

August 13, 2013

The regular meeting of the Council of the City of Martinsville, Virginia, was held on August 13, 2013, in Council Chambers, Municipal Building, at 7:30 PM, Closed Session beginning at 7:00PM, with Mayor Kim Adkins presiding. Council Members present included: Mayor Kim Adkins, Vice Mayor Gene Teague, Mark Stroud, Danny Turner and Sharon Brooks Hodge. Staff present included: Leon Towarnicki, City Manager, Brenda Prillaman, Linda Conover, Eric Monday, Eddie Cassady, Dennis Bowles, and Rob Fincher.

Mayor Adkins called the meeting to order and advised Council will go into Closed Session. In accordance with Section 2.1-344 (A) of the Code of Virginia (1950, and as amended) and upon a motion by Danny Turner, seconded by Mark Stroud, with the following 5-0 recorded vote: Adkins, aye; Teague, aye; Stroud, aye; and Hodge, aye, Turner, aye, Council convened in Closed Session, for the purpose of discussing the following matter: (A) Consultation with legal counsel and briefings by staff members, attorneys or consultants pertaining to actual or probable litigation, or other specific legal matters requiring the provision of legal advice by such counsel, as authorized by Subsection 7.

At the conclusion of Closed Session, each returning member of Council certified that (1) only public business matters exempt from open meeting requirements were discussed in said Closed Session; and (2) only those business matters identified in the motion convening the Closed Session were heard, discussed, or considered during Session. On a motion by Gene Teague, seconded by Sharon Brooks Hodge, with the following recorded 5-0 vote: Adkins, aye; Teague, aye; Stroud, aye; and Hodge, aye; Turner, aye, Council returned to Open Session. Mayor Adkins reported the following for the public record regarding the order from the Circuit Court for the City of Martinsville and former City Manager, Clarence Monday:

<p>VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF MARTINSVILLE</p> <p>CLARENCE MONDAY,) Plaintiff)</p> <p>vs.) CL13000058-00</p> <p>CITY OF MARTINSVILLE,) Defendant.)</p>	<p>JUDGES DAVID V. WILLIAMS MARTIN F. CLARK, JR. G. CARTER GREEN</p> <p>RETIRED JUDGES KENNETH M. COVINGTON CHARLES M. STONE</p>	<p>Commonwealth of Virginia</p>  <p>Twenty-First Judicial Circuit Henry County • Patrick County • City of Martinsville</p>	<p>REPLY TO: MARTINSVILLE CIRCUIT COURT 55 WEST CHURCH STREET P.O. BOX 1347 MARTINSVILLE, VA 24114</p> <p>VOICE: (276) 403 5183 FAX: (276) 403 5389</p>
<p>ORDER</p>	<p>July 22, 2013</p>	<p>R. Reid Young, III, Esq. P.O. Box 1231 Martinsville, VA 24114</p>	<p>Eric H. Monday, Esq., City Attorney P O Box 1112 Martinsville, VA 24114</p>
<p>On Monday, July 15, 2013 came the Plaintiff, Clarence Monday by counsel, R. Reid Young, III and Eric Helms Monday, Attorney for the City of Martinsville to be heard on Plaintiff's Petition for Arbitration previously filed herein.</p> <p>After hearing evidence and argument of counsel, the Court finds that the Plaintiff is clearly entitled to be paid accrued and unused vacation and sick leave, in accordance with the terms of the contract.</p>	<p>RE: <u>Clarence C. Monday v. City of Martinsville</u></p>	<p>Dear Counsel:</p>	<p>The plaintiff has filed a petition for arbitration, in which the City has joined, requesting the court to resolve a dispute concerning the interpretation of the employment agreement ("contract") between the plaintiff, the former City Manager, and the City. The contract contains an arbitration clause, and on February 22, 2013, the court entered an order granting the petition. The parties have submitted a joint statement of facts, together with copies of the contract and pertinent pages of the City's employee handbook.</p>
<p>It is ORDERED by the Court that the Plaintiff is awarded the sum of \$67,523.33.</p>	<p>I. Findings of Fact</p>	<p>1. On October 23, 2007, the plaintiff and the City entered into a contract, whereby the plaintiff assumed the responsibilities of the position of City Manager at an annual salary of \$116,000.00.</p>	<p>2. After the execution of the contract, certain personality issues arose between the plaintiff and members of the City Council, and the plaintiff resigned his position as City Manager.</p>
<p><i>[Signature]</i> 7/23/13 Judge</p>	<p>3. The City has withheld the sum of \$67,523.33, representing accrued and unused vacation and sick leave, pending the court's construction of the contract.</p>	<p><i>[Signature]</i> R. Reid Young, III Attorney for Plaintiff</p>	<p><i>[Signature]</i> Eric Helms Monday, City Attorney</p>
<p>R. REID YOUNG, III ATTORNEY AT LAW, P.C. 55 WEST CHURCH STREET POST OFFICE BOX 1231 MARTINSVILLE, VIRGINIA 24114 878-638-7300</p>		<p><i>[Signature]</i> Eric Helms Monday, City Attorney</p>	<p><i>[Signature]</i> Eric Helms Monday, City Attorney</p>

