

**City Of Martinsburg
Regular Council Meeting
Tuesday, February 20, 2018
The J. Oakley Seibert Council Chambers**

With a quorum present, the regular session of the Martinsburg City Council was called to order by Mayor Karos at 6:30 p.m. The following Council Members were present: Gregg Wachtel (5:12 PM), Harriet Johnson, Dennis Etherington, Ken Collinson, Mark Baker and Jason W. Baker. Absent was Kevin Knowles. Also present were: Mark Baldwin, City Manager; Gena Long, City Recorder, City Attorney Kin Sayre, Police Chief Maury Richards; and Finance Director Mark Spickler.

3. Salute to Flag

Councilman Etherington led the salute to the flag.

4. Prayer—

Mayor George Karos delivered the invocation.

5. Presentations

b. Make Comment on ABCA Zoning Form for Walgreens D.B.A. Rite Aid Discount Pharmacy #3606—609 Winchester Avenue

Ms. Allison Cox, Bowles Rice, represented Walgreens. She stated that this is an ownership change only, conducting the same business as has been conducted by Rite-Aid in that location.

Motion made by Councilman Etherington, seconded by Councilman Knowles, to submit the Zoning Form to the ABCA without additional comment. Motion carried unanimously.

Councilman J. Baker asked if there are loitering and public drunkenness issues in that parking lot due to alcohol sales from Rite Aid. Chief Maurice Richards, Martinsburg Police Department, agreed that that area of the City is a concern, but he isn't convinced that it is entirely due to alcohol sales from Rite Aid.

a. City of Martinsburg Police Department/Municipal Court Building—Silling Architects (move up Item 13A on the agenda)

Mr. Jodi Driggs updated Council on the bidder information and the proposed construction and completion dates.

13 A. Approve/deny Silling Architect's Recommendation to Issue Letter of Intent to Award Contract for Base Bid Plus Alternates One and Two to W. Harley Miller for Construction of the City of Martinsburg Police Station/Municipal Court Building--\$10,997,000 and to Authorize the Mayor to Execute the General Contract for Construction

Motion made by Councilman Etherington, seconded by Councilwoman Johnson, to approve the recommendation and authorize the mayor to sign the contract.

Councilman J. Baker asked if W. Harley Miller will face substantial penalties for overages in construction time. Mr. Driggs stated that there are liquidated damages built into the contract, however, he is not sure what the daily rate is at this point.

Vote on original motion was unanimous.

Mayor Karos thanked Silling for their work on this project, and for attending the various meetings and making changes as requested.

6. Petitions from Citizens

Ms. Barbara Bratina, N. Tennessee Avenue, spoke in favor of appealing the decision of Judge Wilkes to the State Supreme Court.

Ms. Brenda Casabona, W. Martin Street, stated that it is absurd that zoning would not apply to all property owners in the City equally. She stated that she lives in the City limits specifically because of the protections of zoning.

Ms. Tamsen Molenda, N. Tennessee Ave, asked that Council appeal the decision of Judge Wilkes, adding that the County is asking an inflated price for the property, so that they can say that they tried to sell it.

Mr. Charles Spaulding, W. Martin Street, stated that he believes it is important to appeal the decision for the betterment of the City.

There were no other petitions from citizens.

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

a. Historic Preservation Review Commission December 4, 2017 Meeting Minutes

b. Board of Zoning Appeals November 7, 2017 Meeting Minutes

Motion made by Councilman Etherington, seconded by Councilman J. Baker, to receive and file item 7A-7B. Motion carried unanimously.

8. Reports of Chairpersons of Council Standing Committees

9. Report of Mayor

10. Report of City Attorney

11. Report of City Manager

12. Unfinished Business

A. Third and Final Reading of Ordinance 2018-02 Amending and Reenacting the City of Martinsburg Code, Part 3: Traffic Code; Chapter 1: Administration; Article 301: Definitions, by adding “Autocycle.”

Motion made by Councilman Etherington, seconded by Councilman M. Baker, to read Ordinance 2018-02 through the Third and Final reading, by title only. Motion carried unanimously.

B. Third and Final Reading of Ordinance 2018-03 to Amend and Reenact the Codified Ordinances of the City of Martinsburg to Amend Part 3: Traffic Code; Chapter 5: Vehicular Operation; Article 345: Safety and Equipment; Section 345.29: Safety Equipment for Motorcyclists, Motorcycles, Motor-Driven Cycles and Mopeds

Motion made by Councilman Etherington, seconded by Councilwoman Johnson, to read Ordinance 2018-03 through the Third and Final reading, by title only. Motion carried unanimously.

c. Third and Final Reading of Ordinance 2018-04 to Amend and Reenact the Codified Ordinances of the City of Martinsburg Code, Part 5: General Offenses Code; Article 529: Offenses Related to Persons; by Adding Section 529.08: Nonconsensual Disclosure of Private Intimate Images

Motion made by Councilman Etherington, seconded by Councilman M. Baker, to read Ordinance 2018-04 through the Third and Final reading, by title only. Motion carried unanimously.

d. Third and Final Reading of Ordinance 2018-05 to Amend and Reenact the Codified Ordinances of the City of Martinsburg to Amend Part 5: General Offenses Code; Article 533: Offenses Related to Property; Section 533.07: Littering and Deposit of Garbage, Rubbish, Junk, Etc.

