The public hearing ended at 8:15 PM.

Mayor Karos, with the consensus of Council, moved item 17 A up on the agenda.

17 A. Take action, as necessary, on the evidence presented at the Public Nuisance Hearing for 634 Winchester Avenue (Item 9)

Councilman Baker stated that he believes the property is a nuisance, but instead of immediately tearing it down, he advised that Council delay approaching Circuit Court for a month to allow Mr. Nines the opportunity to sell the property.

Councilman Anderson stated that the City needs to set an example with this property and this property owner.

It was moved by Councilman Wachtel, seconded by Councilman Knowles, to determine that 634 Winchester Avenue is a nuisance as defined under City of Martinsburg Codified Ordinance Article 1101.01. Motion carried unanimously.

It was moved by Councilman Wachtel, seconded by Councilman Knowles, to authorize the City Attorney to see action in Circuit Court to abate the nuisance. Motion carried 6-1, Baker no.

Mr. Sayre explained that the City will be preparing a petition, which will be served to Mr. Nines, and a hearing will be set in which he may defend his actions. The judge will make a final decision on the status of the nuisance and what may be done about it.

Mr. Nines asked if he was allowed to access the property and if he can sell it. Mr. Sayre stated that he can do both, but a potential buyer must agree to sign an affidavit acknowledging active Code Enforcement violations and agree to correct those violations.

10. Petitions from Citizens

There were no petitions from citizens.

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

- a. Planning Commission September 2, 2015 Meeting Minutes
- b. Board of Zoning Appeals September 1, 2015 Minutes
- c. Hagerstown/Eastern Panhandle Metropolitan Planning Organization Interstate Council August 26, 2015 Meeting Minutes and FY 2014-2017 TIP Amendments, Revision 8
- d. Martinsburg/Berkeley County Convention and Visitors Bureau August 19, 2015 Meeting Minutes and Financial Report
- e. Berkeley County Animal Control May, June, July, August 2015 Incident Reports
- f. Martinsburg-Berkeley County Parks and Recreation Financial Reports for War Memorial Park and Lambert Park Pools

- g. Letter of Denial, dated October 30, 2015, for the FY 2014 Assistance to Firefighters Grant (request was for self-contained breathing apparatus)
- h. Invitation to Community Traffic Safety Awards Ceremony where the City of Martinsburg will be presented an award—November 9, 2015, Police Department Personnel to Attend
- i. For the Kids, by George Children’s Museum Board of Directors October 2015 Meeting Minutes

Motion made by Councilman Baker, seconded by Councilman Etherington, to receive and file item 11A-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

- a. **Reminder of 1st and 2nd Reading of Ordinance to rezone 750 Baltimore Street from IG (General Industrial) to BC (Community Business) at the December 2015 Regular Council Meeting**
- b. **Reminder that the comment period for the Draft Non-discrimination ordinance concluded November 9, 2015 at the estimated time frame for consideration of the ordinance is February/March, 2016**
- c. **Schedule Council as a Whole Committee Meeting for Thursday, November 19, 2015 at 4:30 PM**

14. Report of City Attorney

- a. **City of Martinsburg Appointments to Martinsburg/Berkeley County Convention and Visitor’s Bureau (WV State Code/City Code)**

Mr. Sayre stated that City Code says that appointees are for 3 years, with 2 being directly involved in tourism and one being indirectly involved in tourism. The State Code recommends a two year term. As the Martinsburg/Berkeley County Convention and Visitor’s Bureau is attempting to become certified, the City may wish to revisit its appointees as they do not currently meet the criteria.

Mr. Sayre added that 2 of the City’s appointees’ terms expire at the end of December, and as they have met the term limits set by the State of West Virginia, he recommended that new appointees should meet the criteria set by the State.

15. Report of City Manager

- a. **Projects Update**

16. Unfinished Business

None.

