

**City Of Martinsburg  
Regular Council Meeting  
Thursday, August 10, 2017  
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: Gregg Wachtel, Harriet Johnson, Dennis Etherington, Kevin Knowles, Ken Collinson, Mark Baker and Jason W. Baker. Also present were: Mark Baldwin, City Manager; Kin Sayre, Legal Counsel; Gena Long, City Recorder, Police Chief Maurice Richards; Fire Chief Paul Bragg, Community Development Administrator Nancy Strine, Public Works Director Jeff Wilkerson, City Engineer/Planning Director Kimberly Petrucci and Utilities Director Steve Knipe.

**3. Salute to Flag**

Councilman J. Baker led the Salute to the Flag.

**4. Prayer—**

Mayor Karos delivered the invocation.

Mayor Karos added item 6 A, introduction of new Police Canine, and pointed out that item 16K is to be moved up to be considered immediately after the public hearing.

**5. Approve July 31, 2017 Special Meeting Minutes**

Motion made by Councilman Knowles, seconded by Councilman Collinson, to approve the July 31, 2017 Special Meeting Minutes. Motion carried unanimously.

**6. Approve June 2017 Administrative and Financial Report**

Motion made by Councilman Knowles, seconded by Councilman M. Baker, to approve the June 2017 Administrative and Financial Report. Motion carried unanimously.

Police Chief Maury Richards introduced Officer Fritz and the new K-9, Titan.

Deputy Chief Swartwood added that Officer Fritz and Titan are great assets to the Police Department, and that Titan's purchase and training were paid for using drug forfeiture funds and no tax dollars were spent.

After introducing Titan, the German Shepherd, Chief Richards added that the dog had been named by the students of Winchester Avenue School and Burke Street Elementary. He also added that Titan had only been on the job since Monday and had already been utilized to find drugs during a traffic stop.

**7. Public Hearing to seek input on the issue of a Special Use Permit Application to use Real Property Located at 800 Boston Street in the City of Martinsburg (Map M9, Parcel 240) as a Wireless Telecommunications Facility—Vertical Bridge Development II, LLC (Move Item 16 K up on the Agenda)**

Mayor Karos opened the public hearing at 6:38 PM.

Mr. Richard Lemanowicz, representing Vertical Bridge Development II, LLC, stated that the permit is for a 120-foot tall telecommunications tower, which has been through all of the City's processes and has received the blessing of Richard Comi, the City's consultant. All supporting documentation has been provided.

Ms. Barbara Bratina, Tennessee Avenue, stated that there are approximately 1,200 residents within 1,500 feet of the proposed tower, and those she had spoken with were unaware of this permit application. She asked that the City table the decision, notify those residents, and hold a second public hearing. Ms. Bratina was also concerned about the height and visual impact of the tower. She pointed out that it is in the center of town, and other towers owned by the same developer are only 80 feet in height. She felt that the photographs of the visual impact were not sufficient, per ordinance. Ms. Bratina asked that Council consider the tower's aesthetics and that it can be disguised as things other than the tree image provided, such as a flag pole.

As no one else spoke for or against the application, Mayor Karos closed the public hearing at 6:42 PM.

City Attorney Kin Sayre stated that the City had met notification requirements as required by the Ordinance, via legal advertisements. He added that Council may send out notification to each resident within the 1500 feet if they choose and the application does list the impacted residents, as required. Mr. Sayre also pointed out that Mr. Lemanowicz has been before Council several times during the process.

**k. Approve/deny Vertical Bridge Development, LLC's Special Use Permit Application to use real property located at 800 Boston Street as a location for a Wireless Telecommunications Facility**

Councilman M. Baker asked when construction would begin. Mr. Lemanowicz replied that construction would begin as soon as possible if the special use permit is approved.

Motion made by Councilman J. Baker, seconded by Councilman M. Baker, to approve the Special Use Permit Application. Motion carried 5-2, Knowles and Wachtel voting no.

**8. Presentations**

**a. Make comment on ABCA Zoning Form for HUB Co-op, LLC, dba Mad Kat Café and Wine Bar, 131 N. Queen Street**

As the applicant was not present, no action was taken.

