

**City Of Martinsburg  
Regular Council Meeting  
Thursday, October 8, 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 Captain George Swartwood, 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 Knowles led the Salute to the Flag.

**4. Prayer—**

Reverend Vernon Cartwright delivered the invocation.

**5. Approve September 10, 2015 Regular Meeting Minutes**

Motion made by Councilman Collinson seconded by Councilman Knowles, to approve the September 10, 2015 Regular Meeting Minutes. Motion carried unanimously.

**6. Approve August 2015 Administrative and Financial Report**

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

**7. Presentations**

**a. Resolution of Appreciation—Retired Fire Lieutenant John Holben**

Lieutenant Holben was unable to attend.

**b. Eastern Panhandle Transit Authority Quarterly Report—Cheryl Keyrouse**

Ms. Keyrouse discussed recent changes to the EPTA including community outreach initiatives and financial goals. The following Report was submitted:

October 8, 2015

Below are some key items from the first quarter of FY 2016:

During the first quarter of Fiscal Year 2016, the Eastern Panhandle Transit Authority (EPTA) has been focusing mainly on the implementation of the recently adopted Transportation Development Plan (TDP) and Strategic Business Plan. Both are five-year plans and we are focusing on the first year.

EPTA—Seven Categories: Capital, Community Outreach, Finance, Human Resource, Operations, Planning, Admin

## **A. Capital**

EPTA had a kick off meeting on October 6 for feasibility study for a new transfer point in the City of Martinsburg and will consider six different locations.

EPTA is in the very beginning stages of discussing a new addition to match the continued growth of our transit business. The first step will be to expedite a feasibility study.

EPTA is now in possession of 23 passenger vehicles, we are up 7 vehicles from FY15.

Two (2) 2015 Dodge mini-vans were bought through the State of West Virginia expressively [sic] for non-emergency medical transportation for MTM. These vans were bought with Section 5310 funding for "Public Transit-Human Services Transportation." EPTA is hoping to cut down on the Demand Response service by contracting with MTM.

EPTA bought back and continues to maintain two (2) 22 seat Champion buses without FTA support. These can now facilitate community runs.

EPTA has on loan indefinitely from the State of West Virginia two (2) 22 seat Champion buses. In addition EPTA now owns one (1) 2015 12 passenger Ford van, two (2) 2015 18 passenger Ford vans and two (2) 2015 30 passenger seat Freightliner buses.

Cameras and radios were installed on new buses.

A new bus lift will be installed within the next two quarters.

We are continuing to research new much needed technology for operations.

## **B. Community Outreach**

EPTA held its annual Open House on Saturday, October 3 from 10 AM until 2 PM. We assisted the public with learning the new realigned routes, *which* went into effect as of October 5<sup>th</sup>.

EPTA held TDP presentations and public forums throughout Berkeley and Jefferson Counties for the past few months.

EPTA staff members are active members of community networks and/or are members of: Rotary Clubs in both counties, Chamber of Commerce in both counties, United Way, Health and Human Service Collaborative, Self-Sufficiency, Workforce Development, What's Next Berkeley County, C&O Canal Towns Partnership, Homeland Security in both counties along with Local Emergency Planning Committees, Government Affairs and Transportation Committee, Leadership Berkeley and Leadership Jefferson, Northport Advisory Committee, and the Metropolitan Planning Organization Council Member, Quad State Legislative Conference attendee and Society of Human Resources Management.

EPTA are members of national programs, Getting America to Work and American Public Transportation Association/Small Operations Committee. We are partners in "Feed to Achieve," a program sponsored by Senator John Unger and we also partnered with United Way to help plan and participate in United Way's Day of Caring.

We participated in a full-scale exercise of the Local Emergency Planning Committee for the first time.

We share much information on Facebook, Twitter, WVRADIO and WRNR, the Journal, the Chronical and the Spirit of Jefferson.

Advertising is continuing to increase on EPTA buses and more businesses are starting to inquire. We have recently acquired Governor Highway Safety Program ads for our buses.

EPTA participated in Shepherd University Orientation and the Senior Expo with over 300 attendees.

### **C. Finance**

EPTA is now banking with MVB.

Each department is charged in finding "Value Added." This means Administrative, Finance, Human Resource, Maintenance, Marketing and Operations are responsible for finding loss, mistakes on the part of the business from which we are charged, finding the lowest price for the best value, finding better contracts, finding new and creative ways to increase our funding. Findings are tracked and maintained by employees to share during performance reviews.

EPTA's annual federal grant is for Operations, Capital and Planning (5307) has been applied for up to 8/12 and executed—the balance will be applied for this month.