Messrs. Young and Monday
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II. Conclusions of Law

The issue in this case is whether the plaintiff is entitled to accrued and unused vacation and sick leave, in view of his voluntary resignation. The resolution of this issue necessarily depends upon the language of the contract. "It is the function of the court to construe the contract made by the parties, not to make a contract for them." *Wilson v. Holyfield*, 227 Va. 184, 187, 313 S.E.2d 396, 398 (1984). In *Univest Construction v. Amitech Elevator Services*, 280 Va. 428, 699 S.E.2d 699 (2010), the Supreme Court of Virginia stated in part as follows:

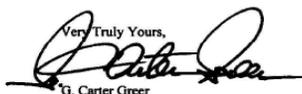
"[T]he contract is construed as written, without adding terms that were not included by the parties. When the terms in a contract are clear and unambiguous, the contract is construed according to its plain meaning. Words that the parties used are normally given their usual, ordinary, and popular meaning. No word or clause in the contract will be treated as meaningless if a reasonable meaning can be given to it, and there is a presumption that the parties have not used words needlessly."

Id., 280 Va. at 439 (quoting *PMA Capital Ins. Co.*, 271 Va. at 358).

Section 6 of the contract states that "[i]n the event of resignation, no severance shall be paid to City Manager; accrued and unused vacation and sick leave shall, however, be paid to City Manager." By its plain terms, this section draws a distinction between "severance," which section 5 defines as "full salary and benefits equal to six months service," and "accrued and unused vacation and sick leave." Although the plaintiff is not entitled to severance, he is clearly entitled to be paid accrued and unused vacation and sick leave, in accordance with the terms of the contract. To the extent that the employee handbook conflicts, the more specific language of the contract controls. See *Condominium Services v. First Owner's Assn.*, 281 Va. 561, 573, 709 S.E.2d 163 (2011) ("a specific provision of a contract governs over one that is more general in nature.").

III. Arbitration Award

The court awards the plaintiff the sum of \$67,523.33. Would Mr. Young please prepare an order consistent with the court's ruling?

Very Truly Yours,

G. Carter Greer

Following the invocation by Mayor Adkins and Pledge to the American Flag, the Mayor welcomed everyone to the meeting and advised that agenda item #9 regarding water discharges is being withdrawn.

Minutes: On a motion by Gene Teague, seconded by Danny Turner, with a 5-0 vote, Council approved the minutes of the June 25, 2013 meeting.

Proclamation Wigs Unlimited: Mayor Adkins presented a proclamation to Ella Mae Wickham of Wigs Unlimited recognizing the Hair 4-A Friend program.

VEC Update from Chris Pope: Office Manager of the Virginia Employment Commission, Chris Pope, updated Council regarding local unemployment rate, how the rate is derived, and efforts being made to improve employment opportunities in the community.

EDC Update: Lisa Lyle presented the update from the M-HC Economic Development Corporation regarding their recent activities. Council Member Hodge asked for information on the amount of return on investment for the money being spent on economic development and requested more quantitative reporting in future reports.

