

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

MARTIN G. HOWE,  
Individually,

Plaintiff,

v.

CASE NO.:

19-c-185-2  
Bedell

HON.:

THE CITY OF CLARKSBURG, WEST VIRGINIA, A West Virginia Municipality, EDWARD RYAN KENNEDY, An Individual and the Mayor of the City of Clarksburg, West Virginia, JAMES MARINO, An Individual and the Vice Mayor of the City of Clarksburg, West Virginia, and LILLIE SCOTT-JUNKINS, An Individual and a City Council Member of the City of Clarksburg, West Virginia,

Defendants.

**VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF PURSUANT TO WEST VIRGINIA CODE § 6C-1-4 (THE WEST VIRGINIA WHISTLE-BLOWER LAW)<sup>1</sup> AND FOR FINDING OF A CIVIL CONSPIRACY**

FILED  
CIRCUIT COURT  
2019 JUL 18 PM 1:15

Martin G. Howe, (“Mr. Howe”), by counsel Frank E. Simmerman, Jr., Chad L. Taylor and Frank E. Simmerman, III of Simmerman Law Office, PLLC, states and alleges as follows:

**NATURE OF THE CASE**

1. This is an action by Martin G. Howe against the City of Clarksburg, West Virginia, Edward Ryan Kennedy, James Marino, and Lillie Scott-Junkins, (collectively “the Conspiring Defendants”), which arises from the Conspiring Defendants malicious, oppressive, secretive, corrupt, discriminatory and retaliatory actions and omissions related to Mr. Howe’s employment with the City of Clarksburg, West Virginia.

<sup>1</sup> Mr. Howe anticipates filing an Amended Complaint in the near future to assert additional civil claims/remedies.

## **PARTIES**

2. Martin G. Howe, (“Mr. Howe”), is the suspended City Manager of the City of Clarksburg, West Virginia. Mr. Howe was suspended by Resolution on July 11, 2019.

3. Defendant the City of Clarksburg, West Virginia is a West Virginia municipality.

4. Defendant Ryan E. Kennedy is the Mayor of the City of Clarksburg, West Virginia -having been elected to such position on July 1, 2019.

5. Defendant James Marino is the Vice Mayor of the City of Clarksburg, West Virginia - having been elected to such position on July 1, 2019.

6. Defendant Lille-Scott Junkins is a Council Member of the City of Clarksburg, West Virginia - having been sworn into office on July 1, 2019. Ms. Junkins is related to Council Member Marino.

## **JURISDICTION AND VENUE**

7. This Court has jurisdiction over the Defendants in accordance with W.Va. Code § 56-3-33 by virtue of the fact that the Defendants transacted business in this State; and caused injury in this State.

8. Venue is appropriate in the Circuit Court of Harrison County, West Virginia pursuant to W.Va. Code § 56-1-1 because the events giving rise to this cause of action occurred in Harrison County, West Virginia.

## **FACTS**

9. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

10. In 2014, by Ordinance No. 14-5, the City of Clarksburg, West Virginia created the position of Assistant City Manager.

11. Vice Mayor Marino, one of the Conspiring Defendants, applied for this position.

12. At the time of his application, Vice Mayor Marino, one of the Conspiring Defendants, was the Director of Personnel at the City of Clarksburg, West Virginia.

13. Given the number of applicants, and the working relationships which Mr. Howe possessed with a number of the applicants, Mr. Howe hired an external consultant to assist in the hiring process.

14. Anthony N. Bellotte was ultimately employed as the Assistant City Manager – with such employment beginning August 21, 2014.

15. Conspiring Defendant Marino was frustrated with this selection – and made his frustration known throughout the City of Clarksburg, West Virginia.

16. Nonetheless, Conspiring Defendant Marino continued in his position as Director of Personnel at the City of Clarksburg, West Virginia after Anthony N. Bellotte assumed the position of Assistant City Manager.

17. In 2014 and 2015, Mr. Howe and others investigated and reviewed complaints of purported wrongdoing against Conspiring Defendant Marino.

18. Mr. Howe was the individual ultimately charged with reporting and investigating such incidents of alleged wrongdoing to the City of Clarksburg, West Virginia – Mr. Howe's employer.

19. At various times, from 2014 to present, Mr. Howe investigated, either directly or indirectly, Conspiring Defendant Marino, for incidents of alleged wrongdoing – wrongdoing purportedly contrary to the regulations and code of conduct/ethics of the City of Clarksburg, West Virginia.

20. May 16, 2019, Mr. Howe's Employment Contract dated July 5, 2019 was renewed, and City Council further adopted a new employment contract dated June 2, 2019. See Exhibit 1, May 16, 2019 Meeting Minutes.

21. On or about June 4, 2019, the Clarksburg City Council election results were received – with Conspiring Defendants Marino and Scott-Junkins receiving the majority of votes.

22. After being elected, but before taking office, some or all of the Conspiring Defendants began to threaten, discriminate and retaliate against Mr. Howe and others for the afore-noted investigations related to Conspiring Defendant Marino.

23. June 19, 2019, Conspiring Defendant Marino sent a detailed email to Mr. Howe requesting various documents. See Exhibit 2, Email from James Marino dated June 19, 2019.

24. Among others, Conspiring Defendant Marino targeted various City employees with whom he had historic disputes – or whom investigated Conspiring Defendant Marino. Id.

25. To expand, Conspiring Defendant Marino targeted and attacked the following City employees in his correspondence and throughout meetings with Mr. Howe: (1) Martin Howe; (2) Boo (Anthony) Bellotte; (3) Adam Barberio; (4) Robbie Hilliard; (5) Desiree Lambert; (6) Dominique Spadafore; and (7) intern Anjelica D'Annunzio. Id.

26. Most importantly, Conspiring Defendant Marino sought findings and documentation from a grievance filed against Conspiring Defendant Marino in 2015 – a report of alleged wrongdoing investigated, directly or indirectly, by Mr. Howe. Id.

27. Moving forward, following his targeted request for information related to historic reports of Conspiring Defendant Marino's purported wrongdoing, on June 24, 2019, Conspiring Defendant Marino expressly threatened to investigate Mr. Howe because Mr. Howe conducted and



oversaw an investigation of Conspiring Defendant Marino in 2015 related to a grievance filed by another City employee against Mr. Marino.

28. Conspiring Defendant Marino made it clear and admitted that he, once officially on City Council, intended to use taxpayer funds to investigate Mr. Howe given that Mr. Howe had been associated with prior investigations of purported wrongdoing associated with Conspiring Defendant Marino in 2015.

29. Conspiring Defendant Marino also made it clear in the meeting on June 24, 2019 that he was Mr. Howe's "boss" and "this is the first time I have been your boss" – in a series of retaliatory and discriminatory threats directed at Mr. Howe.

30. Conspiring Defendant Marino additionally made it clear that Conspiring Defendant Junkins was Mr. Howe's boss and that she is the "new boss in town" with whom Mr. Howe should get familiar - in a series of retaliatory and discriminatory threats directed at Mr. Howe.

31. Finally, Conspiring Defendant Marino indicated throughout the June 24, 2019 meeting with Mr. Howe that he felt that Mr. Howe treated him inappropriately as a City employee, and that his personal feelings toward Martin Howe were prejudiced as he felt that Mr. Howe treated Conspiring Defendant Marino differently than other city employees.

32. Mr. Howe, despite Mr. Marino's comments and attacks (attacks on both Mr. Howe and other city employees), made it clear he was looking forward to working with Mr. Marino, and the newly elected City Council, and moving Clarksburg forward.

33. At some point in the June 24, 2019 meeting Conspiring Defendant Junkins joined Conspiring Defendant Marino in the interrogation, discrimination and harassment of Mr. Howe, and the belittlement of other city employees.