All Fare Box monies are deposited into a Capital Account to save for future investments of buses, large capital expenses and emergencies. Fare box funding fluctuates between 10%-12% of our annual budget. Depreciation has been added as a line item in our budget to accurately reflect our true financial picture.

Shepherd University is our third largest annual contract and has been renewed. EPTA has ongoing small contracts with Quad Graphics for their busy season.

### **D. Human Resources**

EPTA employs 40 staff members and bus operators. We continue to hold Monday morning staff meetings and FTA Friday morning meetings.

This past quarter we have updated our Employee Handbook, we are now HIPPA compliant with MTM, implemented vision, dental, long term, short term and life insurance plans.

Staff attended Mental Health First Aid Seminar, FTA Financial Planning Conference, National Transit Database Conference, Mechanics Class and an HR Workshop.

### **E. Operations**

The Operations Department has been working diligently on the bus route re-alignments and the scheduling changes. This is a very tedious process, along with the Marketing Department working on the bus stop signs and new schedules that were handed out on October 1.

EPTA is continuing to look into new technology for the buses and phone apps.

We are working on moving forward in the planning of a building addition.

#### **F. Planning**

EPTA has been implementing its five-year strategic task oriented business plan that is broken down by individual years on a scorecard in order to maintain the plan.

EPTA is working with the Hagerstown Eastern Panhandle Metropolitan Planning Organization (HEPMPO) and the City of Ranson, as they continue planning for “Northport”, a multimodal to include a bus station. EPTA Board of Directors voted on a Resolution for Support of Northport.

Continuing to work with the C&O Canal Towns Partnership/Canal Towns Route with the end result in getting a contract with the Department of the Interior or C&O Canal. The route goes from Williamsport to Brunswick along the C&O Canal and will shuttle bicycles. We are finally getting to the point where we are holding legislative planning meetings and the C&O Canal Towns Partnership will be taking the route as a full partnership project. We may be able to get startup funding through MDOT as this route runs alongside the Maryland State Scenic Byway. We held two trial runs, which has spurred a lot of interest.

EPTA took a bus to meet the AMTRAK train when they had their first roll on/ roll off day—a new program for bicyclists to ride onto the train without boxing up their bicycle. We brought bikes on our bike racks and the people go on the train with their bikes. This is the Capital Limited and goes from DC to Chicago.

EPTA is working with Shepherd University to get a shuttle between the campuses in Shepherdstown and Martinsburg to support their international student initiative.

#### **G. Admin**

EPTA has updated their Title VI policy, procurement manual (based on FTA best practices), the Board of Directors updated the Board’s Bylaws and adopted them.

The FTA Triennial Review was closed out with an “above average” comment by the consultants.

EPTA completed their Transit Asset Management forms. We have a very comprehensive inventory system.

Maintenance took the initiative and started a new administrative program called “Bus Profiling”. This goes through a very detailed history of each bus, which will be an enormous help for budgeting, buying parts, inventory on parts and planning for new buses. This will also be a part of a training process for each staff member to get a tour of a complete bus, while developing a better understanding of the business.

#### **c. Proclamation—Red Ribbon Week—Shenandoah Valley Young Marines**

Mayor Karos read the Proclamation and presented it to Lance Corporal Seth Bowers, who accepted the Proclamation and spoke of the mission of Red Ribbon Week and the Young Marine program.

#### **d. Proclamation—Breast Reconstruction Awareness (BRA) Day—Dr. Richard Casuccio & Teresa McCabe, Vice President of Marketing & Development, University Healthcare**

Mayor Karos read the Proclamation and presented it to Dr. Casuccio and Ms. McCabe.

**e. Proclamation—Christian Heritage Week**

As no one was present to accept the Proclamation, Mayor Karos asked that it be forwarded to the requestor.

**f. Proclamation—Small Business Saturday**

Mayor Karos read the Proclamation and presented it to Main Street Martinsburg Executive Director Randy Lewis.

**8. Petitions from Citizens**

**Richard Anderson**, NAACP Legal Redress Committee, asked Police Captain Swartwood how an individual might go about filing a complaint against a member or members of the Police Department. He asked if the individual needs to file the complaint himself, or if someone else might do that on his behalf. Captain Swartwood replied that he can give Mr. Anderson a form but that the individual filing the complaint must have it signed and notarized before returning it.

**Laura Gassler**, downtown business owner, property owner and Executive Director of the Convention and Visitor's Bureau. Ms. Gassler supports the overhanging signage requested by Main Street Martinsburg from a business and tourist prospective. She stated that recent visitors have been raving about the overall aesthetics of downtown Martinsburg and something like projecting/overhanging signage would give Martinsburg one more way to differentiate itself. She highly endorsed the project.