Resolution IRF grant for Henry Hotel: On a motion by Gene Teague, seconded by Danny Turner, with a 5-0 vote, Council adopted the following resolution required for grant funding for the Henry Hotel under the Industrial Revitalization Fund (IRF) administered by the Dept. of Housing & Community Development:

WHEREAS, the City of Martinsville is the owner of record of the historic "Henry Hotel Building", located on 50 East Church Street in Uptown Martinsville, and;

WHEREAS, building was purchased by the City of Martinsville to both preserve the historic structure and to make the building available for redevelopment, and to be a catalyst for new investment in the Uptown area, and;

WHEREAS, the purchase price for the "Henry Hotel Building" was a total of \$425,000, with a cash payment of \$95,000 and the balance in the form of a loan from The Harvest Foundation for \$330,000, and;

WHEREAS, The Harvest Foundation has forgiven the loan of \$330,000, as an expression of its support of this project, and;

WHEREAS, The City of Martinsville desires to work with Waukeshaw Development, Incorporated, toward the renovation of the Henry Hotel Building and is willing to transfer the ownership of the building for the sum of \$1.00, and;

WHEREAS, the analysis by Phoenix CDC, followed by a subsequent analysis by Waukeshaw Development, Incorporated, that was contracted by Martinsville Uptown Revitalization Association, shows that it is feasible to renovate the building from a physical standpoint, it would not be economically feasible to renovate the building without the use of both various Tax Credit programs and other Grants to fill the financial gaps caused by the local economic conditions, and;

WHEREAS, considering the City's previous purchase of the building and have spent an additional \$233,000 toward maintenance of the building and together bring the current local funds committed to the renovation project totaling \$658,000, and;

WHEREAS, this amount meets the minimum required local matching funds for an "2013 Industrial Revitalization Fund (IRF) Grant" at the maximum grant amount of \$600,000, now then;

HEREBY BE IT RESOLVED, that the City Council of the City of Martinsville, does hereby authorize the City Staff to prepare and submit on behalf of the City of Martinsville a "2013 Industrial Revitalization Fund (IRF) Grant Application" to the Virginia Department of Housing and Community Development (DHCD) to request funding for the renovation of the Henry Hotel Building which is owned by the City of Martinsville. Such grant request to total \$600,000, and

BE IT ALSO RESOLVED, that if approved by DHCD, the IRF Grant Funds would be used to financially assist in the physical renovation of the Henry Hotel Building, the total renovation cost currently estimated to be over \$3.4 million, with Waukeshaw Development, Incorporated, a for-profit organization, incorporated in the Commonwealth of Virginia, serving as the Project Developer.

This Resolution was read and approved by majority vote of the City Council of the City of Martinsville, at its Council meeting, held on the Thirteenth (13th) Day of August in the Year 2013, and recognized by the Authorized Signature(s) below:


Signature of Authorized Official

Attest:

Brenda Prillaman, Clerk of Council

August 13, 2013

Resolution and ordinance regarding employee residency requirement: City Attorney Eric Monday briefed Council on the required votes regarding the residency resolution and ordinance. Staff recommends that the residency requirements for department heads be repealed, as set forth in the attached ordinance (deletions in ~~strikethrough~~, additions in *italicized underlined*). He noted the resolution for consideration rescinds an earlier resolution listing particular offices subject to the requirement. Mr. Towarnicki reported on current and future vacancies of senior management noting there are qualified people in the community to fill these positions and the residency requirement is a hindrance. After lengthy Council discussion, Mayor Adkins opened the floor for public comment. Mr. Ural Harris of 217 Stuart St. commented that he felt employees need to live in the city. It was noted by Council that the resolution needs rephrasing in a positive way before final approval clarifying that if all things being equal with applicants, that the city resident is to be highly considered. On a motion by Gene Teague, seconded by Sharon Brooks Hodge, with the following 3-2 recorded vote: Teague, aye; Adkins, aye; Hodge, aye; Turner, nay, and Stroud, nay, Council approved the ordinance, on first reading to repeal the residency requirement:

REPEAL OF RESIDENCY REQUIREMENT

Sec. 2-3. - Residency required for certain employees.