17. New Business

- a. **Take action, as necessary, on the evidence presented at the Public Nuisance Hearing for 634 Winchester Avenue (Item 9)**

See Item 9

b. Approve/deny International Festival for May 21, 2016 from noon until 10 PM, including the closing of a portion of Queen Street and letter of endorsement to the ABC Commission for craft beer sales

See Item 8G

c. Approve/deny submission of West Virginia Infrastructure Naming Request Form requesting that new Tennessee Avenue Bridge be named in honor of past Councilman Max Parkinson

Motion made by Councilman Etherington, seconded by Councilman Wachtel, to approve the submission of the WV Infrastructure Naming Request. Motion carried unanimously.

d. Approve/deny request from Martinsburg-Berkeley Parks and Recreation for funds for the purchase of a new tractor with front loader and backhoe—see letter

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to refer this to the Council as a Whole Committee. Motion carried unanimously.

e. Approve/deny bid for 2016 Freightliner garbage truck with leach compactor—West Virginia Tractor Company--\$138,900

Motion made by Councilman Wachtel, seconded by Councilman Baker, to approve the bid for the 2016 Freightliner as recommended by Public Works Director. Motion carried unanimously.

f. Approve/deny bid for copier for Public Works Department—Dice Imaging Xerox WV 7556HCT Copier--\$5,746.00

Motion made by Councilman Baker, seconded by Councilman Etherington, to approve the bid for the copier, as recommended by Public Works Director. Motion carried unanimously.

g. Approve/deny Martinsburg Fire Department Standard Operating Procedure (SOP) for Drug Box Accountability

Motion made by Councilman Etherington, seconded by Councilman Wachtel, to approve the Fire Department SOP regarding Drug Box Accountability as submitted. Motion carried unanimously.

h. Approve/deny submission of application for Fireman's Fund Heritage Grant to purchase three (3) Lucas 2.2 Chest Compression Systems at \$17,363.58 each—no City match

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to approve the submission of the application for the Fireman's Fund Heritage Grant. Motion carried unanimously.

i. Approve/deny relocation expenses for Chief of Police Maurice Richards

City Manager Mark Baldwin stated that he had received the dollar amount for the request, which is \$4,436.32, which is for three trips in which Mr. Richards conducted business relating to his position as Police Chief. He recommended approval of the full amount requested.

Motion made by Councilman Wachtel, seconded by Councilman Knowles, to approve relocation expenses for Chief Richards in the amount of \$4,436.32. Motion carried unanimously.

j. Authorize the Mayor to sign Subrecipient Agreements with the following organizations for use of FY 2015 CDBG Funds:

- **C-Cap—Emergency Rental Assistance--\$5,000**
- **Court Appointed Special Advocates (CASA)—support of volunteer program--\$5,000**

- **Safe Haven Child Advocacy Center—case management support--\$5,000**
- **Berkeley County Meals on Wheels—Dine with Dignity program--\$5,000**
- **Boys and Girls Club, Martinsburg Site—memberships for 20 households--\$5,000**
- **Shenandoah Women’s Center—case management support--\$5,000**
- **Berkeley Senior Services—in-home care services--\$5,000**
- **Community Networks, Inc.—administrative support--\$2,000**
- **Catholic Charities, WV—case management support--\$1,000**
- **Martinsburg-Berkeley County Parks and Rec—Martin Luther King, Jr. Community Park Renovations--\$80,000**

Motion made by Councilman Wachtel, seconded by Councilman Collinson, to authorize the Mayor to sign the above subrecipient agreements. Motion carried 6-1, Anderson no.

k. Discuss and take action as necessary on King/Church Street Storm Drainage Improvement Project bid—D&M Contractors--\$1,704,000.00

Mr. Dick Klein stated that there was only one bidder for this project, some were too busy and some felt the job was too big and others felt it was too high risk with regards to several unknown factors. The one bidder was very high, and Mr. Klein recommends that the bid be rejected. Alpha Associates can then do some investigation on the unknown issues, such as sewer laterals and rock locations, and rebid the project. He stated that this can likely be done with the \$25,000 in contingencies previously budgeted, therefore, the engineering budget need not be increased at this time. He estimated that the project could out to bid again in the first part of February in order to get it started before the CDBG monies are forfeit.

Councilman Anderson asked why Mr. Klein believes the price will be better in March. Mr. Klein responded that the contractors will have more information and can make a more competitive bid if some of the risk is removed. He cautioned the investigation could always prove more risk than originally thought, there are no guarantees.

Mr. Baldwin added that the original estimate for this project is just under \$1M. He stated that the City has been carrying CDBG funds for several years amounting to approximately \$387K, the City has committed \$450K, and the state had committed to 12% of the original estimate. He asked that Council move to reject the bid and make another motion to expend the \$25K to further investigate the project. He reminded Council that there is a timeliness issue with the HUD money, and the funds can be lost if the project cannot move forward. He asked that the second motion be contingent upon approval from HUD to use the money in May.