34. June 24, 2019, Conspiring Defendant Junkins and Conspiring Defendant Marino made it clear that they were jointly questioning Mr. Howe – and that they would convene after the June 24, 2019 meeting to discuss their interrogation of Mr. Howe.

35. Conspiring Defendant Marino also asked Mr. Howe, at various times, if he had been in the position of City Manager too long – yet another threat directed at Mr. Howe's employment.

36. All this conduct occurred before Conspiring Defendant Marino and Conspiring Defendant Junkins were sworn in as council members.

37. July 1, 2019, the Conspiring Defendants were officially sworn into office.

38. July 3, 2019, Conspiring Defendant Marino resumed his retaliation against Mr. Howe.

39. On July 3, 2019, Conspiring Defendant Marino was advised that Mr. Howe would be out for vacation on July 10<sup>th</sup>, July 11<sup>th</sup> and July 12<sup>th</sup>.

40. On July 3, 2019, Conspiring Defendant Marino was also advised that Mr. Howe would be out for vacation starting July 18<sup>th</sup>.

41. Conspiring Defendant Marino repeatedly made it clear, again, on July 3, 2019, that he was Mr. Howe's boss – and that he was criticizing Mr. Howe as his boss.

42. On July 3, 2019, Conspiring Defendant Marino continued to retaliate and discriminate against Mr. Howe because Mr. Howe made historic, good faith reports to his employer concerning Conspiring Defendant Marino's historic employment with the City of Clarksburg, and acts of alleged wrongdoing committed by Conspiring Defendant Marino.

43. Conspiring Defendant Marino's retaliatory and discriminatory conduct is entirely consistent with multiple, former City of Clarksburg public officials' declarations and admissions

– as several public officials have publicly stated that the current attack against Mr. Howe is a personal vendetta/political attack.

44. Returning to the July 3, 2019 incident, Conspiring Defendant Marino repeatedly also made it clear that he was placing his personal, historic interests ahead of the City of Clarksburg, West Virginia.

45. On July 3, 2019, Conspiring Defendant Marino continued to attack Mr. Howe for historic issues related to acts of alleged wrongdoing historically reported and/or investigated by Mr. Howe.

46. Following the meeting on July 3, 2019 with Conspiring Defendant Marino, Conspiring Defendant Kennedy requested that Mr. Howe come to his law office, located at 140 West Main Street, Clarksburg, West Virginia, 26301, to meet with Conspiring Defendant Kennedy.

47. Assistant City Manager Anthony Bellotte accompanied Mr. Howe to meet with Conspiring Defendant Kennedy.

48. To be clear, this meeting occurred less than 48 hours after the Conspiring Defendants had been sworn into office.

49. Upon the arrival of Mr. Howe and Mr. Bellotte at Conspiring Defendant Kennedy's law firm, Conspiring Defendant Kennedy led Mr. Howe and Mr. Bellotte to a conference room (the Tygart Room) in Conspiring Defendant Kennedy's law office.

50. To the surprise of Mr. Howe, all Conspiring Defendants were in the Tygart conference room in Conspiring Defendant's law office; Conspiring Defendant Kennedy, Conspiring Defendant Marino, and Conspiring Defendant Junkins.

51. It was clear that the Conspiring Defendants had been meeting behind closed doors discussing Mr. Howe's employment – without notice to the public, other City Council members, the City Manager, or the Assistant City Manager.

52. Mr. Howe informed the Conspiring Defendants that it was his understanding that the Conspiring Defendants wanted Mr. Howe to leave quietly.

53. Rather than creating a public spectacle and fight, Mr. Howe provided the buy-out sum contained in his Employment Contract to the Conspiring Defendants.

54. Rather than considering other Council Members' opinions or thoughts, the Conspiring Defendants, without any authority to do so, rejected the buyout proposal – stating that Mr. Howe should make this issue simple and resign.

55. The Conspiring Defendants had no authority to make such a demand – or to corner Mr. Howe in an unprecedented, behind closed door meeting in an attempt to force him to leave employment at the City of Clarksburg, West Virginia.

56. After some admittedly awkward conversation, the Conspiring Defendants then began to inquire as to whether or not Mr. Bellotte felt that he was being forced out of his position as the Assistant City Manager.

57. Following this inappropriate, secretive and unprecedented process, Mr. Howe and Mr. Bellotte excused themselves and left Conspiring Defendant Kennedy's law office – with the Conspiring Defendants remaining in a secret meeting in the Tygart Conference Room located in Conspiring Defendant Kennedy's law office.

58. On information and belief, potentially realizing the troubling nature of their actions/omissions, the Conspiring Defendants issued false and misleading public statements –

suggesting that Mr. Howe had unilaterally requested a buyout – and that Mr. Howe’s actions are the genesis of the present issues facing the City of Clarksburg, West Virginia.

59. At approximately 10:09 p.m. on July 3, 2019, Mr. Howe emailed Conspiring Defendant Kennedy, advising that he was being personally attacked by the Conspiring Defendants – and that the Conspiring Defendants had created a combative and stressful environment in the Clarksburg Municipal Building based upon historic actions and omissions. See Exhibit 3, Email dated July 3, 2019.

60. At approximately 10:20 a.m. on July 4, 2019, Conspiring Defendant Kennedy responded to Mr. Howe’s email advising: (1) that he was unaware of the incident; and (2) that such conduct would be unacceptable and inappropriate for a council member. See Exhibit 4, Email dated July 4, 2019.

61. On information and belief, such statements are inaccurate as Conspiring Defendant Kennedy was in a secret, closed door meeting with the other Conspiring Defendants on July 3, 2019 at Conspiring Defendant Kennedy’s law office.

62. To date, Conspiring Defendant Kennedy has failed to address Mr. Howe’s complaints raised in his email of July 3, 2019.

63. Indeed, rather than address the concerns voiced by Mr. Howe, the Conspiring Defendants continued to foster their discrimination and retaliation by drafting an agenda for a special meeting to consider a resolution to suspend Mr. Howe – accusing Mr. Howe of: (1) responsibility for urban decay; (2) misappropriation of funds; and (3) unprofessionalism. See Exhibit 5, Agenda for Special Meeting – 7-11-2019.

64. Conspiring Defendant Kennedy has publicly admitted that he drafted the afore-referenced Resolution.

65. Upon information and belief, the Resolution was drafted with knowledge of the Conspiring Defendants' bad acts and omissions. Stated differently, a "cover up" Resolution – which is merely a pretext for discrimination/retaliation against Mr. Howe was prepared by the Conspiring Defendants.

66. July 6, 2019, Mr. Howe emailed all City Council members advising, among others: (1) that he would not resign; and (2) that Mr. Howe stood ready to put past issues aside and move forward at the City of Clarksburg, West Virginia. See Exhibit 6, Email dated July 6, 2019.

67. Conspiring Defendant Kennedy advised that he would respond to Mr. Howe's email dated July 6, 2019 – to date no response has been received from Conspiring Defendant Kennedy.

68. July 7, 2019, Conspiring Defendant Kennedy advised that his big picture for Clarksburg is "openness." See Exhibit 7, Article titled "New Clarksburg, WV, Mayor, New City Council Members Working To Develop Action Plan."

69. Conspiring Defendant Kennedy's actions evidence an intent to deceive the public – and to discriminate and retaliate against Mr. Howe in secret meetings convened at his law office.

70. Conspiring Defendant Kennedy's actions and omissions are inconsistent with his public statements that "transparency and openness in government is important" and that Conspiring Defendant Kennedy "wants to bring things into the light of day."

71. At the Special Meeting convened on July 11, 2019 Conspiring Defendant Marino repeatedly stated that his aim is transparency and openness and that he "is not in this [the investigation of Mr. Howe] for a vendetta."

