

**CITY OF MARTINSBURG
SPECIAL COUNCIL MEETING
APRIL 21, 2009
THE J. OAKLEY SEIBERT COUNCIL CHAMBERS**

With a quorum present, the special session of the Martinsburg City Council was called to order by Mayor George Karos at 5:00 p.m. The following Council Members were present: Rodney Woods, Dennis Etherington, Richard Yauger, Max Parkinson, Roger Lewis and Betty Gunnoe. Also present were: Mark S. Baldwin, City Manager, Kin Sayre, City Attorney, Sharon A. Flick, City Recorder, Brian Yost, Police Sergeant, Paul Bragg, Fire Chief, Mike Covell, City Engineer/Planning Director, Steve Knipe, Utilities Director and Mark Spickler, Finance Director.

3. PRESENTATIONS

**B. MAKE COMMENTS ON ABC APPLICATION FOR DIRTY DAWG SALOON LLC –
1017 SOUTH QUEEN STREET**

Ms. Alexa O'Connell, 1017 S. Queen Street, addressed Council regarding the ABC application for Dirty Dawg Saloon LLC.

Police Sergeant Yost advised there has been an alcohol establishment at that location for many years. Sergeant Yost did not see this establishment posing any additional issues as what it has in the past.

Councilman Woods questioned what hours the establishment would be open.

Ms. O'Connell advised they would be opening at 5:00 p.m. during the week and Saturday at noon and close at 3:00 a.m. during the week and 2:00 a.m. on Saturday.

The consensus of the Council was to forward the application to the ABC Commission without comment.

4. PETITIONS FROM CITIZENS

There were no petitions from citizens.

**5. RECEIVE AND FILE REPORTS-MINUTES-CORRESPONDENCE OF THE
FOLLOWING:**

**A. HISTORIC PRESERVATION REVIEW COMMISSION – MINUTES MARCH 2,
2009**

B. BEARD OF ZONING APPEALS – MINUTES MARCH 3, 2009

**C. LETTER FROM U.S. DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT INFORMING THE CITY OF MARTINSBURG THAT HUD HAS
INITIATED FORECLOSURE PROCEEDINGS AGAINST THE OWNER OF KINGS
DAUGHTER GROUP HOME LOCATED AT 206 E. KING STREET,
MARTINSBURG, WV – APRIL 6, 2009**

**D. LETTER FROM DIVISION OF CRIMINAL JUSTICE SERVICES DEPARTMENT
OF MILITARY AFFAIRS & PUBLIC SAFETY ACKNOWLEDGING RECEIPT OF
THE CITY OF MARTINSBURG'S APPLICATION FOR FY 2010 JUSTICE
ASSISTANCE GRANT PROGRAM STIMULUS FUNDS IN THE AMOUNT OF
\$112,000 – APRIL 3, 2009**

**E. MARTINSBURG-BERKELEY COUNTY CONVENTION AND VISITORS BUREAU
– MINUTES JANUARY 14, 2009 AND MARCH 4, 2009, EXECUTIVE DIRECTOR
REPORT FOR MARCH, FINANCIAL STATEMENT AS OF FEBRUARY 28, 2009
AND 2008 ANNUAL UPDATE**

**F. MARTINSBURG-BERKELEY COUNTY PARKS & RECREATION – MINUTES
MARCH 17, 2009**

Motion made by Councilman Parkinson, seconded by Councilman Etherington to receive and file items 5 a-f. Motion carried unanimously.

6. REPORTS OF CHAIRPERSONS OF COUNCIL STANDING COMMITTEES

There were no reports of Chairpersons of Council Standing Committees.

7. REPORT OF MAYOR

A. REMINDER SPECIAL CITY COUNCIL MEETING FOR TUESDAY, MAY 5, 2009 TO APPROVE THE FIVE YEAR CONSOLIDATED PLAN FOR 2009-2013 AND THE FY 2009 ANNUAL PLAN FOR COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM (CDBG) AND HOME AND OTHER ITEMS AS NECESSARY – 5:00 P.M.

