

**City Of Martinsburg
Regular Council Meeting
Thursday, October 12, 2017
The J. Oakley Seibert Council Chambers**

With a quorum present, the regular session of the Martinsburg City Council was called to order by Legal Counsel Charles Printz 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; Gena Long, City Recorder, Police Chief Maury Richards; Fire Chief Paul Bragg; City Engineer/Planning Director Kim Petrucci; Public Works Director Jeff Wilkerson, and Utilities Director Steve Knipe.

Motion made by Councilman Etherington, seconded by Councilman Collinson that Councilman Wachtel lead the meeting, in the absence of the Mayor. Motion carried unanimously.

3. Salute to Flag

Councilman Knowles led the Salute to the Flag.

4. Prayer—

Rev. Mark Mooney lead the invocation.

5. Approve September 28, 2017 Special Council Meeting Minutes

Motion made by Councilman Etherington, seconded by Councilman Collinson, to approve the September 28, 2017 Special Meeting Minutes. Motion carried unanimously.

6. Approve August 2017 Administrative and Financial Report

Motion made by Councilman Knowles, seconded by Councilman Etherington, to approve the August 2017 Administrative and Financial Report. Motion carried unanimously.

7. Presentations

a. Opioid Litigation Presentation—Stephen Skinner Law Firm (See Item 15 C)

Attorney Stephen Skinner provided information to Council regarding recent litigation against manufacturers and distributors of opioid pain killers. If the City wishes to join in the suit, Mr. Skinner stated that it would be on a contingency basis, with the law firm advancing all costs with the expectation of collecting approximately 25% of any proceeds.

Councilman Knowles asked if individual doctors were being named in the suit. Mr. Skinner replied that, when dealing with doctors there are limits on their malpractice insurance and naming each one would be difficult and unwieldy, with a lower chance of meaningful settlement. The appropriate venue for suits against doctors would be from family members of addicts or addicts themselves that can assert that an individual doctor willingly prescribed unneeded pain medication without disclosing the risk. He also added that State legislation is likely forthcoming to require doctors to self-regulate and more strictly regulate the prescription of opioid painkillers, as has been the case with over-the-counter cold medicines.

Mr. Printz asked if there was a deadline for the City to elect to become involved in litigation. Mr. Skinner replied that, while there appears to be no set statute of limitations, the City now has knowledge of the ability to enter litigation, and the longer the City waits, the more likely the suit would be to be subjected to effected defenses.

Councilman M. Baker asked how many local entities were prepared to enter the litigation. He had several questions about the possibility of the law firm not having the funds to go the distance, as the manufacturers have deep pockets and the litigation could drag on for some time. He was concerned that later, the law firm would be coming back to the City to ask for funding to keep moving forward. He agreed that the possibility of litigation should be discussed and options should be considered.

Councilman Knowles offered that the Mr. Skinner had explained that there is no cost to the City. Documentation can be drafted to protect the City and ensure that there is no financial risk. Opioids have caused massive problems in the City, and the City has invested a great deal of time and money and someone needs to be held accountable.

Mr. Skinner agreed, adding that if the City wishes to move forward, there is a process which would require resolutions and agreements. At some point, the Skinner law firm may wish to partner with another firm but at no point with the City be asked to finance the litigation. The law firm(s) will advance all costs.

Motion made by Councilman Knowles, seconded by Councilman Collinson, for Mr. Skinner to work with City Attorney Kin Sayre and draft the necessary documents for Council to review. Motion carried unanimously.

b. N. Tennessee Tree Planting Presentation—Tanner Haid, Cacapon Institute Urban Watershed Forrester (See Item 15D)

Ms. Mary Lewis, Shade Tree Commission, introduced Mr. Haid and explained that the City had received a grant for tree plantings in the City limits, and part of the grant was an educational component, which this presentation would partially fulfill.

Mr. Haid, Charles Town, WV, spoke about urban tree canopies and their importance in watershed protection. In 2013, as study of the City of Martinsburg urban tree canopy revealed that the City spends approximately \$20K annually on tree maintenance, but the canopy provides approximately \$180K annually in benefits.

He stated that the grant will allow for the planting of the right trees in the right locations. Tennessee Avenue is known for its large stately trees, however, many of those trees were not appropriate for their location and have been removed. They will be replaced with appropriate plantings and only on the properties of those residents who desire to have the trees.

The grant will also allow for the Institute to assist with private residents to plant backyard trees by covering half of the cost. Between the two projects, the City will have 36 new trees.

Councilman M. Baker added that he would like to have a future conversation about replacing the trees downtown with more appropriate plantings, as the current trees are overgrown and attract nuisance birds. Mr. Haid responded that there are grant applications available to provide funding for this type of project.

Motion was made by Councilman Knowles, seconded by Councilman Etherington, to approve the acceptance of the WV CommuniTree funding and move forward with the project, as detailed in item 15 D. Motion carried unanimously.

c. Proclamation—Small business Saturday—November 25, 2017

d. Proclamation—Christian Heritage Week—November 19-25, 2017

The City Recorder will forward both Proclamations to the appropriate parties.

8. Petitions from Citizens

Ms. Helen Henderson, W. Burke Street, asked that Council approve item 15 H referencing stormwater management at Mt. Hope Cemetery, as it is a part of the City's history and has been neglected.

Ms. Susan Bales, Randolph Street, does not believe that the City's police levy should be on a County ballot.

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

a. Historic Preservation Review Commission September 11, 2017 Meeting Minutes

b. Planning Commission September 6, 2017 Meeting Minutes

Motion made by Councilman Knowles, seconded by Councilman Etherington, to receive and file item 9A-9B. Motion carried unanimously.