72. Conspiring Defendant Marino's actions evidence an intent to deceive the public – and to discriminate and retaliate against Mr. Howe in secret meetings. Moreover, Conspiring

Defendant Marino's actions and express statements evidence that he has a personal vendetta against Mr. Howe – and that he will stop at nothing to have him removed as the City Manager given that Mr. Howe reported and investigated prior acts of alleged wrongdoing committed by Conspiring Defendant Marino.

73. July 11, 2019, the Conspiring Defendants discriminated and retaliated against Mr. Howe when they changed the terms, conditions, location and privileges of Mr. Howe's employment because Mr. Howe, or a person acting on behalf of or under the direction of Mr. Howe, made good faith reports of historic, purported wrongdoing against Conspiring Defendant Marino.

74. Stated succinctly, the Conspiring Defendants are leading a charge to terminate Mr. Howe based upon historical, good faith reports and investigations of alleged wrongdoing, and for politically motivated reasons – without any consideration of objective criteria.

75. Indeed, the Conspiring Defendants failed to produce any material, let alone convincing material, at the Special Meeting convened on July 11, 2019 related to Mr. Howe's employment.

76. Rather, the Conspiring Defendants fostered a circus environment, a kangaroo court, without any leadership, control, direction; or meaningful discussion of Mr. Howe's employment.

77. The Conspiring Defendants', some or all, actions and omissions are malicious or otherwise oppressive such that they are not entitled to qualified immunity.

78. The Conspiring Defendants', some or all, actions and omissions are attributable to the City of Clarksburg, West Virginia under the laws of vicarious liability, respondeat superior and/or agency.

79. Further, the Conspiring Defendants malicious, oppressive, secretive, corrupt, discriminatory and retaliatory actions and omissions indicate that resorting to an available hearing would be an exercise in futility – such that this action is appropriate.

80. Finally, the Conspiring Defendants have intentionally attempted to conceal the unlawful nature of their actions/omissions, described above and below.

**COUNT I – CIVIL CONSPIRACY  
(Against All Defendants)**

81. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

82. The Conspiring Defendants worked in combination to use their insider positions to retaliate and discriminate against Mr. Howe.

83. The Conspiring Defendants conspired to avoid open and objective consideration of Mr. Howe’s employment, as well as to discriminate and retaliate against Mr. Howe.

84. Each Defendant has taken a substantial step in furtherance of this conspiracy.

85. WHEREFORE, Plaintiff Martin G. Howe respectfully requests that judgment be entered in its favor and the following relief be granted:

(1) A finding of civil conspiracy and an award of compensatory damages to compensate Plaintiff for the injuries he has suffered;

(2) An award of attorneys’ fees and costs; and

(3) Any such other relief the Court deems appropriate.

**COUNT II – ACTION FOR INJUNCTIVE RELIEF  
(WEST VIRGINIA WHISTLEBLOWER ACT)**

86. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

87. Mr. Howe is an employee within the meaning of West Virginia Code § 6C-1-2(b).



88. The Conspiring Defendants are an employer within the meaning of West Virginia Code § 6C-1-2(c).

89. As indicated above, Mr. Howe made good faith reports of wrongdoing within the meaning of West Virginia Code § 6C-1-2(d) to the City of Clarksburg, West Virginia – a West Virginia public body. See West Virginia Code § 6C-1-2(e)(2).

90. West Virginia law is clear that “[n]o employer may discharge, threaten or otherwise discriminate or retaliate against an employee by changing the employee's compensation, terms, conditions, location or privileges of employment because the employee, acting on his own volition, or a person acting on behalf of or under the direction of the employee, makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority an instance of wrongdoing or waste.” See West Virginia Code § 6C-1-3(a).

91. West Virginia law is further clear that “[a] person who alleges that he is a victim of a violation of this article may bring a civil action in a court of competent jurisdiction for appropriate injunctive relief or damages, or both, within one hundred eighty days after the occurrence of the alleged violation.” (emphasis added) See West Virginia Code § 6C-1-4(a).

92. As stated above, the Conspiring Defendants have retaliated and discriminated against Mr. Howe based upon his prior reports and investigations of alleged wrongdoing concerning Conspiring Defendant Marino.

93. Based upon the foregoing, this Honorable Court should order “as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation,

including reasonable attorney fees and witness fees, if the court determines that the award is appropriate.” See West Virginia Code § 6C-1-5.

94. Further, this Honorable Court should find that the Conspiring Defendants are each “personally liable for a civil fine of not more than \$5,000” – with such fine to be paid to the State Treasurer for deposit into the General Fund. See West Virginia Code § 6C-1-6.

95. And finally, this Honorable Court should specifically find that the Conspiring Defendants, while acting on behalf of the City of Clarksburg, West Virginia committed acts of retaliation and discrimination with the intent to discourage the disclosure of information, such that the acts of the Conspiring Defendants are deemed as official acts of misconduct and malfeasance in office – which may be relied upon as admissible in any subsequent proceeding or petition to remove the Conspiring Defendants from the Clarksburg City Council. See West Virginia Code § 6C-1-6.

96. WHEREFORE, Plaintiff Martin G. Howe respectfully requests that judgment be entered in its favor and the following relief be granted:

(1) A temporary and permanent injunction issue prohibiting the Defendants from engaging in retaliatory, discriminatory and unlawful conduct as described herein, and reinstating Mr. Howe to the active position of City Manager of the City of Clarksburg, West Virginia;

(2) An award to Plaintiff of all attorneys’ fees and court costs from the Defendants consistent with W.Va. Code § 6C-1-5;

(3) That the Defendants be fined, individually, \$5,000.00 for their unlawful, retaliatory and discriminatory actions and omissions, consistent with West Virginia Code § 6C-1-6;

(4) That the Court enter a finding that the Defendants committed acts of retaliation and discrimination with the intent to discourage the disclosure of information, such that the acts of the Conspiring Defendants are deemed as official acts of misconduct and malfeasance in office consistent with W.Va. Code § 6C-1-6, which finding may serve as the basis for removal of the Conspiring Defendants from the Clarksburg City Council; and

(5) Any such other relief the Court deems appropriate.

Dated: July 8<sup>th</sup>, 2019.

Respectfully submitted,

SIMMERMAN LAW OFFICE, PLLC

By: 

Frank E. Simmerman, Jr.

(W. Va. Bar #3403)

Chad L. Taylor

(W. Va. Bar #10564)

Frank E. Simmerman, III

(W. Va. Bar #11589)

254 East Main Street

Clarksburg, WV 26301

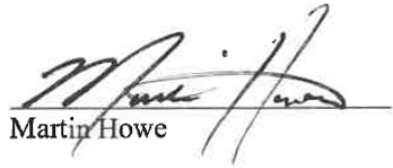
Phone: (304) 623-4900

*Counsel for the Plaintiff*

**VERIFICATION**

I, Martin Howe, hereby state and verify that the statements set forth in the Complaint filed herewith are true and correct to the best of my knowledge, information and belief, subject to correction at a later date.

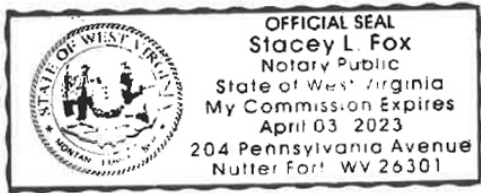
Dated: 7/16/19


  
Martin Howe

STATE OF WEST VIRGINIA )  
 ) TO-WIT:  
COUNTY OF HARRISON )

The foregoing Verification was acknowledged before me this 16<sup>TH</sup> day of July, 2019, by Martin Howe.

(NOTARIAL SEAL)



  
Notary Public

My commission expires:  
APRIL 3, 2023

# EXHIBIT 1

**MAY 16, 2019**

The Clarksburg City Council met in REGULAR SESSION on Thursday, May 16, 2019 at 6:00 P.M. at the Clarksburg Municipal Building – Council Chambers, 222 West Main Street, Clarksburg, West Virginia, with Mayor Goings presiding.