**Kenneth Hawthorne**, Vietnam Veterans of America, Martinsburg Chapter, which is housed in Ms. Morton's building at 630 Winchester Avenue, spoke about 632-634 Winchester Avenue, stating that there had been some progress but there loitering alcoholics and prostitutes were still a big problem. Mayor Karos informed Mr. Hawthorne that the property is on the agenda for discussion.

**Pamela Coyle**, Martinsburg/Berkeley County Public Libraries, requested that Council consider financially supporting the library to allow it to remain open at the downtown location on Wednesdays. Ms. Coyle stated that many people are wishing to have access to the library, but due to funding, it is not possible to open it to the public on Wednesdays. Ms. Coyle stated that the requested funds would also allow for maintenance people to be hired to keep the area tidy and clean and would allow for an evening security guard.

**Habib Ali** stated that he moved to Martinsburg approximately a year ago and has been making every attempt, along with his wife, to become involved in being a positive force for the community. He is impressed with the current Mayor and Council, and in particular thanked Councilman Boyd and Councilman Baker for their help in finding volunteer activities for him to be involved in. Mr. Habib stated that he and his wife are members of the Berkeley County Democratic Association and have been working with Berkeley County Councilwoman Elaine Mauck, as well as associations with Senior Services and the Workforce West Virginia Job Fair. Mr. Habib stated that he has made connections to help fund the establishment of a small business so he and his wife might become entrepreneurs in the City of Martinsburg. He reminded Council that the NAACP Freedom Fund dinner is scheduled for November 22 at 5 PM. He also spoke of the importance of supporting Planned Parenthood and spoke of a recent meeting at Senator Manchin's office.

**Reverend Ujima Tyson**, New Beginnings, spoke about the proposed non-discrimination ordinance. She stated that she has dealt with discrimination in her life and that issues of discrimination need to be addressed, but opposes the ordinance that would prohibit the discrimination of members of the LGBTQ community. Ms. Tyson believes that the laws of man should line up with the laws of God. She stated that she is also concerned that the ordinance would encourage fraudulent lawsuit abuse. Ms. Tyson relayed a situation in which she felt violated when she

noticed man watching her try on a bathing suit in a changing room. She stated that she is concerned with the safety of women and children in private areas, such as locker rooms, bathrooms and changing rooms, and that protecting the safety and privacy of women and girls is very important.

**Mark Mulligan**, Winchester Avenue, thanked Council for a wise selection for the new Chief of Police. He felt that Council had conducted a wise and detailed analysis of the candidates and is excited for the beginning of a new era for the City of Martinsburg.

**Christina Lundberg**, Candi Court, stated that the public and Council have now been presented with a draft non-discrimination for consideration. She thanked Council for taking the time to consider the rights of a group of individuals not yet included in affirmative action and equal opportunity policies.

**Jack DeHaven**, retired photographer, Laurel Ridge, spoke of a sister on Auburn Street who was always considered slow and may have a mild form of autism. She was constantly bullied in school, to the point she was removed from public schools. Because of his, Mr. DeHaven stated that he has compassion for everyone, but believes the draft non-discrimination ordinance does not protect the constitution rights guaranteed to all. He is concerned that the ordinance will put freedoms of speech and religion at risk. Mr. DeHaven asked why anyone would want to force a business owner to be a part of the most important day of their lives, citing cases where bakers, photographers and florists have been sued because they refused service for same sex marriages. Mr. DeHaven stated the he believes that Council wants to do what is best for the City, but that this new law will threaten the freedoms of the majority of the citizens.

**Betty DeHaven**, Talisman Drive, stated that government has no business telling citizens what to say or punishing them for their beliefs. She stated that this action limits the freedoms of a tolerant state. He asked how one qualifies or defines membership in the LGBTQAI community and what the immutable traits of LGBT are. She stated that she will not feel safe in public restrooms if this ordinance is passed.

**Mr. Joe Merceruio**, Fairness WV, replied that LGBTQ has been officially defined. He also stated that he is sorry about what happened to Ms. Tyson, but that is not the fault of the transgender community. Mr. Merceruio stated that the ordinance adds to the current discrimination policy and does respect rights of religion, without allowing religion to trump equal rights.

**Jeannie Morton**, 630 Winchester Avenue, spoke about the continuing issues at 634 Winchester Avenue. She introduced Ms. Francis Yurish, area resident.