**9. Petitions from Citizens**

Ms. Elizabeth Day, Winchester Avenue, made the following statement:

Good Evening. My name is Elizabeth Day. My husband and I live in the 800 block of Winchester Avenue.

Just to the south of the City limits are motels that have problems with addicts, prostitutes, drug dealers, and violent offenders. In 2016 alone, there were one-hundred-nine (109) 911 calls to the Heritage and Relax Inns, an average of two (2) per week.

If the activity stayed in the County, I'd have little to say. However, there have been days recently when we have counted up to 9 different prostitutes a day sashaying by our home, morning, noon and night. They

are being picked up and dropped off 15 feet from our door. We see local and out of town johns cruising round and round the block looking for them. Sometimes we are afraid to take our dog outside for fear someone will harm him or us. We find syringes and condoms in the alley.

The couple three-doors down just put their home on the market. As the realtor was showing their house this week, there were streetwalkers very obviously soliciting in front.

Criminals in and around the Heritage and Relax Inns know how the game is played. They know they are virtually untouchable by Martinsburg police and that the Deputies are stretched thin policing the County. They enjoy their island of lawlessness, while residents and businesses of Martinsburg pay the price. We are here to propose a solution.

We have collected 282 signatures on a petition asking the City of Martinsburg to annex the motels at 1022 and 1024 Winchester Avenue into the City limits. The motels owners should pay something to offset the motels' emergency calls. After annexation, the City would receive a few hundred dollars of property taxes and collect B&O taxes. Importantly, the Drug House ordinance could be enforced, ideally reducing the number of 911 calls there.

If you believe that Martinsburg should look the other way and keep the line where it is, you are wishfully thinking. Crime is a cancer creeping into your City and costing you. If you need an ambulance, but it's tied up at another overdose at the Relax Inn, then it's costing you. If taxes rise because more police and EMTs are needed, then it is costing you. If you are trying to refinance or sell your home, but one of the comp properties is near the motels, then your property value just declined and it is costing you.

Chief Richards said this week, "the decent citizens of Martinsburg deserve to live in safe, drug-free neighborhoods." And last week he said, "The drug house ordinance is a powerful weapon in our arsenal." We strongly agree.

We need your help in holding the motel owners responsible. Using the Drug House Ordinance, the police can do much to lower crime and keep the peace which, in turn, preserves everyone's property values. We have reached the tipping point. Nearly 300 people want to know what else we can do to help you help us. Thank you.

Mayor Karos replied that the City does not generally reply directly to Petitions from Citizens during open sessions, however, Chief Richards wished to address this petition. He stated that in July, there were forty citations and arrests conducted on Winchester Avenue. He also added the bike patrol has been increased, 212 Winchester Avenue was declared a drug house and shut down, and that the Martinsburg Police Department was working closely with the Berkeley County Sheriff's office on the issues on the properties located outside of City limit.

Mr. Donald Roberts, E. King Street, stated that he is representing KD Court and offered the following petition, regarding the area around and including the Town Square Pedestrian Plaza, which he states is affecting the health of the neighborhood. Mr Roberts added the request that the "park" area be closed at dusk and that patrol be increased:

This petition is a request from concerned citizens residing in and around Kings Daughters Court (KD Court). In no way are we complaining about the quality and dependability of our local police officers. They are amount the best. We just think that you need to know about certain happenings around our building.

The space between our building and the Boarman House is home to quite a lot of illicit activity after dark. Recently, there have been sexual activities in the shadows. We also discovered human urine and feces in one of our outside stairwells. There is a lot of noise when people cut through our property where we are

adjacent to the Presbyterian Church. One person even tried to break into the City's portable toilet next to the Boarman House. We also have had complaints about homeless people sleeping in the rear of our building. Of course, there is drug dealing too.

Our visitor parking area behind the maintenance building is often a hub of activity. We have signs ("No Trespassing" and Parking for KD Court Visitors Only) threatening to tow illegally parked vehicles. Most of them are parking to visit someone at the VanMetre property. If they hurt themselves on our property, we are liable. Towing causes bad feelings and often results in retaliation.