Mayor Karos reminded Council of a special City Council meeting on Tuesday, May 5, 2009 to approve the Five Year Consolidated Plan for 2009-2013 and the FY 2009 Annual Plan for the Community Development Block Grant Program (CDBG) and HOME and other items as necessary at 5:00 p.m.

8. REPORT OF CITY ATTORNEY

There was no report of the City Attorney.

9. REPORT OF CITY MANAGER

There was no report of the City Manager.

10. UNFINISHED BUSINESS

A. THIRD AND FINAL READING OF ORDINANCE 2009-02 AMENDING THE CITY OF MARTINSBURG CODE, PART 7, BY AMENDING AND REENACTING ARTICLE 755, SECTION 755.03 TO PROVIDE FOR A BUSINESS AND OCCUPATION TAX CREDIT FOR NEW BUSINESS

Motion made by Councilman Lewis, seconded by Councilman Parkinson to read through the third and final reading of Ordinance 2009-02 amending the City of Martinsburg Code, Part 7, by amending and reenacting Article 755, Section 755.03 to provide for a Business and Occupation Tax Credit for new business, by title only and adopt. Motion carried unanimously.

B. THIRD AND FINAL READING OF ORDINANCE 2009-03 AMENDING THE CITY OF MARTINSBURG CODE, PART 7, BY AMENDING AND REENACTING ARTICLE 755, SECTION 755.03A TO PROVIDE FOR THE DESIGNATION OF THE MARTINSBURG DOWNTOWN DEVELOPMENT DISTRICT AND BUSINESS AND OCCUPATION TAX CREDIT FOR THE MARTINSBURG DOWNTOWN DEVELOPMENT DISTRICT

Motion made by Councilman Lewis, seconded by Councilman Parkinson to read through the third and final reading of Ordinance 2009-03 amending the City of Martinsburg Code, Part 7, by amending and reenacting Article 755, Section 755.03A to provide for the designation of the Martinsburg Downtown Development District and Business and Occupation Tax Credit for the Martinsburg Downtown Development District, by title only and adopt. Motion carried unanimously.

C. THIRD AND FINAL READING OF ORDINANCE 2009-04 TO AMEND ORDINANCE 2004-22 PROVIDING FOR THE CONTROL OF BACKFLOW AND CROSS-CONNECTIONS WITHIN THE SERVICE AREA OF THE CITY OF MARTINSBURG

Motion made by Councilman Lewis, seconded by Councilwoman Gunnoe to read through the third and final reading of Ordinance 2009-04 to amend Ordinance 2004-22 providing for the control of backflow and cross-connections within the service area of the City of Martinsburg, by title only and adopt. Motion carried unanimously.

D. THIRD AND FINAL READING OF ORDINANCE 2009-05 TO PROVIDE FOR REGULATIONS GOVERNING OUTDOOR BURNING IN THE MUNICIPAL LIMITS OF THE CITY OF MARTINSBURG

Motion made by Councilman Parkinson, seconded by Councilwoman Gunnoe to read through the third and final reading of Ordinance 2009-05 to provide for regulations governing outdoor burning in the municipal limits of the City of Martinsburg, by title only and adopt. Motion carried unanimously.

11. NEW BUSINESS

A. FIRST AND SECOND READING OF ORDINANCE 2009-06 ESTABLISHING A FLOODPLAIN AREA AND REQUIRING ALL CONTRACTORS, PERSONS, PARTNERSHIPS, BUSINESSES, AND CORPORATIONS TO OBTAIN A PERMIT FOR DEVELOPMENT AND THE CONSTRUCTION, SUBSTANTIAL IMPROVEMENT, OR RELOCATION OF ANY BUILDING OR STRUCTURE; PROVIDING FOR CERTAIN MINIMUM STANDARDS FOR CONSTRUCTION WITHIN THE FLOODPLAIN AREA AND SETTING FORTH SPECIAL PROCEDURES FOR SUBMISSION AND APPROVAL OF PLANS AND; ESTABLISHING PENALTIES FOR ANY PERSON WHO FAILS TO COMPLY WITH THE REQUIREMENTS OR PROVISIONS OF THIS ORDINANCE