~~The city manager, the city attorney, the assistant city manager and the head of any department of the city established pursuant to the Charter, the City Code, or resolution of the city council shall establish residence within the corporate boundaries of the city no later than twelve (12) months after the commencement of employment and shall thereafter maintain residence within the corporate boundaries of the city during the term of his or her employment. The city manager may make exceptions to the requirements established hereby when unusual or extraordinary conditions exist that would constitute a hardship for an applicant. A determination as to whether such employee resides in the city shall be made by the city manager, with the exception of the city manager's residency, which shall be determined by the city council. This section shall apply to any new employee and to any existing employee subsequently promoted to an office or position affected hereby. This section shall not apply to any person employed in an office or position affected hereby if such person was so employed prior to this section's enactment, nor shall it apply to any person employed by the city at least fifteen (15) years prior to this section's enactment. Violation of this section shall result in termination of employment.~~

Repealed. (Ord. No. 2004-17, 10-26-2004)

On a motion by Gene Teague, seconded by Sharon Brooks Hodge, with a 4-1 vote (Turner-nay), Council approved adopting the resident resolution with modifications adding text to give preference to applicants living in the city with all things being equal. Eric Monday will have the modified resolution for Council's consideration, on second reading, at the next meeting. City Attorney reported that effective July 1, 2013, VA State law will allow Council Member Hodge to participate remotely at the August 27, 2013 as she will be out of town on business. Following is the unmodified resolution which was approved on first reading:

WHEREAS, the Council of the City of Martinsville adopted on October 26, 2004 an ordinance amending Section 2-3 of the City Code, requiring residency within the City for certain employees of the City; and

WHEREAS, Section 2-3 provides that officials subject to the ordinance may be set forth by resolution of the City Council; and

WHEREAS, the City Council has, concurrently with this resolution, voted to repeal that ordinance; now, therefore

BE IT RESOLVED by the City Council of the City of Martinsville Virginia, convened in regular session on August 13, 2013, that its prior resolution dated October 26, 2004, listing specific offices subject to the residency requirements set forth in Section 2-3 of the City Code is hereby rescinded.

Staff update on electric issues: Dennis Bowles, Utilities Director, updated Council on the Electric Rate Stabilization Fund for fiscal year ending June 30, 2013 and the impact the fund has had on the City's power cost.

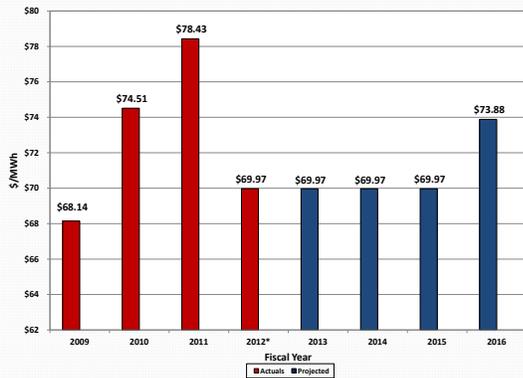
Rate Stabilization Plan Update

July 1, 2012 ~ June 30, 2013

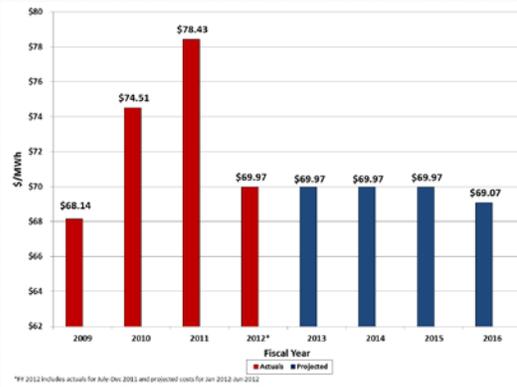
Rate Stabilization Plan Specifics

- The plan is based on a 42 month term which began on July 1, 2012 and continues through December 31, 2015.
- The savings accumulating during 2013-2015 are deposited into an interest bearing trust fund by AMP on the City's behalf, through payment of the City's monthly power bill.
- The accumulating funds are used to maintain a stabilized monthly power cost of \$69.97, as actual power cost fluctuates above and below the stabilized rate.
- At plan termination, the remaining fund balance will be used to repay AMPGS stranded cost.