In the daytime, we have to put up with skateboards and bicycles on our wheelchair access ramps. These are kids, but they cause damage to our railings when they hop their bicycles onto it and slide down, scraping off the paint. One of our residents was out front walking recently when a kid on a bicycle barreled past her, almost knocking her to the pavement. Then the kid turned around and did it again to her, as if she was trying to get as close as possible.

We understand that these problems may sound petty compared to the life and death situations our police have to deal with every day. However, we feel there are not enough resource allocate to this kind of patrolling. Please consider the need of our elderly population to have a safe and secure environment.

We, the following signatories request that more resources be allocated to these problems.

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

**a. Notice from Comcast, dated July 27, 2017, regarding updates to Comcast Agreement for Residential Services**

**b. Board of Zoning Appeals June 6, 2017 Meeting Minutes**

**c. Planning Commission July 5, 2017 Meeting Minutes**

Motion made by Councilman Etherington, seconded by Councilman Knowles, to receive and file item 10A-10C. Motion carried unanimously.

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

**a. Council as a Whole Committee July 31, 2017 Meeting Minutes**

As there were no objections, Committee minutes were approved by unanimous consent as follows:

**Council as a Whole Committee Minutes**

Monday, July 31, 2017—immediately following Special City Council Meeting at 5 PM.

**Present:** Mayor George Karos, Kevin Knowles, Jason Baker, Mark C. Baker, Gregg Wachtel, Dennis Etherington, Harriet Johnson and Ken Collinson.

**Others in Attendance:** Mark Baldwin, City Manager; Mark Spickler, Finance Director

**Unable to Attend:**

Mayor Karos opened the meeting and the following items were discussed:

**1. FY 2017-2018 General Fund Budget**

**a. General Fund Unassigned Fund Balance (unencumbered balance):** Finance Director Mark Spickler provided an overview of the General Fund Unassigned Balance.

**b. City Manager Recommendations/Committee Discussion:** City Manager Mark S. Baldwin provided an overview of recommendations for the FY 2017-2018 Unassigned Balance.

The consensus of the Committee was to forward the City Manager recommendations as suggested to City Council for approval.

**b.1. Berkeley County Day Report Center Funding Request--\$70,000:** After a great deal of discussion, consensus of the Committee was to request additional budget and grant allocation for the Day Report Center from the Berkeley County Council.

**c. FY 2017-2018 Budget—Going Level Overview:** Finance Director Mark B. Spickler provided an overview of the going level report.

## **2. Time Schedule for Events at the Town Square**

Councilman Etherington suggested events be scheduled for no longer than 4 hour time periods. One of the concerns regarding the time suggestion was how Council would handle certain requests beyond the 4 hour time limit.

After a great deal of discussion, the consensus of the Committee was to not place a time constraint at this time for events on the Town Square.

## **3. Urban Deer Management within the Corporate Limits of Martinsburg:**

Consensus of the Committee was to authorize the City Attorney to draft an ordinance for Council's review.

## **12. Report of Mayor**

### **a. Report the following vacancies:**

- **Board of Zoning Appeals (1 alternate)**
- **Parking Authority (2)**
- **Shade Tree Commission (1)**
- **Historic Preservation Review Commission (1)**
- **Airport Authority (1)**

## **13. Report of City Attorney**

## **14. Report of City Manager**

## **15. Unfinished Business**

### **a. Third and Final Reading of Ordinance 2017-10 Amending Ordinance 2017-09 Which Established Job Descriptions For Employees Of The City Of Martinsburg, West Virginia**

Motion made by Councilman Etherington, seconded by Councilman Collinson, to read Ordinance 2017-10 through the third and final reading, by title only, and adopt. Motion carried unanimously.

## **16. New Business**

### **a. First and Second Reading of Ordinance 2017-11 to Amend and Reenact the Codified Ordinances of the City of Martinsburg to Amend Part Nine: Streets, Utilities and Public Services Code, Chapter Five: Other Public Services,**

**Article 951: Garbage Collections at Section 951.02: Container Requirements and Section 951.06: Charges for Collection by City**

Motion made by Councilman Etherington, seconded by Councilman J. Baker, to read Resolution 2017-11 through the first and second reading, by title only. Motion carried unanimously.