**Francis Yurish** stated that she is concerned about her own property due to the activities going on at 634 Winchester Avenue. She stated that the inhabitants of the property in question have been urinating on her property, throwing fecal matter into the alleyway and hanging out on her porch drinking alcohol. Ms. Yurish stated that children use this alleyway to get to school and she is concerned that those children may be given or come into contact with drugs or drug paraphernalia. She stated that she has requested the help of the School Board for the safety of the children.

Ms. Morton added that there is ongoing prostitution and that the police were called as late as 5:45 this evening to remove publically intoxicated individuals. She stated that the neighborhood does need assistance and the stamina from the Council to move forward on declaring this property a nuisance and abating that nuisance.

**Hubert Smith**, NAACP member, 2860 Cherry Run Road, provided the following letter addressed to President Barack Obama:

Dear Mr. President:

On March 13, 2013 a 50-year old black man, Wayne A. Jones, was shot and killed by five City Police Officers on the main street in Martinsburg, West Virginia. Wayne Jones was beaten sufficiently to break his arm, he was tased two to four times, choked and thrown to the ground by police officers. Then the five officers formed a half-circle and fired 22 shots into his body, while Jones lay on the ground. The first shot entered his head. In spite of claims to the contrary, many more than 22 shots were fired. A Grand Jury declined to indict any of the five officers. It was murder and no one cares.

It has now been two and a half years since Mr. Jones's killing. We have seen very little progress in obtaining justice for the Jones family. How could they drag their feet on something so horrific? The Jones family and the NAACP have met with the Regional Attorney General, the Mayor of Martinsburg, and the Martinsburg City Police, the Berkeley County Sheriff, the WV State Police and other entities all this time without substantial results.

We are writing you to ask for your intervention to push forward a complete and thorough investigation of the killing of Wayne Jones, action taken as required by law against the involved officers, and changes to the policies and procedures within the Martinsburg Police to guard against any repeat of this kind of thing happening in the future.

The Berkeley County, WV NAACP and the Jones family would appreciate the opportunity to meet with you to discuss this matter and define remedies to bring justice for the Jones family.

We look forward to your reply.

Most Sincerely,  
Hubert Smith  
President  
Berkeley County, WV NAACP

cc. the Honorable Loretta Lynch, US Attorney General,  
US Department of Justice

Mr. William Ihlenfeld, US Attorney, Northern District WV

Local Media

Attached is our letter to Us Attorney Northern District WV in which we requested an investigation of the Jones killing.

**John Mason**, Harpers Ferry, President of the LGBTQ Alliance, stated that the hopes Council will move forward. He invited anyone with doubts about the ordinance to call him. He stated that he has empathy for Ms. Tyson's experiences, but he does not feel that a man who was once a woman should be in the ladies' restroom. Mr. Mason stated that the ordinance has the full support of the 4,000+ members of the Alliance.

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

- a. Human Relations Committee August 13, 2015 Meeting Minutes
- b. Historic Preservation Review Commission August 3, 2015 Meeting Minutes
- c. For the Kids, by George Children's Museum September 3, 2015 Board of Director's Meeting Minutes

Motion made by Councilman Baker, seconded by Councilman Wachtel, to receive and file item 9A-9C. Motion carried unanimously.

**10. Reports of Chairpersons of Council Standing Committees**

**11. Report of Mayor**

**a. Schedule Special City Council meeting for Tuesday, October 27, 2015 to administer Oath of Office to incoming Chief of Police Maurice Richards and other business as needed.**

Mayor Karos stated that he did not anticipate any other business and that the meeting will be at 5 PM.

**b. Appoint Martin Bales (current alternate) as a regular member of the Board of Zoning Appeals to fill an unexpired term—January 1, 2015-January 1, 2018**

Motion made by Councilman Wachtel, seconded by Councilman Collinson, to appoint Mr. Bales through 01/01/18.

**c. Appoint Thomas Johnson as an alternate member of the Board of Zoning Appeals to fill an unexpired term—January 1, 2013-January 1, 2016**

Motion made by Councilman Wachtel, seconded by Councilman Knowles, to appoint Mr. Johnson as an alternate member through 1/01/16.

**d. Public meeting notice for the King and Church Streets Stormwater Upgrades Project—Monday, October 19, 2015 at 6 PM—Alpha Associates and Staff**

**12. Report of City Attorney**

**a. Draft Non-Discrimination Ordinance Update and Review**

Mr. Sayre stated that it would be appropriate to place the draft ordinance on the website and open a public comment period for thirty days. He stated that a hard copy can also be obtained from the City. City Manager Mark Baldwin asked interested parties to address public comment to the City Recorder via mail or in person. Emailed comments are also acceptable through November 8, 2015.