Councilman Etherington asked if the \$25K built in will be sufficient. Mr. Klein stated that he is confident that will be sufficient. Mr. Baldwin reminded Council that some of the \$387K of HUD money has already been spent on engineering.

Motion made by Councilman Etherington, seconded by Councilman Collinson, to reject the current bid for \$1,704,000. Motion carried unanimously.

Motion made by Councilman Wachtel, seconded by Councilman Knowles, to act on the recommendation of Alpha Associates, contingent upon approval from HUD to extend the time frame in which the money must be used. Motion carried 5-2, Anderson and Baker no.

Mr. Baldwin and Mr. Klein agreed that, unfortunately, there is no alternative to this project, there is no easy fix for the stormwater issues in that area.

l. Approve/deny Resolution 2015-31 authorizing HRI Inc.’s Application for November 2015 Payment #23 for the WWTP Upgrade Project--\$1,657,538.33

Motion made by Councilman Collinson, seconded by Councilman Etherington, to approve Resolution 2015-21. Motion carried 6-1, Anderson no.

m. Approve/deny Change Order #4 between the City of Martinsburg and O'Brien and Gere Engineers for WWTP Upgrade project engineering for re-budgeting purposes—net zero

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to approve Change Order #4 for the WWTP Upgrade Project engineering. Motion carried 6-1, Anderson no.

n. Approve/deny Change Order # 13 between the City of Martinsburg, HRI Contractors and O'Brien and Gere Engineers for WWTP Upgrade Project construction--\$86,057

Motion made by Councilman Knowles, seconded by Councilman Etherington, to approve Change Order #13 for the WWTP Upgrade Project construction. Motion carried 6-1, Anderson no.

o. Confirm Change Order #2 between the City of Martinsburg and W. Harley Miller for E. Burke Street Parking Lot Project construction--\$36,435 (see documentation for various areas)

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to confirm approval for Change Order #2 for E. Burke Street Parking Lot Construction. Motion carried 5-2, Anderson and Baker, no.

p. Approve/deny Change Order #3 between the City of Martinsburg and W. Harley Miller for E. Burke Street Parking Lot Project construction--\$1,774

Mr. Baldwin stated that this is for one small area of concrete.

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to approve Change Order #3 for the E. Burke Street Parking Lot Project construction. Motion carried 5-2, Anderson and Baker, no.

q. Update on E. Burke Street Parking Lot Project

Mr. Covell stated that the lot is looking much better and issues with contractors have been resolved. He estimated that construction will begin again over the weekend. Phase II (behind King Street buildings) is currently underway. He estimated significant completion by the end of November, with lot reopening to traffic in the first week of December, weather permitting.

Councilman Boyd asked when the original completion date was. Mr. Baldwin stated that it was the first week of November. Councilman Boyd asked if there were penalties for not completing the job on time. Mr. Baldwin responded that there were no liquidated damages on this project, as it is a small project, and such contingencies can cause an increase in the bid amount. Councilman Boyd responded that the delay is damaging downtown businesses.

Councilman Baker asked if the base is compacted properly. Mr. Covell responded that that he has been assured by the General Contractor that it is, that rotomillings were used and compacted before the hot mix was poured. Councilman Baker stated that it doesn't look like quality work. Mr. Covell stated that, unfortunately, the City is at the mercy of W. Harley Miller to ensure that a superintendent is on site and overseeing the work. He stated that if the work fails, the City may have a claim with W. Harley Miller. Councilman Baker stated that it appeared to him that a plate tamper was used when the pavement was cold. Mr. Covell stated that would not meet standard.

Councilman Anderson asked when the work will start again, and added that he did not vote for this project.

Mr. Baldwin reiterated that work is expected to re-start on the weekend.

18. Executive Session

Motion made by Councilman Knowles, seconded by Councilman Baker, to enter Executive Session for legal matters at 8:56 PM. Motion carried unanimously.

Council re-entered Regular Session at 9:15 PM.

19. New Business Cont'd

A. Approve/deny retention of Patrick Henry as co-counsel for Public Civil Service litigation

Motion made by Councilman Wachtel, seconded by Councilman Collinson, to approve the retention of Patrick Henry in the appeal of Corporal Q. Burner for a time not to exceed ten hours. Motion carried 6-1, Baker no.

Adjournment

Motion adjourned by unanimous consent at 9:20 PM.

George Karos, Mayor

Gena Long, City Recorder