**b. Approve/deny Resolution 2017-13 FY 2017-2018 General Fund Revision #2**

Motion made by Councilman Etherington, seconded by Councilman Collinson, to approve Resolution 2017-13. Motion carried unanimously.

**c. Approve/deny Sales Tax Fund Budget Revision #1**

Motion made by Councilman Etherington, seconded by Councilman Wachtel, to approve the sales tax fund budget revision #1. Motion carried unanimously.

**d. Approve/deny Resolution 2017-14 Approving the FY 2017 Annual Action Plan and Authorizing the Filing of Application with HUD**

Motion made by Councilman Etherington, seconded by Councilman Wachtel, to approve Resolution 2017-14. Motion carried unanimously.

**e. Approve/deny Authorization to Request Exemption from the United States Department of Housing and Urban Development (USHUD) to allow Councilman J. Baker, DBA JWB Contracting, to serve as General Contractor for the Habitat for Humanity Home Built with Community Housing Development Organization (CHDO) Funds, without Financial Compensation and on a Voluntary Basis**

Motion made by Councilman M. Baker, seconded by Councilman Knowles, to approve the authorization request the exemption.

Councilman J. Baker asked to be recused for items 16e – 16 i.

City Attorney Kin Sayre responded that he saw no need for recusal, however, it was up to Council.

There was no motion to allow Councilman J. Baker to recuse from voting on items 16e-16i.

On original motion, motion carried unanimously.

**f. Approve/deny Authorization for Mayor to Sign Amended Agreement between the City of Martinsburg and Habitat for Humanity of the Eastern Panhandle for Lot #19 (104 Humanitarian Way) in the Auburndale Subdivision--\$42,257.60—2013 CHDO Funds**

Motion made by Councilman Collinson, seconded by Councilman Knowles, to authorization for the amended agreement for \$42,257.60 in 2013 CHDO Funds. Motion carried unanimously.

**g. Approve/deny Authorization for Mayor to Sign Amended Agreement between the City of Martinsburg and Habitat for Humanity of the Eastern Panhandle for Lot # 19 and Lot #20, (104 and 106 Humanitarian Way) in the Auburndale Subdivision—\$48,669.00 2014 CHDO Funds**

Motion made by Councilman Collinson, seconded by Councilman M. Baker, to authorization for the amended agreement for \$48,669.00 in 2014 CHDO Funds. Motion carried unanimously. Motion made by Councilman

**h. Approve/deny authorization for Mayor to sign amended agreement between the City of Martinsburg and Habitat for Humanity of the Eastern Panhandle for Lot # 20 (106 Humanitarian Way) in the Auburndale Subdivision--\$46,282.00—2015 CHDO Funds**

Motion made by Councilman Knowles, seconded by Councilman M. Baker, to authorization for the amended agreement for \$46,282.00 in 2015 CHDO Funds. Motion carried unanimously.

Councilman J. Baker stated that Lot 20 is the last ready for construction; future lots will require infrastructure development. There are 17 lots remaining in the subdivision.

**i. Approve/deny authorization for Mayor to Memoranda of Agreement to transfer HOME Match Credit to Habitat for Humanity of the Eastern Panhandle, Inc. for FY 2013, 2014 and 2015**

Motion made by Councilman Knowles, seconded by Councilman M. Baker, to authorize the Mayor to sign the Agreement to transfer HOME Match credits to Habitat for Humanity for FY 2013, 2014 had 2015. Motion carried unanimously.

**j. Approve/deny agreement between the City of Martinsburg and Berkeley County Farmland Protection Bureau for lease of office suite at Caperton Train Station**

Motion made by Councilman J. Baker, seconded by Councilman Wachtel, to approve the lease agreement with Berkeley County Farmland Protection Bureau. Motion carried unanimously.

**k. Approve/deny Vertical Bridge Development, LLC's Special Use Permit Application to use real property located at 800 Boston Street as a location for a Wireless Telecommunications Facility**

See Item 7 A.