**b. Receipt of Petition from Police Chief Kevin Miller requesting a nuisance hearing for 634 Winchester Avenue—Steve Nines, property owner**

Mr. Sayre stated that Mr. Nines will be served in order to have a nuisance hearing. He stated that CAD sheets are available and that input from the Planning Department will also be collected. He stated that if Mr. Nines can be served in time, the public nuisance hearing can be held at the November regular meeting. If he does not appear, the hearing can proceed without him. Mr. Sayre then stated that if the property is considered to be a nuisance, the City can request permission from the Circuit Court to abate the nuisance by any means, up to and including demolition of the structure.

Councilman Knowles asked if this is a process expected to take 30-45 days. Mr. Sayre stated that unless it is appealed, that is the approximate time frame.

Councilman Knowles asked if there is anything the City can do to ensure that the building is secure and that the neighbors are safe from nuisance elements. Mr. Sayre replied that, for immediate issues, the Police Department and Planning Department can respond.

Councilman Knowles stated that there is currently a ladder leaning against the structure and it is being used for access to the roof by high school aged students. City Engineer/Planning Director Michael Covell replied that the leaning ladders is not a code violation but he can ask the property owner to remove it, as it is an attractive nuisance.

Mayor Karos asked Mr. Covell what Planning can do to help secure the area. Mr. Covell replied that they can work to secure it by boarding up access points.

Councilman Baker asked if a temporary fence could be used. Mr. Covell stated that it can, but they don't tend to last long.

Mayor Karos stated that he understands it would behoove Council and the Planning Department to secure the structure as tightly as possible, and recommended that the Planning Department request assistance from the Police Department when going to that address. Mr. Covell stated that missing door or window openings can be boarded up, but it is not appropriate to board up a functional door or window. He also stated that boarding up intact windows would have the added issue of blocking the view of the inside, making it more difficult for police officers to observe if anyone is inside the structure.

### **C. Map Amendment Application**

Mr. Sayre stated that the Planning Commission met the preceding Wednesday to decide on a Map Amendment application which would change the zoning on a parcel from General Industrial to Commercial Business. He stated that Council will be asked to consider an Ordinance that would officially amend the zoning and if the first and second reading passes, it will be re-presented for a third and final reading. Should the ordinance pass all three readings, the zoning map would be changed. Mr. Sayre stated that he believes certain types of facilities are planned for that location, which would require a special exception from the Board of Zoning Appeals. He also stated that there may be flood plain issues, which would be considered by the Flood Plain Coordinator to be sure the request is in line with the national flood insurance program.

Mayor Karos suggested that this issue be first considered on the December 2015 agenda to allow Council time to research the issues.

Mr. Sayre stated that Council is to determine if the proposed zoning is consistent with the comprehensive plan, and if it is not, Council should determine if, due to major changes in economic, social or physical changes, a zoning change would be appropriate.

Councilman Wachtel stated he is the ex-officio member of the Planning Commission and that, after much discussion, the Planning Commission had reached a tie vote of 3-3, which was broken by the Chairman, to recommend the zoning change to Council.

Mr. Sayre cautioned the Council and asked them to keep an open mind and consider all of the information available to them regarding this request. He stated that it is not appropriate to pre-judge the application and some issues had been caused by some members of the boards and commissions making public comment regarding the issue.

Mayor Karos again recommended that Council consider the issue in December and asked for and received Council consensus.

## **13. Report of City Manager**

### **a. Projects Update**

Mr. Baldwin added to his written update, that the Brownsfield grant is in progress, that Mr. Covell has prepared the application and the Request for Qualifications guidelines. He stated that the plan is to receive those by the end of the month and that staff will review and shortlist the submissions. He asked if Council would like to be a part of the interview process or if they would like staff to handle it. The consensus of Council was that staff was capable. Mr. Baldwin stated that the selection would then come before Council for approval.

**14. Unfinished Business**

None.

**15. New Business**

**a. Approve/deny Resolution 2015-29: *A Resolution of the City Council of the City of Martinsburg, West Virginia, Authorizing the Participation in the Eastern Panhandle Home Consortium of West Virginia for a Period of July 1, 2016 to June 30, 2018***

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to approve Resolution 2015-29. Motion carried unanimously.

**b. Approve/deny Housing Consortium Cooperation Agreement by and Between the City of Martinsburg and the Counties of Berkeley, Jefferson and Morgan, West Virginia**

Motion made by Councilman Etherington, seconded by Councilman Collinson, to approve the Housing Consortium Cooperation Agreement. Motion carried unanimously.