**COUNCIL MEMBERS PRESENT:**

Gary Bowden  
Frank Ferrari  
Marshall Goff  
Ryan Kennedy  
Chad Sigmon  
Vice Mayor Jim Malfregeot  
Mayor Catherine Goings

**ALSO PRESENT:**

Martin Howe, City Manager  
James Cann, City Attorney  
Annette Wright, City Clerk

Following roll call, the prayer was given and the pledge led by Vice Mayor Malfregeot.

Council deviated from the agenda for a proclamation presentation by Councilmember Sigmon to Shawn Kniceley of United Summit Center proclaiming May as “Mental Health Awareness Month” in the city of Clarksburg.

**MOTION** by Vice Mayor Malfregeot, **SECONDED** by Councilmember Ferrari for approval of the minutes of the regular session of Council held on May 2, 2019. **MOTION APPROVED UNANIMOUSLY.**

Mayor Goings called for petitions, communications and public hearings with the following individuals appearing therefor:

**Martin Shaffer**, 211 N. Sixth Street – addressed Council concerning (Crime) Volume 14 – because of homelessness. Mr. Shaffer remarked that it has been 767 days since he reported the theft of the jackhammer and nothing has been done. Mr. Shaffer commented on problems due to homelessness referencing the City’s police department budget of \$5.2 million stating that such equals \$158,000 per officer. Mr. Shaffer stated that there have been three house fires and inquired as to what was being done to get the arsonist. Mr. Shaffer further stated that the police, not the property owner(s), should be the ones to tell the homeless individuals that are sleeping in Glen Elk doorways to move. Mr. Shaffer expressed frustration with nothing being done about the problems he raised.

**Mike Weiss**, 1935 Pride Avenue – addressed Council concerning the extension of the City Manager’s contract and raise. Mr. Weiss inquired as to how the Council justified, with everything going on, giving Mr. Howe another raise opining that he was the highest paid city manager in the state.

**Jimmy Marino**, 700 Milford Street – also addressed Council concerning the City Manager’s employment contract. Mr. Marino concurred with Mr. Weiss’ remarks. Mr. Marino stated that there are so many issues in the city, as well as the inability to get police officers and opined that the money could be spent more wisely than on the City Manager’s salary. Further, Mr. Marino expressed concern with the timing of the contract extension noting the election is in approximately two weeks wherein at least two new members will be on Council. Mr. Marino suggested that Council table this matter at this time until after the new Council is seated. Mr. Marino stated that acting on this matter would encumber another council which may not be illegal but possibly unethical.

**AGENDA ITEM NO. 5: CITY MANAGER'S REPORT/UPDATE**

Manager's Report  
May 16, 2019  
Submitted by Martin G. Howe

**General Updates**

1. Public Works Union Contract – AFL-CIO Local 743 – Public Works’ Union Contract is on the agenda for consideration under New Business. This contract will begin July 1, 2019 and run through June 30, 2022. The administration recommends approval.
2. Demolition –
  - a. Anderson/CIRA Associates – They were awarded three (3) contracts for asbestos abatement. To date, CIRA has completed 10 of the 25 abatements.

- b. Empire Builders – They were awarded four (4) contracts consisting of thirty (30) demolitions and/or asbestos abatements and demolition. To date, they have completed razing eleven (11) structures and have abated four (4) out of nineteen (19) in preparation to complete demolition.
- c. Public Works has completed six (6) out of twenty-seven (27) structures scheduled for demolition.
- 3. Boards and Commissions – The following Boards and Commissions are appointments of the City Manager. All of the appointments are under New Business for Council's confirmation.
  - a. Urban Renewal Authority – City Manager reappoints Sam Gallo to URA.
  - b. BOCA – City Manager appoints Greg Linder to the Code Appeals Board.
  - c. Planning & Zoning Commission – City Manager appoints George Faris to the Planning & Zoning Commission.
- 4. M.O.R.E. – Monticello Ongoing Revitalization Effort – The Blue Print Communities Kick-off ceremony will be Wednesday, May 29<sup>th</sup> at 9:00 a.m.

### Infrastructure Projects

- 1. Embankment Failures –
  - a. Bond closing – Permanent financing not to exceed \$2.75 million to permanently finance the embankment failures, with a term of 4.45% for ten (10) years, will occur on Monday, June 3, 2019 at 11:00 a.m. as a pre-closing in the City Manager's Conference Room. These infrastructure improvements would not have been financially feasible to complete without the recently implemented 1% Sales and Use Tax.
  - b. Upper Winding Way – All concrete lagging has been installed. The wall has been backfilled with crusher run stone. Existing concrete pavement from the roadway has been removed. The project is tentatively scheduled to be completed in approximately three (3) weeks.
  - c. Ascension/Brannon – Public Works Department crews recently completed site improvements to existing hillsides near a storm water control culvert. Hydroseeding is occurring as of Thursday, May 16, 2019 that will assist with slope stability. Next week additional maintenance work will take place on the existing storm water culverts.
  - d. Camden Street Bridge – WVDOT project is approximately two (2) to three (3) weeks away from major completion. Discussions are presently being held concerning the addition of a chain link fence along walkway at both ends of the bridge.

### Police and Fire

- 1. Police Civil Service Commission (PCSC) –
  - a. The Police Civil Service will be meeting on Monday, May 21, 2019 to begin reviewing background information on the five (5) remaining candidates.
  - b. New Eligibility List –
    - i. Physical Ability Test – Saturday, June 8<sup>th</sup> at 10:00 a.m. at Robert C. Byrd High School.
    - ii. Written Test – Applicants who successfully complete the physical ability test will be provided an application for the written test which will be conducted on Wednesday, June 19<sup>th</sup> at 6:00 p.m. at the Harrison County Senior Center.
  - c. Promotional Exam –
    - i. Monday, June 10<sup>th</sup> – testing for Lieutenant (1 position)
    - ii. Tuesday, June 11<sup>th</sup> – testing for Sergeant (3 positions) – Police Civil Service Commission will also be deciding whether not all vacancies will be filled with this test due to one (1) officer being on military leave.
- 2. Police –
  - a. One (1) new probationary officer (Preston Lewis) was sworn in Wednesday, May 14, 2019.
  - b. We currently have four (4) probationary officers awaiting enrollment to the West Virginia State Police Academy.
  - c. The Clarksburg Police Department attended a job fair, Operation Appreciation, Thursday, May 16, 2019 at the Fairmont Armory. This event was targeted towards veterans and military personnel.
  - d. Clarksburg Police Department will be attending a Job Fair on Friday, June 7<sup>th</sup> at the WV State Building.

### Economic Development

- 1. Robinson Grand Performing Arts Center – USDA – The Bond Closing for permanent financing will be on Wednesday, May 22, 2019 at 10:00 a.m. in the City Manager's Conference Room. We anticipate financing approximately \$8.4 million out of an approximately \$20 million project. This again exemplifies the overall success of the New Market Tax Credits, Historical Tax Credits (State and Federal) and a Capital Campaign.
- 2. Harrison Energy Center – The main line extension agreement for sanitary and sewer to service the new natural gas fired power plant has been submitted to the Public Service Commission for review.
- 3. Simon's Crossings – The preliminary plan reviews are anticipated to begin at the end of the month. This is the \$7.5 million residential housing facility to be located at the end of N. 12<sup>th</sup> Street. It will consist of a total of thirty-eight (38) units.
- 4. Goff Building -

- a. Roofing Project – We anticipate the contractor, Sutter Roofing, will have the new roof completed by the end of May.
- b. The developer is still in process of executing due diligence and project pricing.
- 5. Sadd Brothers – Glen Elk Apartments – The construction of the new estimated \$6.2 million residential housing complex consisting of thirty-six (36) units is approximately 42% complete. The fourth floor is framed and ready for the roof to be installed beginning May 28, 2019, weather permitting. The building is anticipated to be under roof by June 6, 2019. The brick exterior is also anticipated to begin being installed the next one (1) to two (2) weeks (weather permitting).
- 6. Ribbon Cutting – Hair, Inc. will be celebrating its 20<sup>th</sup> Anniversary with a ribbon cutting Friday, May 24, 2019 at 11:00 a.m. An open house will also be taking place Saturday, May 25, 2019. Hair, Inc. is located at 548 Emily Drive.