Motion made by Councilman Etherington, seconded by Councilwoman Johnson, to read Ordinance 2018-05 through the Third and Final reading, by title only. Motion carried unanimously.

e. Third and Final Reading of Ordinance 2018-06 to Amend and Reenact the Codified Ordinances of the City of Martinsburg to Amend Part 3, Traffic Code; Article 345: Safety and Equipment; Section 345.02: When Lighted Lights are Required

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to read Ordinance 2018-03 through the Third and Final reading, by title only. Motion carried unanimously.

f. Third and Final Reading of Ordinance 2018-07 to Amend and Reenact the Codified Ordinance of the City of Martinsburg to Amend Part 3: Traffic Code, Article 345: Safety and Equipment; Section 345.09: Spotlights and Auxiliary Lights

Motion made by Councilwoman Johnson, seconded by Councilman Wachtel, to read Ordinance 2018-07 through the Third and Final reading, by title only. Motion carried unanimously.

13. New Business

a. Approve/deny Silling Architect's Recommendation to Issue Letter of Intent to Award Contract for Base Bid Plus Alternates One and Two to W. Harley Miller for Construction of the City of Martinsburg Police Station/Municipal Court Building--\$10,997,000 and to Authorize the Mayor to Execute the General Contract for Construction

See item 5A.

b. Approve/deny Purchase of Property Located at 126-128 W. Race Street (Tax Map M10, Parcel 0001) Contingent upon Satisfactory Deed Search and Title Work--\$35,000 (Currently owned by WVTB, LLC)

Motion made by Councilman Collinson, seconded by Councilman Etherington, to approve the purchase.

Councilman M. Baker suggested amending the motion to be contingent upon obtaining the deed for lot next door, which the City purchased in a tax sale, and the owner has been served.

Motion amended by Councilman Collinson, seconded by Councilman Etherington.

Vote on the original and amended motion carried unanimously.

c. Approve/deny Purchase of Property Located at 650 W. Race Street (Tax Map M10, Parcel 403), Contingent upon Satisfactory Deed Search and Title Work--\$70,000 (Currently Owned by Habitat for Humanity of the Eastern Panhandle)

Councilman J. Baker asked if he should abstain, as he sits as the President of the Board for Habitat. City Attorney Kin Sayre replied that would not be necessary as he has no financial interest in the decision.

Motion made by Councilman Wachtel, seconded by Councilman M. Baker, to approve the purchase. Motion carried unanimously.

d. Authorize Letter of Endorsement to the ABCA in Favor of the Martinsburg Rotary Club's Taste of the Panhandle, to be held on Saturday, April 28, 2018 from 4-8 PM at the Roundhouse Complex

Motion made by Councilman J. Baker, seconded by Councilman Collinson, to authorize the Letter of Endorsement. Motion carried unanimously.

e. Approve/deny Surveying and Engineering Services for the Relocation of Water/Sewer Utility for the Martin Street/Train Station Corridor Project—Alpha Architects and Engineers—Base Fee \$23,375 (Additional Services if Needed--\$37,750)

Motion made by Councilman Etherington, seconded by Councilwoman Johnson, to approve to approve the services as proposed. Motion carried unanimously.

Councilman M. Baker asked if the DOT had approved any funding for paving in the White Avenue vicinity. City Manager Mark Baldwin stated that commencement was likely 9 months out, approximately, due to necessary clearances, but that street repaving is not an eligible expenditure of the grant funding. He recommended adding that vicinity to the paving list, to be completed at City cost.

f. Authorize Bowles Rice to File, on Behalf of the City of Martinsburg, an Appeal of the Order of the Circuit Court, in Civil Action No. 17-C-461, The Berkeley County Council, a West Virginia Public Corporation and the Berkeley County Building Commission, a West Virginia Public Corporation v. the City of Martinsburg, a Municipal Corporation, with the West Virginia State Supreme Court—Estimated Fees not to Exceed \$7,500

Motion made by Councilman Etherington, seconded by Councilman Collinson, to approve the authorization. Motion carried, Councilman J. Baker voting no.

g. Approve/deny Final Payment to HRI for Wastewater Treatment Plant Upgrade Project--\$23,000 (\$37,000 being Retained by the City)

Motion made by Councilman Collinson, seconded by Councilman M. Baker, to approve the payment. Motion carried unanimously.

City Manager Mark Baldwin confirmed that this is the final payment and all issues have been resolved.

h. Approve/deny Mosquito Larvicide Treatment (4 Applications June-September 2018), \$8,840 (same price as previous years) --Erlch

Motion made by Councilman Collinson, seconded by Councilman M. Baker, to approve the treatments. Motion carried unanimously.

Meeting adjourned by unanimous consent at 5:37 PM

George Karos, Mayor

Gena Long, City Recorder