**c. Approve/deny Recommendations of the Human Relations Committee to set Two-Year Staggered Terms for Committee Members**

Motion made by Councilman Etherington, seconded by Councilman Wachtel, to approve the recommendation. Motion carried unanimously.

**d. Approve/deny the Establishment of the Following Terms for the Human Relations Committee Members (as Appointed by the Mayor and Confirmed by Council on July 9, 2015):**

**Wilma Roberts and Rodney Woods 7/9/15-7/6/16**

**Chris Amores, Christina Lundberg and Vernon Cartwright—7/9/2015-7/9/2017**

Motion made by Councilman Collinson, seconded by Councilman Knowles, to establish the above terms. Motion carried unanimously.

**e. Discuss and Take Action as Necessary on Main Street Martinsburg's Request for Overhanging/Projecting Signage in the Downtown District**

Mayor Karos recommended forming a Committee to study the request, adding that the Historic Preservation Review Commission and Planning Commission would be involved in this decision.

Councilman Etherington asked why it is not allowed currently.

Councilman Wachtel responded that the prohibition of overhanging signage was put into effect during a revitalization project some time ago.

Mr. Covell stated that the signs are prohibited by both the Martinsburg Zoning Ordinance and the Martinsburg City Code. He stated that his department can work on some model language and being the process with a committee or directly with the HPRC and Planning Commission. He stated that he could draft the language and begin the public hearing process. The changes to the Zoning Ordinance would be done via text amendment application and the change would be recommended to Council. Another ordinance would be required to change the City Code. He stated that this request has come up a few time in recent years and that the Planning Department is prepared to begin the process upon consensus of Council.

Randy Lewis, Main Street Martinsburg, stated that the organization has been working on this for several years, precisely ten or fifteen years. He feels that this would be a good option for downtown businesses. He added that there would be design restrictions; that the signs would not be overly large or neon; and the business owners would respect the guidelines set by the Historic Preservation Review Commission. He stated that signage is vital to the Main Street business community and that these signs can be a positive image for downtown. Mr. Lewis stated that he is aware that this would be a gradual change and involved process, but he believes most business will be in favor of having this option.

Mr. Covell stated that he can prepare the drafts and have them ready to begin the public and Council input process. He said the request is sensible if done safely and that other neighboring communities have this option available for business signage.

Council was agreeable to referring the request to the Planning Department.

**f. Discuss and Take Action as Necessary on Request for Funds in the Amount of \$50,000 for the Martinsburg-Berkeley County Public Library**

City Manager Mark Baldwin stated that funds were previously requested through the budget process and that Council did not, at that time, have the funds to commit.

Councilman Etherington asked if the Library has approached the County for funding. Pam Coyle, Martinsburg/Berkeley County Public Library, stated that she had requested \$200K from the County and \$100K from the City during the budget process when they realized their budget expected from the school levy was to decrease. They do not have a current request before the County Council. Ms. Coyle went on to say that they are now realizing the significant impact of citizens who wish to use the library and come to find the doors closed. Ms. Coyle stated that the downtown facility has approximately 300 visitors per day and has been working with Main Street to bring people downtown. She stated that the requested funding would pay eight people for six months for the Martinsburg location, only. Ms. Coyle stated that she is not currently asking for funding from the County because she would be asking them for funding for County branches and this request is specifically for the City branch.

Mayor Karos reminded Ms. Coyle that City revenue is also down this fiscal year.

Councilman Baker asked what caused the sudden deficit. Ms. Coyle responded that legislation had been passed many years ago that the Berkeley County libraries were to be funded by schools, county and city governments. Approximately five years ago, this had been challenged and the Supreme Court determined that school boards no longer have to contribute to libraries. She stated that this reduced the allocation by approximately \$500K, which was used to help the schools to make their budgets. She stated that all libraries are closed two days per week and have reduced staff considerably; the libraries are now using volunteers and are doing as many passports and other services for which they receive payment.

Councilman Baker asked if the addition of new branches is causing a financial strain. Ms. Coyle stated that there are only four branches in Berkeley County and they have existed since the 1970's. She stated that the libraries have to keep up with the population increases, so size of those facilities has increased. She stated that the only new structure is the Hedgesville branch and circulation in that branch has increased by 300%. Ms. Coyle stated that the need for libraries is there and they are trying to cover as much as they can by using funding and endowments.

Mayor Karos recommended referring the request to Committee. He stated that the City has projects on hold currently because the money is not available, but that Council will try to come up with something.