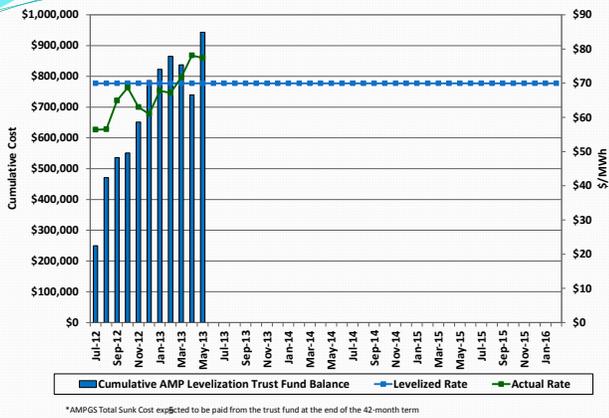
City of Martinsville Fiscal Year Rate Summary - Levelized Rates, Sept. 2012



City of Martinsville Fiscal Year Rate Summary - Levelized Rates, June 2013



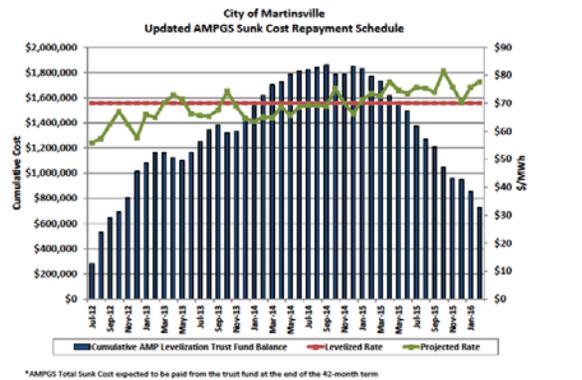
City of Martinsville Actual AMPGS Sunk Cost Repayment Schedule



Rate Stabilization Fund

	Accumulated Interest on Deposited Funds	Actual Funds for Stab.	Monthly Projected Funds for Stab.	Difference of Actuals vs. Projections	Distributions from the fund balance	Actual Metered Load in MWh	Projected Load in MWh	MWh Difference
Jul-12		\$249,422.60	\$282,628.00	(\$33,205.40)		18,343	20,166	-1,823
Aug-12		\$221,337.00	\$245,764.00	(\$24,427.00)		16,450	19,456	-3,006
Sep-12		\$65,380.87	\$119,341.00	(\$53,960.13)		12,908	15,831	-2,923
Oct-12	\$43.66	\$15,142.58	\$41,321.00	(\$26,178.42)		12,097	14,147	-2,050
Nov-12	\$71.73	\$100,093.20	\$113,883.00	(\$13,789.80)		14,337	15,170	-833
Dec-12	\$113.38	\$135,073.14	\$206,875.00	(\$71,801.86)		15,072	16,923	-1,851
Jan-13	\$102.45	\$36,472.00	\$67,873.00	(\$31,401.00)		16,401	17,163	-762
Feb-13	\$89.29	\$41,992.64	\$82,029.00	(\$40,036.36)		15,028	16,336	-1,308
Mar-13	\$118.46	-\$27,681.12	-\$2,292.00	(\$25,389.12)	(\$27,681.12)	15,360	15,476	-116
Apr-13	\$105.01	-\$97,253.79	-\$43,392.00	(\$53,861.79)	(\$97,253.79)	11,953	14,266	-2,313
May-13	\$57.44	\$203,381.79	-\$24,070.00	\$227,451.79	(\$96,618.21)	13,026	14,727	-1,701
Jun-13								
Total Fund Accumulation	\$701.42	\$943,360.91	\$1,089,960.00	(\$146,599.09)	(\$221,553.12)	160,975	179,661	-18,686

City of Martinsville Updated AMPGS Sunk Cost Repayment Schedule



Benefits of the Plan:

- Provides stable rates for customers through FY' 13 and for the term of the plan.
 - Residential rate = \$105.60 for 1000 kWh's
 - 2013 Ranking, 11th lowest in the State, when compared to the 32 other Municipals, Co-ops and Investor owned utilities.
- Provides stable power cost for FY' 13 continuing through mid-term of FY' 16.
- Repayment of AMPGS stranded cost at the end of the plan term.

Options to Increase Fund Balance

1. Monitor the fund balance during FY-'14 to determine if additional funding requirements will be needed for the remainder of the term, July 1, 2014 ~ Dec. 31, 2015.
2. If the fund balance continues to lag initial projections, deposit annual lump sum payments such as was done in FY-'13 to boost fund balance, based on available funding.
3. Extend the fund termination date to allow for additional fund accumulations based on recent lower power cost projections for FY-'16.