**l. Approve/deny Special Events Permit # 2017-24, for Kingdom Agenda Christian Center's request to use the Town Square Pedestrian Plaza for purposes of holding a "Unity in the Community" event on Saturday, August 26, 2017 from noon until 4 PM, contingent upon proof of adequate liability insurance and payment of any recommended fees for City service (\$0.00 Recommended)**

Motion made by Councilman Etherington, seconded by Councilwoman Johnson, to approve the request with the condition that the total time, including set-up and tear-down, not exceed four hours, contingent upon proof of adequate liability insurance and payment of any recommended fees for City services. Motion carried 5-2, Knowles and J. Baker voting no.

**m. Approve/deny request from Breast Cancer Awareness—Cumberland Valley, Inc. to affix pink ribbons to trees, utility poles and parking meters in the City of Martinsburg as part of the Park in the Pink Awareness Campaign, October 2-October 13**

Motion made by Councilman Wachtel, seconded by Councilman Knowles, to approve as requested. Motion carried unanimously.

**n. Authorize the City Attorney to draft an ordinance with provisions for urban deer management (as recommended at Council as a Whole Committee Meeting—July 31, 2017)**

Motion made by Councilman Collinson, seconded by Councilman M. Baker, to authorize the City Attorney to draft an ordinance with provisions for urban deer management. Motion carried unanimously.

**o. First and Second Reading of Ordinance 2017-12 to Amend and Reenact the City of Martinsburg Fire Civil Service Rule and Regulations to Amend the Physical Agility Test Standards**

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to read Ordinance 2017-12 through the first and second reading.

Chief Bragg stated that this request was made with no discussion with the Fire Department or the City of Martinsburg and feels it requires further discussion. Customarily, the Commission meets with the City Manager and the Fire Department to discuss changes to testing procedures.

City Attorney Kin Sayre explained that Council must act on this Ordinance within 20 days, or the changes will be automatically approved, therefore, he did not recommending tabling the action. Councilman Wachtel asked if the Commission can bring it back within a year. Mr. Sayre stated that it can be amended and brought back as a new ordinance at any time.

Councilman J. Baker asked why the Commission wishes to remove the checking of vital signs during the testing process. Chief Bragg explained that he understood that Commissioner Canby was concerned that the Commission has no base line and does not feel comfortable telling someone they cannot proceed based on the results. Chief Bragg agreed that some process should be reviewed, such as a release in which the applicant must sign stating that they are aware that the heart rate or blood pressure are elevated and wish to proceed anyway.

Councilman J. Baker asked if all applicants should be certified on SCBA equipment. Chief Bragg responded that they sometimes get applicants that have no firefighting experience and may not be certified or trained to use the equipment. The point of that part of the test is to determine if the applicant is claustrophobic, not if they can use SCBA equipment.

City Manager Baldwin added that the City of Martinsburg has a good working relationship with the Fire Civil Service Commission. If Council denies the vote this evening, the intention is to meet and discuss the rule and regulation changes. If the City and Commission cannot come to an agreement, Council will make the final determination on the proposed changes.

Original motion was denied by unanimous vote.

**p. Approve/deny bid recommendation for geotechnical services for the concrete apron at the Martinsburg Fire Station--\$3,200; Triad Engineering**

Motion made by Councilman Etherington, seconded by Councilman Collinson, to approve the bid recommendation as proposed.

Councilman M. Baker stated that he felt this was a waste of money, that the dirt was not compacted properly when the station was constructed originally. He felt that the apron should be dug up, good dirt brought in and compacted property, then the apron reconstructed.

City Manager Mark Baldwin explained that the purpose of the geotechnical services is to determine the bid specifications for the construction bid, taking into consideration what must be done to handle the weight of the fire and EMS equipment. If the testing is not conducted, the City may not ask for bids on the correct specs.

Councilman J. Baker recommended a trench test rather than core drilling.

Councilman Wachtel called for the question.

Original motion passed 5-2, M. Baker and J. Baker voting no.

**q. Approve/deny Snyder Environmental Pay Application # 4 for N. Queen Street Underpass Utility Relocation Project--\$28,577.79**



Motion made by Councilman Wachtel, seconded by Councilwoman Johnson, to approve the pay application.  
Motion carried unanimously.

**18. Executive Session**

**Adjournment**

Meeting adjourned by unanimous consent at 7:23 PM.

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George Karos, Mayor

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Gena Long, City Recorder