Ms. Coyle stated that the Library has had to kick individuals out that have driven considerable distance to attend special events and wish to stay and use the library after those events have ended.

Councilman Anderson asked if this amount was sufficient, or if the Library would be requesting this level of funding annually. Ms. Coyle responded that the funding is to cover them through the end of June, and she hopes that the State legislation will make changes to allow them a more stable funding source.

Councilman Anderson stated that school boards should be funding libraries.

Councilman Boyd asked why the library would bring a guest speaker in on a day they were closed. He asked if it would not be possible to switch days to accommodate those who had traveled to visit the library. Ms. Coyle responded that the event was scheduled well in advance. She stated that switching the schedule would confuse regular visitors who expect the library to be open. She stated that the Martinsburg facility used to have more open hours than any other public library in the State, but they are now open less than Harpers Ferry.

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

**g. Approve/deny Agreement for Administrative Services between the City of Martinsburg and Region 9 Planning and Development Council for the WVDEP Chesapeake Bay Implementation Grant (CBIG) for the City of Martinsburg Revenue Stream**

Mr. Baldwin explained that they City currently has two grants going regarding the Chesapeake Bay, one is for asset management and the other is to identify and establish revenue streams. The first grant already sits with Region 9 as it is specific to the City of Martinsburg, but will serve as a model for other cities. The second grant names the City of Martinsburg of Martinsburg as an applicant, but it will require much of the same work as the Region 9 grant, which will be conducted by Michael Baker. This administrative agreement will allow Region 9 to use Michael Baker as the consultant for the second grant also, which will eliminate duplication of work.

Motion made by Councilman Etherington, seconded by Councilman Knowles, to approve the Agreement for Administrative Services between the City of Martinsburg and Region 9. Motion carried 6-1, Anderson, no.

**h. Approve/deny bid for 16 new mattresses at the Central Fire Station--\$6,200 total for product and delivery (\$6,000 mattresses--\$200 delivery)—Dutch Brothers Furniture (Fire Department General Fund Budget)**

Motion was made by Councilman Collinson, seconded by Councilman Etherington, to approve as submitted.

Councilman Anderson asked why the City is paying for delivery. Fire Chief Bragg stated that he does not have a vehicle to pick up 16 mattresses.

Motion was made by Councilman Anderson, seconded by Councilman Baker, to reconsider the previous motion. Motion carried 5-2, Collinson no; Wachtel out of the room.

Councilman Etherington asked who is going to pick up the mattresses if Council approves the total for the product but not the delivery.

Councilman Collinson pointed out that, even with the delivery fee, Dutch Brothers was the low bid.

Motion was made by Councilman Collinson, seconded by Councilman Etherington, to approve the bid as submitted.

Councilman Baker stated that he feels Dutch Brother should waive delivery.

Mr. Baldwin pointed out that there is no way to know if the other bidders included a delivery charge if it was not specifically listed on the bid.

Councilman Wachtel called for the question.

Motion carried 6-1, Anderson no.

**i. Approve/deny bid for purchase of carpet at the Central Fire Station--\$5,614.20 total for product, installation and disposal of old carpet—Jordan's Flooring (Fire Department General Fund Budget)**

Motion made by Councilman Wachtel, seconded by Councilman Baker, approve the bid for carpet as submitted. Motion carried unanimously.

**j. Approve/deny bid for purchase of day room furniture at the Central Fire Station--\$4,474.60—Dutch Brothers Furniture (Fire Department General Fund Budget)**

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to approve the bid for day room furniture as submitted. Motion carried unanimously.

**k. Schedule public nuisance hearing date in response to petition from Police Chief Kevin Miller for 634 Winchester Avenue—Steve Nines, property owner**

Mayor Karos reiterated that the public hearing has been scheduled for November 12, at the next regular Council Meeting, so long as Mr. Nines can be served promptly.

**l. Approve/deny Change Order #2 between the City of Martinsburg and W. Harley Miller for the E. Burke Street Parking Lot Project Construction--\$21,987**

City Manager Mark Baldwin explained that the Change Orders are not in response to the discovery of additional work, but for items that were never bid in outlying areas. At the time the project was bid, Mr. Baldwin stated, Finance Director Mark Spickler was adamant of the budgetary limit, and these items are being requested as there is still room in the budget. With the approval of the following change orders, the project will still be within budget.

Motion made by Councilman Wachtel, seconded by Councilman Collinson, to approve Change Order #2 between the City of Martinsburg and W. Harley Miller.

Councilman Boyd asked about the signage. Mr. Baldwin stated that they had discussed signs, but they are not part of the project at the moment. He stated that are part of the Wayfinding Project, but that they can also discuss signage. This can be handled separately from the W. Harley Miller bid.