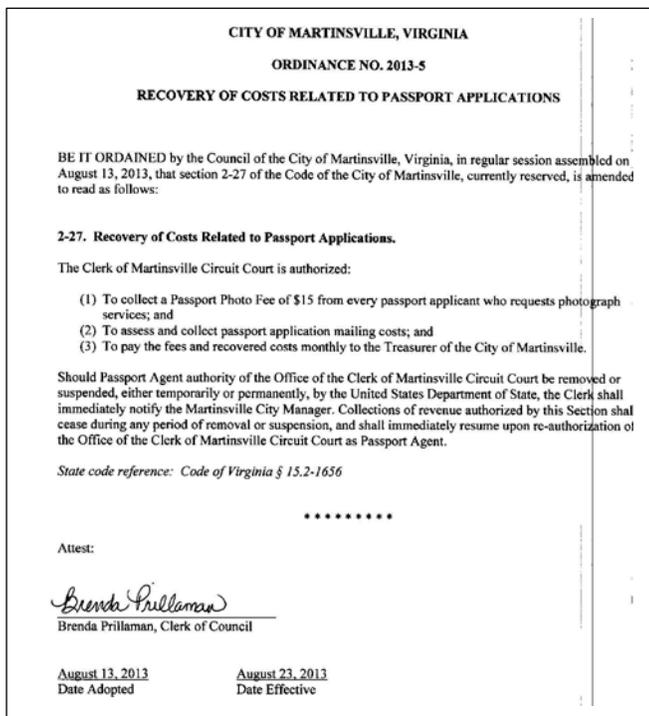
Conclusions:

- The fund balance is less than projected from the onset due to optimistic load projections for FY-'13, the past mild winter & business closings.
- Based on current projections the fund balance peak will be approximately \$300,000 less than previous projections.
- Staff recommends no changes to the fund at this time.

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After lengthy Council discussion, Council Member Turner submitted a list of five questions regarding Prairie State and requested they be answered by AMP. Mayor Adkins asked the City Manager to submit the questions to AMP for a report back to Council.

Passport fees ordinance second reading: City Attorney, Eric Monday, briefed Council on the ordinance related to recovery of costs related to passport applications which Council passed on first reading at their last meeting. On a motion by Gene Teague, seconded by Mark Stroud, with the following 5-0 recorded vote: Teague, aye; Adkins, aye; Hodge, aye; Turner, aye, and Stroud, aye, Council approved the following ordinance on second reading:



Consent Agenda: On a motion by Gene Teague, seconded by Sharon Brooks Hodge, with a 5-0 vote, Council approved the following consent agenda:

BUDGET ADDITIONS FOR 8/13/13					
ORG	OBJECT	DESCRIPTION	DEBIT	CREDIT	
FY13					
General Fund:					
01100909	490104	Advance/Recovered Costs			4,216
01331108	501300	Sheriff/Corrections - Part-time & Temporary Wages	3,065		
01331108	502100	Sheriff/Corrections - Social Security	190		
01331108	502110	Sheriff/Corrections - Medicare	44		
01331108	506008	Sheriff/Corrections - Vehicle Equipment & Maint.	613		
01331110	506200	Sheriff/Annex - Prisoner Allowance	304		
		Reimbursement from Henry County for litter pickup - Apr 2013 - June 2013			
Total General Fund:			4,216		4,216

Before Mayor Adkins called for Business from the Floor, Council Member Danny Turner asked that the September 9 Neighborhood meeting location be changed to be held at an Uptown restaurant. After Council discussion, Mayor Adkins asked that Mr. Towarnicki explore pros and cons and come back to Council with a recommendation.

Business from the Floor: no comments

August 13, 2013

Council comments: Stroud-announced today is his 35th wedding anniversary; Turner-commended Smith River Fest event coordinators and inquired on status of Uptown Big Chair; Teague-reported citizen concerns about Greyson St. properties and asked that staff follow up and report back with options and recommendations, also reported WDBJ television did a good story on the Martinsville High School renovations; Hodge-reported citizen concerns on Summit & Graves St. properties and she asked that inspections respond back to person who initiated the concern; Adkins-reported on Martinsville Rotary “urban art” project with the Uptown picnic tables.

City Manager comments: Mr. Towarnicki reminded Council to submit their registrations for the October 13-15 VML Conference and he indicated the City of Martinsville may be receiving an award at that meeting.

There being no further business, the meeting adjourned at 10:15pm.

Brenda Prillaman
Clerk of Council

Kim Adkins
Mayor