Motion made by Councilwoman Gunnoe, seconded by Councilman Woods to read through the first and second reading of Ordinance 2009-06 establishing a floodplain area and requiring all contractors, persons, partnerships, businesses, and corporations to obtain a permit for development and the construction, substantial improvement, or relocation of any building or structure; providing for certain minimum standards for construction within the floodplain area and setting forth special procedures for submission and approval of plans and; establishing penalties for any person who fails to comply with the requirements or provisions of this ordinance, by title only. Motion carried unanimously.

B. APPROVE/DENY FY 2009-2010 LEVY RATES

Motion made by Councilman Lewis, seconded by Councilwoman Gunnoe to approve the FY 2009-2010 levy rates. Motion carried unanimously.

C. APPROVE/DENY PURCHASE OF EQUIPMENT FOR POLICE CRUISERS – GALL’S \$4,128 AND ADAMSON \$2,786.12

Motion made by Councilman Woods, seconded by Councilman Etherington to approve the purchase of equipment for police cruisers from Gall’s in the amount of \$4,128 and Adamson in the amount of \$2,786.12. Motion carried unanimously.

D. APPROVE/DENY USGS STREAMGAGES ON TUSCARORA CREEK FOR THE PERIOD OF 4-01-09 – 09-30-09 IN THE AMOUNT OF \$1,793.75

The Utilities Director advised the U.S. Geological Survey set up streamgages on the Tuscarora Creek. The Berkeley County Commission signed on as a partner but due to budget constraints the remaining half of the year of 2009 they removed funding from the Tuscarora Creek and Backcreek Valley. The Utilities Director further advised the U.S. Geological Survey contacted him to ascertain if the City of Martinsburg would be a funding participant for the Tuscarora Creek only. The Utilities Director stated he does use these streamgages for monitoring droughts and storm floods in the Tuscarora Creek. The Utilities Director further stated this is a one time funding.

Motion made by Councilman Yauger, seconded by Councilman Woods to approve USGS streamgages on the Tuscarora Creek, for the period of April 1, 2009 through September 20, 2009, in the amount of \$1,793.75. Motion carried unanimously.

E. APPROVE/DENY SUBMITTING GRANT APPLICATION FOR A WATERSHED RESTORATION PROJECT FROM THE CHESAPEAKE BAY SMALL WATERSHED GRANTS PROGRAM

The Utilities Director stated the City would be submitting a grant, by May 1, 2009. The Utilities Director further stated the grant would allow a portion of the effluent coming into the wastewater facility to be sent through a wetlands area to achieve nutrient reduction as part of the Chesapeake Bay requirements.

Motion made by Councilman Woods, seconded by Councilman Etherington to approve submitting a grant application for a watershed restoration project from the Chesapeake Bay Small Watershed Grants program. Motion carried unanimously.

F. APPROVE/DENY REQUEST OF BERKELEY COUNTY ROUNDHOUSE AUTHORITY FOR USE OF PEDESTRIAN BRIDGE FOR ROUNDHOUSE TOURS AND "ROCK THE ROUNDHOUSE CONCERTS", USE OF TRAIN STATION PARKING LOT AND CAPERTON STATION BATHROOM FACILITIES FOR THE CONCERTS TO BE HELD ONCE A MONTH ON SATURDAY EVENINGS, FROM APRIL THROUGH AUGUST FROM 8:00 P.M. to 10:00 P.M.

The City Manager advised the City has allowed the Roundhouse Authority to utilize the use of City property for events; however, since they are increasing their usage he asked the Roundhouse Authority to submit their request in writing. The City Manager advised the City would be provided with a certificate of liability insurance naming the City of Martinsburg as an additional insured. The City Manager further advised this approval is not an endorsement of their events but the approval to use the City facilities. The City Manager stated the Roundhouse Authority needs to meet minimal requirements from the Martinsburg Planning Department and Fire Department to hold the events.