**Events**

- 1. Upcoming events at the RGPAC –
  - a. Music – “Beginnings: The Ultimate Tribute to Chicago” Saturday, May 18, 2019 at 8:00 p.m.
  - b. Dance Recital – Altered Productions will be Friday, May 24 and Saturday, May 25.
  - c. There are three (3) additional upcoming dance recitals by other studios from late May through mid June.
- 2. Coast to Coast Rt. 50 Yard Sale will be setup on the corner of 3<sup>rd</sup> Street and Washington Avenue sponsored by the PWA on Saturday, May 18<sup>th</sup> beginning at 8:00 a.m.
- 3. Float the Fork – Celebration – Friday, May 31, 2019 at the VA Park will allow for registration, demonstrations, boat rentals, and safety tips for the Saturday event which begins in Good Hope.

**FOIA**

- 1. FOIA request from Andy Mancini – received on Monday, May 6, 2019, requesting all electronic emails, memos, attachments or otherwise from former employee James Marino to or from Justine Marino and Marino Brothers. A response was provided on Friday, May 10, 2019. The information is still being gathered to be provided.
- 2. FOIA request from Records Request, Friday, May 10, 2019, requesting copies of all invoices for dog waste bags for the past two (2) years. We responded to Records Request on Thursday, May 16, 2019.
- 3. FOIA request from Lindsey McQuiddy, Armada Analytics, Inc., Monday, May 13, 2019, requesting the certificates of occupancy, final approved site plan/approval documents, any special permits/conditions, variances, any open zoning code violations, any opening building violations, and any open fire code violations of Oakmound Apartments. We responded, and provided a letter with the appropriate information to Ms. McQuiddy on Wednesday, May 15, 2019.

**UNFINISHED BUSINESS:**

**A. CONSIDERATION OF SECOND AND FINAL READING AND PUBLIC HEARING OF AN ORDINANCE ESTABLISHING SALARIES OR COMPENSATION FOR MUNICIPAL OFFICERS AND EMPLOYEES FOR FISCAL YEAR 2019-2020 AND REPEALING ALL INCONSISTENT ORDINANCES**

City Clerk Wright announced that notices regarding the public hearing for the above-referenced ordinance appeared in *The Exponent Telegram* on May 7, 2019 and May 14, 2019. Mayor Goings declared the public hearing open with no one appearing therefor. Upon closing the public hearing, **MOTION** by Vice Mayor Malfregeot, **SECONDED** by Councilmember Sigmon for approval of the above-captioned ordinance on second and final reading. **MOTION APPROVED UNANIMOUSLY.**

**NEW BUSINESS:**

**A. CONSIDERATION OF A RESOLUTION OF THE COUNCIL OF THE CITY OF CLARKSBURG, WEST VIRGINIA, RENEWING THE EMPLOYMENT CONTRACT DATED JULY 5, 2018 BETWEEN THE CITY OF CLARKSBURG AND MARTIN HOWE, AND ADOPTING A NEW EMPLOYMENT CONTRACT DATED JUNE 2, 2019**

**MOTION** by Councilmember Kennedy, **SECONDED** by Councilmember Bowden to **TABLE** the above-captioned matter. **MOTION TO TABLE** defeated with only Councilmembers Kennedy and Bowden voting in favor thereof.

**MOTION** by Vice Mayor Malfregeot, **SECONDED** by Councilmember Sigmon for



adoption of the above-captioned resolution. Under discussion, Councilmember Kennedy commented on the City Manager being the head of the city and his responsibilities therein noting the concerns with the homeless/backpackers, the crimes being committed, and our citizens not feeling safe and, in light thereof, could not give the person responsible for handling these matters a raise. Councilmember Bowden commented that although he is fully supportive of the City Manager, he is opposed to considering the contract extension at this time as he believes that matter would be better addressed by the future/new Council. Mayor Goings remarked to Councilmember Kennedy on the many positives in the City such as the Robinson Grand, infrastructure projects, Glen Elk apartments, etc. and that we always focus on the negative. Mayor Goings stated that if Councilmember Kennedy had a simple solution to the problems he referenced, then he needed to share the same. Mayor Goings stated that the police salary has been increased; however, we can't make someone want to be a police officer. In closing, Mayor Goings added that this Council should be extremely proud of what has been accomplished. Concluding discussion, **MOTION CARRIED 5-2** with Councilmembers Kennedy and Bowden casting the dissenting votes.

**B. CONSIDERATION OF SALARY ADJUSTMENT FOR CITY CLERK FOLLOWING PREVIOUS PERFORMANCE EVALUATION**

**MOTION** by Councilmember Ferrari, **SECONDED** by Councilmember Goff to increase the City Clerk's salary by \$2,000. **MOTION APPROVED UNANIMOUSLY.**

**C. CONSIDERATION TO AUTHORIZE THE CITY MANAGER TO EXECUTE THE 2019 CONTRACT BETWEEN THE CITY AND ALF-CIO LOCAL 743**

**MOTION** by Councilmember Ferrari, **SECONDED** by Councilmember Goff to authorize the City Manager to execute the 2019 contract between the City and the ALF-CIO 743. **MOTION APPROVED UNANIMOUSLY.**

**D. CONSIDERATION OF CONFIRMATION OF THE CITY MANAGER'S APPOINTMENT TO THE URBAN RENEWAL AUTHORITY**

**MOTION** by Vice Mayor Malfregeot, **SECONDED** by Councilmember Sigmon for confirmation of the City Manager's reappointment of Sam Gallo to the URA. **MOTION APPROVED UNANIMOUSLY.**

**E. CONSIDERATION OF CONFIRMATION OF THE CITY MANAGER'S APPOINTMENT TO THE CODE APPEALS BOARD**

**MOTION** by Councilmember Ferrari, **SECONDED** by Vice Mayor Malfregeot for confirmation of the City Manager's appointment of Greg Linder to the Code Appeals Board. **MOTION APPROVED UNANIMOUSLY.**

**F. CONSIDERATION OF CONFIRMATION OF THE CITY MANAGER'S APPOINTMENT TO THE PLANNING & ZONING COMMISSION**

**MOTION** by Vice Mayor Malfregeot, **SECONDED** by Councilmember Sigmon for confirmation of the City Manager's appointment of George Faris to the Planning & Zoning Commission. **MOTION APPROVED UNANIMOUSLY.**

**G. CONSIDERATION OF A PETITION FILED BY RONNIE KALALAU OF 99 ARGONNE STREET REQUESTING THE ABANDONMENT OF AN ALLEY THAT RUNS BETWEEN HIS PROPERTIES LOCATED THEREAT**

**MOTION** by Councilmember Bowden, **SECONDED** by Councilmember Kennedy to forward the above-captioned petition to the Planning & Zoning Commission for their review, public hearing and comment. **MOTION APPROVED UNANIMOUSLY.**

**H. CONSIDERATION OF CANCELLING THE JUNE 6, 2019 REGULAR COUNCIL MEETING (DUE TO WVML BOARD MEETING)**

**MOTION** by Vice Mayor Malfregeot, **SECONDED** by Councilmember Ferrari to cancel the June 6<sup>th</sup> Council meeting due to the WVML Board meeting. **MOTION APPROVED UNANIMOUSLY.**