10. Reports of Chairpersons of Council Standing Committees

11. 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)

12. Report of City Attorney

13. Report of City Manager

14. Unfinished Business

a. Third and Final Reading of Ordinance 2017-13 to Amend and Reenact the Codified Ordinances of the City of Martinsburg to Amend Part Five— General Offenses Code, Chapter Five- Animals and Fowl, Article 505.05: Hunting Prohibited, by Adding Sections 505.051-505.054 and Amending Section 505.99: Penalty

Motion made by Councilman Knowles, seconded by Councilman Collinson, to read Ordinance 2017-13 through the third and final reading, by title only, and approve. Motion carried unanimously.

Consensus of Council was for the City Manager to send a letter and a copy of the ordinance to the WVDNR to request approval to conduct a 2017 deer hunt.

b. Third and Final Reading of Ordinance 2017-14 Amend the City of Martinsburg Zoning Map to Rezone 30.55 Acres of an Improved Parcel Identified as 1858 Delmar Orchard Road Containing Approximately 62.90 Acres from RML (Multiple-Family, Low-Density Residential District) to RP (Planned Residential) and Approximately 2.58 Acres from RML to BC (Community Business)

Motion made by Councilman M. Baker, seconded by Councilwoman Johnson, to read Ordinance 2017-14 through the third and final reading, by title only, and approve. Motion carried unanimously.

15. New Business

a. First and Second Reading of Ordinance 2017-15 providing for an election for additional levy, to renew the levy which expires June 30, 2019, by the City of Martinsburg, West Virginia May 8, 2018 Special Election, in conjunction with the WV Primary Election

Motion made by Councilman Etherington, seconded by Councilwoman Johnson, to read Ordinance 2017-15 through the first and second reading, by title only. Motion carried unanimously.

b. Approve/deny Special Events Permit # 2017-29 for a “New Year Apple Drop” sponsored by Main Street Martinsburg for Sunday, December 31, 2017 from 4-6 PM in the Town Square Pedestrian Plaza, contingent upon proof of adequate liability insurance and payment of any recommended fees for City Services (\$0.00)

Motion made by Councilman Knowles, seconded by Councilman J. Baker, to approve Special Event Permit # 2017-29, as requested, contingent upon proof of adequate liability insurance. Motion carried unanimously.

c. Discuss and take action as necessary on opioid litigation—as presented by Stephen Skinner Law Firm

See item 7 A.

d. Approve/deny acceptance of WV Project CommuniTree Grant (with specific tree species provided)

See item 7 B.

e. Approve/deny quote recommendation to clean up Baltimore Street and Kilmer Springs sites—CBP Enterprises--\$4,300

Councilman M. Baker asked what was being cleaned up. Utilities Director stated that it was mostly brush and poison ivy.

Motion made by Councilman Etherington, seconded by Councilman J. Baker, to approve the quote as presented. Motion carried unanimously.

f. Approve/deny voiding of contract with ClearSpan Fabric Structures in the amount of \$16,508, approved November 17, 2016 to construct Salt Storage Canopy

Motion made by Councilman J. Baker, seconded by Councilman Etherington, to void the contract with ClearSpan Fabric Structures. Motion carried unanimously.

g. Approve/deny contract with W. Harley Miller to install Salt Storage Canopy--\$18,771

Motion made by Councilman Etherington, seconded by Councilman M. Baker, to approve the contract with W. Harley Miller. Motion carried unanimously.

Councilman J. Baker asked if there is a contracted completion date, with penalties for failing to meet the deadlines.

City Manager stated that Public Works Director Jeff Wilkerson is working with the contractor and there is an estimated start date.

h. Approve/deny Stormwater Drainage Project at Mount Hope Cemetery (see attached memo)

This item was removed from the agenda as further research is needed to form an agreement. The City is likely still interested in assisting, but more preliminary work is needed prior to a Council action.

Motion made by Councilman J. Baker, seconded by Councilman Etherington, to table this item. Motion carried unanimously.

i. Approve/deny Snyder Environmental Pay Application # 6 for N. Queen Street Underpass Utility Relocation Project--\$54,279

Motion made by Councilman Etherington, seconded by Councilman J. Baker, to approve Pay Application #6, as requested. Motion carried unanimously.

j. Approve/deny Supplemental fees for Alpha Associates for N. Queen Street Underpass Utility Relocation Project—Construction Administration \$5,520-\$8,280/Construction Inspection Services--\$4,750

Motion made by Councilman Collinson, seconded by Councilman J. Baker, to approve the supplemental fees as recommended. Motion carried unanimously.

k. Approve/deny Snyder Environmental Pay Application # 2 for Big Springs Water Treatment Plant Upgrade--\$188,046.16

Motion made by Councilman Etherington, seconded by Councilwoman Johnson, to approve Pay Application # 2 as requested. Motion carried unanimously.

l. Approve/deny Pro Contracting Pay Application #1 for Oak Street Bridge Utility Relocation Project--\$308,387.7018. Executive Session

Motion made by Councilman Knowles, seconded by Councilman M. Baker, to approve Pay Application # 1 as requested. Motion carried unanimously.

Mr. Baldwin stated that, when the project gets underway, the contractor and WVDOT will likely wish to place a construction trailer on City property. Staff will make sure they have adequate insurance and anything else necessary.

Council entered executive session at 7:16 for legal reasons.

Adjournment

Meeting adjourned by unanimous consent at 7:27 PM.

Gregg Wachtel, Acting Mayor

Gena Long, City Recorder