Mayor Karos reiterated the City of Martinsburg is not sponsoring the Roundhouse events.

Councilman Yauger requested he be allowed to abstain from voting as he is a member of the Berkeley County Roundhouse Authority.

Motion made by Councilman Lewis, seconded by Councilman Parkinson to allow Councilman Yauger to abstain from voting on the Roundhouse Authority issues as he is a member of the Berkeley County Roundhouse Authority. Motion carried unanimously.

Motion made by Councilwoman Gunnoe, seconded by Councilman Parkinson to approve the request of the Berkeley County Roundhouse Authority for use of the pedestrian bridge for Roundhouse tours and "Rock the Roundhouse Concerts", use of the train station parking lot and Caperton Station bathroom facilities for the concerts to be held once a month on Saturday evenings, from April through August from 8:00 p.m. to 10:00 p.m. Motion carried. Councilman Yauger abstained.

G. APPROVE/DENY FIRST AMENDMENT TO LEASE EFFECTIVE DECEMBER 2008 BETWEEN CITY OF MARTINSBURG AND BERKELEY POST NO. 14 AMERICAN LEGION, INC.

The City Manager reported the Berkeley Post No. 14 American Legion, Inc. was requesting a lease extension from June 30, 2009 to October 31, 2009.

Motion made by Councilman Yauger, seconded by Councilman Woods to approve the first amendment to the lease effective December 2008 between the City of Martinsburg and Berkeley Post No. 14 American Legion, Inc. Motion carried unanimously.

H. APPROVE/DENY SECOND AMENDMENT TO LEASE BETWEEN THE CITY OF MARTINSBURG, WEST VIRGINIA AND THE BERKELEY COUNTY ROUNDHOUSE

**AUTHORITY AND THE GEORGE WASHINGTON HERITAGE TRAIL
ASSOCIATION, INC.**

Motion made by Councilman Lewis, seconded by Councilman Yauger to approve the second amendment to the lease between the City of Martinsburg, West Virginia and The Berkeley County Roundhouse Authority and The George Washington Heritage Trail Association, Inc. Motion carried unanimously.

COMCAST CABLE PUBLIC BROADCAST CHANNEL

Councilman Lewis requested the City Manager update Council on the Comcast Cable public broadcast channel.

The City Manager stated over the last few months the City has received correspondence from Comcast regarding channel lineup changes. The City Manager further stated the West Virginia public broadcasting station has been moved to the high definition tier. The City Manager advised, for the first year, the cost of the of the channel would be free to local customers; however, after the first year the customer would be charged. The City Manager advised this change is occurring statewide and deals with the transmission lines and who has the rights to the PBS stations within a territory. The City Manager further advised if customers have complaints they need to direct them to Comcast Cable.

Councilman Woods expressed concern regarding the lack of public broadcasting in West Virginia.

Motion made by Councilwoman Gunnoe, seconded by Councilman Lewis to authorize the City Attorney to write a letter of concern to Comcast Cable on behalf of the City of Martinsburg. Motion carried unanimously.

Councilman Woods commended Councilwoman Gunnoe for her work involving the recent West Virginia Book Faire and the wonderful authors that participated.

12. EXECUTIVE SESSION

- A. DISCUSS PENDING LEGAL MATTERS WITH COUNSEL (IF NECESSARY)**
- B. DISCUSS PERSONNEL MATTERS (IF NECESSARY)**
- C. DISCUSS REAL ESTATE MATTERS INVOLVING COMPETITIVE BIDS (IF NECESSARY)**

There was no executive session.

13. ADJOURNMENT

Motion made by Councilman Yauger, seconded by Councilman Woods to adjourn the meeting at 5:30 p.m. Motion carried unanimously.

George Karos, Mayor

Sharon A. Flick, City Recorder