**I. CONSIDERATION OF SCHEDULING A TIME FOR THE MONDAY, JUNE 10, 2019 CANVASS**

**MOTION** by Vice Mayor Malfregeot, **SECONDED** by Councilmember Sigmon to conduct the Canvass on Monday, June 10<sup>th</sup> at 8:30 a.m. **MOTION APPROVED UNANIMOUSLY.**

**J. CONSIDERATION OF RESCHEDULING THE JUNE 20, 2019 REGULAR COUNCIL MEETING TO TUESDAY, JUNE 18, 2019 (DUE TO THE WEST VIRGINIA DAY HOLIDAY)**

**MOTION** by Vice Mayor Malfregeot, **SECONDED** by Councilmember Sigmon to reschedule the June 20<sup>th</sup> meeting to Tuesday, June 18, 2019 due to the WV Day Holiday. **MOTION APPROVED UNANIMOUSLY.**

**COUNCIL COMMENTS:**

Mayor Goings: Congratulated the City Manager and Police Chief on working toward getting a K9 for the Police Department; read aloud an email from Timothy Bumgardner commending the Public Works Department on their efficiency in addressing a ditch line matter; congratulated Vice Mayor Malfregeot on his funeral director status; informed of a May 22<sup>nd</sup> – 7:00 p.m. meeting at Clarksburg Country Club sponsored by Dyer Law Offices extending an invitation to Council regarding the Mission.

Councilmember Bowden: Stated that he hoped the City Manager and Police Chief would be attending the meeting at Clarksburg Country Club referenced by the Mayor; congratulated the City Manager and City Clerk on their job performance evaluations.

Councilmember Sigmon: Informed of the United Methodist Church's 5K and expressed support thereof; expressed enthusiasm with the Police Department getting a K9 back in operation; noted the improvements being made at the old Maxwell-Duncan House and expressed desire for the continuance thereof; thanked the candidates who came out to the meeting this evening and expressed best wishes to all; congratulated the City Clerk and City Manager and wished all a happy and safe Memorial Day.

Councilmember Kennedy: Noted the First Fridays' events with the next one to be held on June 7<sup>th</sup> and expressed appreciation to those responsible for the same.

There being no further business to come before Council, **MOTION** by Councilmember Ferrari, **SECONDED** by Vice Mayor Malfregeot and **APPROVED UNANIMOUSLY** for adjournment.

\_\_\_\_\_  
Catherine A. Goings, Mayor

Approved: June 18, 2019

\_\_\_\_\_  
Annette M. Wright, City Clerk

# EXHIBIT 2



Martin Howe &lt;mhowe@cityofclarksburgwv.com&gt;

## Information Request

1 message

James marino <mbros1404@yahoo.com>  
 To: Martin Howe <mhowe@cityofclarksburgwv.com>  
 Cc: awright@cityofclarksburgwv.com, lillie.junkins@gmail.com

Wed, Jun 19, 2019 at 11:53 PM

Mr. Howe -

I am requesting your office provide me the following documentation ASAP:

- ✓1. As detailed a copy as available of the city budget for 2018 & 2019 for each department
- ✓2. The current employee handbook
- ✓3. A salary and wage schedule for all employees
- ✓4. A copy of your most current contract
- ✓5. A copy of Boo Bellotte's job description and all duties & responsibilities
- ✓6. A concise summary of who exactly serves as the code enforcement officer/supervisor for our department and what chain of command is followed in that department
- ✓7. A copy of Ms. D'Annunzio's job title/description and duties as well as her salary, benefits and any other compensation. As well, I want to know the details of how and why this position was created. More specifically, how was this position posted - internally, publicly, etc? Also, what has she been compensated to date?
- ✓8. Copies of all letters/documentation pertaining to any and all transfers of administrative staff from one department to another in the last 8 months. ~~Denker, Kelly, Joyce~~ *Denise, Kelly, Joyce*
- ✓9. Adam Barberio's job title/description including any and all duties and responsibilities. As well as copies of all certifications that he holds
- ✓10. A detailed summary for 2016, 2017 & 2018 of the vacation leave payout for all employees, and sick leave payout bonus for the same years for Boo Bellotte, Adam Barberio, Robbie Hilliard and yourself.
- ✓11. A copy of the monthly administrative time sheet for 2016, 2017 & 2018 for Boo Bellotte, Adam Barberio, Robbie Hilliard and yourself
- ✓12. A copy of job title/description and duties for Desiree Lambert. As well, I request an explanation of how her job was created and the exact hiring process performed to fill it
- ✓13. A copy of Dominique Spadafore's job description/title and all duties and responsibilities
14. A complete file of all findings and documentation pertaining to the grievance filed by Adam Barberio against James Marino (2015) - most specifically the findings of facts from Steptoe & Johnson's Susan Deniker.

Please compile this information as quickly as possible and contact me by phone to retrieve it as is I need it to hit the ground running before my swearing in.

Very truly yours,  
 James Marino

*Robbie & Jason S*  
*Interim*

Sent from my iPhone

*eff July 1. 12:01am 78,226*

# EXHIBIT 3



Martin Howe <mhowe@cityofclarksburgwv.com>

## Operational Issue

Martin Howe <mhowe@cityofclarksburgwv.com>

Wed, Jul 3, 2019 at 10:09 PM

To: Ryan Kennedy <rkennedy@cityofclarksburgwv.com>

Cc: Frank Ferrari <frankf@cityofclarksburgwv.com>, Jimmy Malfregeot <jmalfregeot@cityofclarksburgwv.com>, Marshal Goff <mgoff@cityofclarksburgwv.com>, Lillie Junkins <ljunkins@cityofclarksburgwv.com>, Gary Keith <gkeith@cityofclarksburgwv.com>, James Marino <jamesm@cityofclarksburgwv.com>

Honorable Mayor -

This morning, a Council Member, whom was a former employee, unexpectedly appeared in my office requesting to see me. This Council Member began immediately questioning a plethora of information, which he had requested from a June 19, 2019 email and I have compiled and supplied to him, as well as another Council Member and City Clerk. This large quantity of information was provided in a form of copied documents in an attempt to be cooperative. There has been a great amount of time and effort put forth by staff and myself to locate and reproduce the information. Additionally, there seems to be a concise and consistent target of information, which is being requested pertaining to certain individuals.

This Council Member began questioning Administrative Time of 1 individual, which became very apparent of his vendetta, as he was only supplied info for 2 of the 4 individuals requested (one of which included me, but clearly I do not receive). There are 8 department heads, therefore the other information for the remaining 5 was not requested. He tried to compare the documentation in a contrasting light which I found very odd, due to the fact he had no other comparable information to differentiate. I also find it to be politically motivated as it is my understanding this Councilman wants to repeal and eliminate the Assistant City Manager Position, which he applied for and was not successful.

Also, very concerning to me, among the other requests was #14 "A complete file of all findings and documentation pertaining to the grievance filed by Adam Barberio against James Marino (2015) - most specifically the findings of facts from Steptoe & Johnson's Susan Deniker.

This Councilman became very agitated and verbally combative while coming across my desk in a very threatening posture while viciously pointing to my memo dated July 2.

The crux of the issue seems to be "rehashing" and attempting to take another "bite at the apple" to resurrect a grievance from 2015 that was properly handled and disposed.

This very intense and confrontational communication has now put me in a very precarious position, as I do not feel professionally comfortable being alone in a room with this Councilman. Furthermore, my Intern whom is temporarily filling a vacancy of my administrative assistant until a proper search can be completed, then permanently hired is now fearful of this Councilperson. She was very stressed, upset and concerned with the tones of voice that she alerted and requested Interim Chief Snider to come to our office. Additionally, our Communications person was also fearful and immediately vacated her office as she felt the tension that had escalated and was fearful.