Councilman Baker stated that he had worked out the price per square foot for the concrete work for Change Order #2. The original bid offered a good price for concrete work, however, the quotes for the change orders is \$33 per square foot, nearly four times the going rate for removing and replacing concrete. He recommended considering other contractors by allowing others to bid for these jobs.

Mr. Baldwin stated that there is no way to assure that the work will be done in conjunction with the existing project if it is put out to bid, and it likely will not be done before winter. He stated that it can be a different project, but was concerned that the work might cause damage to the new parking lot surface.

Councilman Baker stated that if the concrete were bid at regular prices, the savings would be approximately \$20,000.

Mayor Karos asked if change orders typically have higher prices than original quotes. Councilman Baker stated that is common as they are easy to upsell, however, he stated this is a significant increase. He added that the price should be better than the high average for this type of work as the equipment is already on site.

Mr. Baldwin stated that Council can direct him to attempt to negotiate with W. Harley Miller or begin a bid process.

Councilman Knowles asked if bidding the projects would affect the time in which the job is finished. Mr. Baldwin replied that some of the requested change orders cannot easily be done later, but some can.

Councilman Etherington asked if this could be called to W. Harley Miller's attention and attempt to renegotiate can be made.

Councilman Wachtel asked if the concrete workers are subcontractors. Mr. Baldwin stated that they are.

Councilman Wachtel withdrew his initial motion and Councilman Collinson withdrew his second.

Councilman Etherington stated that he understands the need to have these project done, but does not want the City to be ripped off.

Motion made by Councilman Wachtel, seconded by Councilman Baker, to table item 15 L.

Mayor Karos asked about the best way to proceed. Mr. Baldwin stated that the parking lot project can be finished without these change orders. Councilman Wachtel recommended renegotiating and conducting a telephone poll. Mr. Baldwin stated that the item is tabled and can only be taken off the table at another meeting. Councilman Knowles stated that the phone calls could be made the next day and a special meeting could be scheduled next week to discuss the items.

Councilman Baker asked if Council could use bids from other projects, such as the work at the Fire Hall. Mr. Sayre stated that would not be allowed because it this work was not in the scope of these bids. He stated that change orders are part of an existing project and are appropriate, but using a bid from a completely different project would not be appropriate.

Mr. Covell agreed with Councilman Baker's concerns, that the contractor is put in a position to dictate price. He asked Council how important it was to get the work done in a timely matter, stating that patch work could be done at a later date, but there is a risk of causing damage to work already done.

Council conceded to conducting a phone poll after attempts to renegotiate and affirming the decision on the following agenda. It was also determined not to take action on the other Change Orders between the City of Martinsburg and W. Harley Miller at this time.

**m. Approve/Deny Change Order #3 between the City of Martinsburg and W. Harley Miller Construction for the E. Burke Street Parking Lot Project Construction--\$10,530.**

The consensus of Council was to take no action at this time.

**n. Approve/deny Change Order #2 between the City of Martinsburg, Gordon and Associates and Grove and Dall'Olio Architects for the E. Burke Street Parking Lot Engineering--\$1,616**

Motion made by Councilman Knowles, seconded by Councilman Boyd, to approve Change Order #2. Motion carried 6-1, Anderson no.

**o. Approve/deny Change Order #12 between the City of Martinsburg, O'Brien and Gere Engineers Inc., and HRI, Inc., for the WWTP Upgrade project--\$8,535**

Motion made by Councilman Knowles, seconded by Councilman Boyd, to approve Change Order #12. Motion carried 6-1, Anderson no.

**p. Approve/deny Resolution 2015-30 authorizing HRI Inc.'s Application for September Payment #22--\$1,276,440.69**

Motion made by Councilman Wachtel, seconded by Councilman Boyd, to approve Resolution 2015-30. Motion carried 6-1, Anderson no.

Mayor Karos acknowledged Councilman Anderson's "no" vote and apologized for moving to the next item prematurely.

**q. Approve/deny Change Order #4 between the City of Martinsburg and W. Harley Miller Construction for the E. Burke Street Parking Lot Project Construction (remove and replace concrete against building)--\$8,313**

The consensus of Council was to take no action at this time.

**16. Executive Session**

Motion made by Councilman Etherington, seconded by Councilman Knowles, to enter Executive Session for legal matters at 9:25 PM. Motion carried unanimously.

**Adjournment**

Motion adjourned by unanimous consent at 9:40 PM.

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George Karos, Mayor

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Gena Long, City Recorder