I am sending you this as you are the Mayor and are my point of contact for issues such as these. I have never had or been treated this unprofessionally in the near 14 years as City Manager from ANY Councilperson.

I will await for your response on how you plan to resolve this very stressful and combative environment that not only I am forced to deal with, but now several of my subordinates have been exposed to unwillingly.

Sincerely,

# EXHIBIT 4



Martin Howe <mhowe@cityofclarksburgwv.com>

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## Operational Issue

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Councilman Ryan Kennedy <rkennedy@cityofclarksburgwv.com>

Thu, Jul 4, 2019 at 10:20 AM

To: Martin Howe <mhowe@cityofclarksburgwv.com>

Cc: Frank Ferrar <frankf@cityofclarksburgwv.com>, Jimmy Malfregeot <jmalfregeot@cityofclarksburgwv.com>, Marshal Goff <mgoff@cityofclarksburgwv.com>, Lillie Junkins <ljunkins@cityofclarksburgwv.com>, Gary Keith <gkeith@cityofclarksburgwv.com>, James Marino <jamesm@cityofclarksburgwv.com>

Mr. City Manager:

Thank you for bringing this alleged incident to my attention. I was unaware of it until your e-mail which I received late yesterday. If such an incident occurred as you describe, that would be inappropriate and unacceptable behavior from any member of Council or any City employee. As you have correctly stated, the Mayor is your point of contact for issues that you may have with members of Council. As you are aware, I was not present when this alleged incident occurred and, therefore, I have no first-hand knowledge regarding it. Consequently, now that I have been made aware of these allegations, I will be conducting an investigation in order to gather as much information as possible so that the best possible decision can be made as to what actions should be taken regarding the same. As part of that investigation, I will be speaking with Vice Mayor Marino (whom I presume is the member of Council to which you refer, although he is not expressly named) in order to gather such information as I can from his account of the alleged incident. I will also be speaking with the two employees whom you have stated were also affected by the alleged incident, for inquiry purposes only, in order to gather such information as I can from their recollections. Due to receiving this e-mail only a few hours prior to the July 4th holiday, and it being my understanding that the City offices will be closed until Monday, July 8th, I will not be able to speak with the employees until that time.

Once I have completed my investigation, I will follow up with you again, with copy to all members of Council, regarding the same.

Sincerely,  
Ryan Kennedy  
Mayor

[Quoted text hidden]



# EXHIBIT 5

# **A G E N D A**

## **C I T Y   O F   C L A R K S B U R G**

**AGENDA FOR SPECIAL MEETING OF COUNCIL OF THE CITY OF CLARKSBURG TO BE HELD THURSDAY, JULY 11, 2019 AT THE CLARKSBURG MUNICIPAL BUILDING – COUNCIL CHAMBERS, 222 WEST MAIN STREET, CLARKSBURG, WEST VIRGINIA AT 6:00 P.M.**

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### **ORDER OF BUSINESS**

- 1. ROLL CALL**
- 2. PUBLIC HEARING ON THE PERFORMANCE OF THE CITY MANAGER**
- 3. CONSIDERATION OF A PRELIMINARY RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLARKSBURG, WEST VIRGINIA, SUSPENDING THE CITY MANAGER FOR THIRTY (30) DAYS IN ANTICIPATION OF TERMINATION AND APPOINTING AN INTERIM CITY MANAGER**
- 4. ADJOURNMENT**

**A PRELIMINARY RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLARKSBURG, WEST VIRGINIA SUSPENDING THE CITY MANAGER FOR THIRTY (30) DAYS IN ANTICIPATION OF TERMINATION AND APPOINTING AN INTERIM CITY MANAGER**

**WHEREAS**, it is resolved by the Council of the City of Clarksburg, West Virginia that four (4) or more members having voted in the affirmative to adopt a preliminary resolution removing the City Manager, Martin Howe, from office effective August 12, 2019; and

**WHEREAS**, it is further resolved by the Council of the City of Clarksburg, West Virginia that four (4) or more members having voted in the affirmative, that the City Manager, Martin Howe, shall be suspended for thirty (30) days, with pay, beginning on July 12, 2019 and that the City Clerk, Annette Wright, is hereby designated to perform the duties of the City Manager during the period of his suspension; and

**WHEREAS**, the Council finds that the three (3) major categories of reasons for said removal of the City Manager, both separately and collectively, are as follows: (1) Urban Decay; (2) Misappropriation of Funds; and (3) Unprofessionalism. These categories are more fully described below:

**Urban Decay**

During the City Manager's fourteen (14) year tenure:

1. The City has a staggering increase in homelessness;
2. The Police Department is understaffed;
3. Crime is on the rise and has risen significantly;
4. Buildings and houses in Clarksburg are rapidly decaying;
5. The population of the town has decreased by approximately 10%;
6. Businesses are leaving the City at an exponential rate, such as United Hospital Center, Steptoe & Johnson, Dominion Gas and Chase Bank;
7. The City's budget has declined by \$1.6 million since 2011, after adjusting inflation;
8. City Manager's budget has increased approximately 100% since 2011;
9. Budgets for departments such as Engineering and Code Enforcement have declined by approximately 40% since 2011.

**Misappropriation of Funds**

Upon information and belief, City funds have been misappropriated by the City Manager and/or one or more subordinates, at least some of which personally benefited the City Manager. These misappropriations include, but are not limited to, exchanging vacation time for a monetary payment in excess of City policy established by Council and failure to properly verify overtime of employees. Further, upon information and belief, the City Manager has committed one or more violations of state Purchase Card policies including, but not limited to, seeking reimbursement for non-itemized receipts. These allegations warrant further investigation during the suspension of the City Manager.

**Unprofessionalism**

Upon information and belief, the City Manager has violated the West Virginia Freedom of Information Act by (1) disclosing non-public information not subject to FOIA; (2) failing to disclose of information subject to FOIA and/or (3) failing to apply the fee schedule for documents produced from FOIA requests in a content-neutral and non-discriminatory fashion. These allegations warrant further investigation during the suspension of the City Manager.

The City Manager has disrespected members of Council.

For reasons stated above, and those which are later discovered during the aforesaid investigation, Council has lost confidence in the leadership, executive, and administrative abilities of the City Manager, removes and suspends him as stated above, and designates City Clerk Annette Wright as the person hereby designated to perform the duties of the City Manager during the period of his suspension.

PASSED by the Council of the City of Clarksburg, this            day of July, 2019.

\_\_\_\_\_  
Ryan R. Bennett, Mayor

ATTEST:

\_\_\_\_\_  
Annette M. Wright, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
James V. Carr, City Attorney

# EXHIBIT 6



Martin Howe <mhowe@cityofclarksburgwv.com>

**(no subject)**

2 messages

Martin Howe <mhowe@cityofclarksburgwv.com>

Sat, Jul 6, 2019 at 10:00 AM

To: Ryan Kennedy <rkennedy@cityofclarksburgwv.com>, James Marino <jamesm@cityofclarksburgwv.com>, Frank Ferrari <frankf@cityofclarksburgwv.com>, Jimmy Malfregeot <jmalfregeot@cityofclarksburgwv.com>, Marshal Goff <mgoff@cityofclarksburgwv.com>, Gary Keith <gkeith@cityofclarksburgwv.com>, Lillie Junkins <ljunkins@cityofclarksburgwv.com>

Dear Mayor Kennedy, Vice Mayor Marino, and Council:

Initially, I note that I did not send this correspondence on July 4th, 2019, as I felt it best to not interrupt your respective holiday and family events.

That being said, it saddens me to write this email.

On July 3, 2019 I was approached by Mayor Kennedy, Vice-Mayor Marino and Councilwoman Junkins and asked to resign [which I refused to do] – subsequently I was told that I would be terminated at an upcoming special meeting.

First, I have always been a fan of transparency in government – and the apparent back door discussions and conclusions which led to this meeting (which was more of a confrontation) are inappropriate.

You are all well aware of the Open Meetings Act – and I find these actions – and the conclusion to terminate me as expressed by Mayor Kennedy – frustrating to say the least. Stated differently, if you have problems with me (or with my performance) they should take place in an open meeting – not in closed door meetings wherein conclusions as to my position are being reached – without any apparent foresight or thought given to the timing of such actions – or as to transition by the City.

Alternatively, if these actions are simply threats – this is not a good way to begin our new relationship.

To repeat, I will not resign, particularly when confronted (as described in greater detail below) by an unsuccessful applicant for the Assistant City Manager's Position, who seeks to reopen long closed grievances, previously filed against him by other employees, when he was also a city employee.

I firmly believe that I am best suited to guide Clarksburg moving forward in the position of City Manager. As most of you are aware, I have been employed here for nearly 14 years, through both good times and bad, and threats (or political attacks) will not force me to give up on all that the City has accomplished during my tenure.

Second, I find these actions more frustrating as my Employment Contract with Clarksburg was renewed effective July 1, 2019 – and I was approached on July 3, 2019, less than 48 hours after a new council was seated.

Put bluntly, I remain willing and able to perform by duties set forth in the Employment Contract; however, if you choose to go another direction please do so consistent with the Employment Contract, consistent with the City Charter, and consistent with the Open Meetings Act. You owe this to the citizens of Clarksburg and to all employees (not just me).

Third, some of this action directly stems from an email/request Vice-Mayor Marino directed to me on 6/19/19. So that all the cards are on the table, I have attached Vice-Mayor Marino's request, and my responses, to this email. Although not titled as such, I treated Vice-Mayor Marino's request as a FOIA request, and spent substantial time and effort preparing responses/gathering documents – even though I was under no obligation to do so.

It is apparent from reading the 6/19/19 request that Vice-Mayor Marino is placing his personal interests above those of the City – and is invading personnel matters – matters which are for the City Manager to address and resolve – matters which were resolved/addressed in 2015. Please review the documents and draw your own conclusions.

In closing, I ask that this retaliatory action stop – and that we put old, personal matters aside and attempt to collectively move forward to address the real issues at the City – not, for example, grievances from 2015.

Further, until you take any official action, I ask that you not micro-manage me, and that you refrain from interfering with city employees. All administrative issues are to be directed to me – you should not be placing city employees, either publicly or privately, in awkward/inappropriate situations.

If you have any questions as to the contents of this email, I invite you to address them in public, at our next meeting, special or otherwise.

 Marino Request June 19.pdf  
221K

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Ryan Kennedy <rkennedy@cityofclarksburgwv.com>

Mon, Jul 8, 2019 at 7:58 AM

To: Martin Howe <mhowe@cityofclarksburgwv.com>

Cc: James Marino <jamesm@cityofclarksburgwv.com>, Frank Ferrari <frankf@cityofclarksburgwv.com>, Jimmy Malfregeot <jmalfregeot@cityofclarksburgwv.com>, Marshal Goff <mgoff@cityofclarksburgwv.com>, Gary Keith <gkeith@cityofclarksburgwv.com>, Lillie Junkins <ljunkins@cityofclarksburgwv.com>

As per my commitment to open and transparent government and the City Manager's request that any response to his below e-mail be announced in a public meeting of Council, I will be reading my response at the upcoming meeting this Thursday. I will also be e-mailing a copy of my response to both the City Manager and the City Clerk so that there will be a record of my response for the purpose of any future FOIA requests that might occur.

[Quoted text hidden]

# EXHIBIT 7



[https://www.wvnews.com/news/wvnews/new-clarksburg-wv-mayor-new-city-council-members-working-to/article\\_e858dd5e-cf7f-5173-81e6-f24d4763f26e.html](https://www.wvnews.com/news/wvnews/new-clarksburg-wv-mayor-new-city-council-members-working-to/article_e858dd5e-cf7f-5173-81e6-f24d4763f26e.html)

## New Clarksburg, WV, mayor, new City Council members working to develop action plan

by Charles Young SENIOR STAFF WRITER Jul 7, 2019

Kennedy

Jenkins

infolinks

Marino

Keith

CLARKSBURG — The newly selected mayor of Clarksburg and the newest members of Clarksburg City Council say they are preparing to hit the ground running.

~~members of~~  
inlinks

The first regular meeting of the newly seated Council is scheduled for July 18, and a plan of action for the first 100 days of Mayor Ryan Kennedy's term in office is currently in development.

A special City Council meeting is scheduled for 6 p.m. Thursday, and Kennedy has said the meeting will address City Manager Martin Howe's position and whether the long-serving city manager will remain in his post.

Kennedy, who was selected to serve as mayor during a special City Council meeting held last Monday, said he plans to focus his efforts on making the workings of city government more open and transparent.

"There are some changes we want to make to the way the city operates, some kind of low-hanging fruit, so to speak," he said. "Things that we can do that are kind of quick and easy and don't require a lot of expenditure or time just to make things more in the open."

For starters, Kennedy said the work session prior to the June 18 meeting will be held in Council Chambers instead of in Howe's conference room, where they have been held in the past.

"It will be out in the Chambers to encourage people to come," he said. "There is plenty of seating, so we're hoping to get more people to attend that way."

He plans to bring up other transparency efforts at the meeting, including discussion of the possibility of filming City Council meetings and the idea of publicly posting the city's financial information online, Kennedy said.

"The big picture is that we're going for openness," he said. "We want to turn the page and say we're going to be an open and transparent administration. We're going to do everything in the sunlight."

He has been looking into the details of a plan he first suggested in May that would amend the city's charter to allow citizens to directly elect future mayors, Kennedy said.

Infolinks

"I've looked myself at the Charter to see what the timing issues would be," he said. "I'm hopeful that we can time it so we can coincide the vote on the Charter changes with the May (2020) election coming up. If we can work with the county clerk and work something out on that, that would be great."

Kennedy, who has said he also plans to prioritize "public safety" during his time as mayor, said he has been staying in contact with Interim Police Chief Iason Snider, who was chosen to lead the department following the June 30 retirement of Police Chief Robbie Hilliard.

"I'm hearing some good things from him as far as how he wants to increase public safety, and I'm hoping that they pan out," he said.

Newly selected Vice Mayor James Marino said dealing with the Clarksburg community's current problems with homelessness and vagrancy are among his top priorities for the new administration's 100-day plan.

"At the top of my list is the homelessness and the drug issues, which kind of go hand-in-hand," he said. "We want to hit the ground running with that one."

He hopes to build on the momentum of a community meeting held in May, during which time the Clarksburg Mission was discussed, Marino said.

New Council member Lillie Junkins said public safety is also her "No. 1 issue."

"I don't think that people feel safe in Clarksburg anymore," she said. "I think that's a big issue. You want to be able to feel safe where you live and where your kids play.

"A lot of people expressed to me while we were campaigning that they don't even feel safe to go on vacation because they are worried that their homes are going to be broken into. They can't let their kids out in the yard unsupervised and they can't walk in their neighborhoods."

Adding additional members to the Clarksburg Police Department is the first step that

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needs to be taken to address public safety, Junkins said.

“First of all we need to get our police force up to the proper amount of manpower,” she said. “Our police officers, especially our veteran police officers, have left in droves in Clarksburg.”

Securing the right candidate to serve as the department’s next chief will hopefully help with recruitment, Junkins said.

New council member Gary Keith said one of his top concerns that he would like to see addressed in the 100-day plan is the needle exchange program run by the Harrison-Clarksburg Health Department.

Keith said he would like to see “new regulations” imposed on the program that would help “get it under control.”

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