



## Cira and Associates Consulting LLC

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April 7, 2014

City of Morgantown  
Mr. Steve Fanok  
389 Spruce Street  
Morgantown, WV 26505

Re: Summary of Findings  
513 Madison Avenue  
Morgantown, WV

Mr. Fanok:

On February 27, 2014 I conducted a Mold, Bacteria and Asbestos inspection at 513 Madison Avenue. The conditions within the residence at the time of my inspection were deplorable. I have been conducting inspections (Asbestos/Indoor Air Quality) for almost 15 years throughout the Tri-state area and I have never encountered conditions in a Residential or Commercial structure as bad as the conditions I encountered on that day.

The mold spore counts inside the residence were a magnitude higher than the exterior reference spore counts, however my real concern was that the mold combined with animal waste on nearly every surface made this Residence an immediate health hazard.

Contamination of the neighboring properties and other personal property is possible if untrained people are permitted to enter the Residence and remove items at will and then transport these items to other locations (homes/businesses).

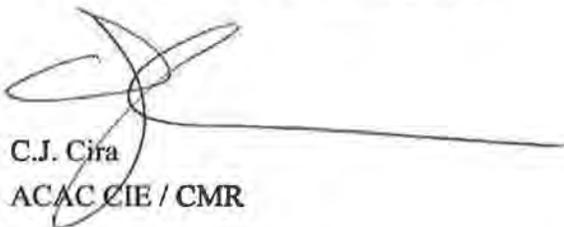
The temperature on February 27, 2014 was approximately 20° F at the time of the inspection. If the residence remains in its current condition without operating utilities, the humidity will increase and the spore counts will rise as the temperatures outside increase. This will cause even greater mold spore counts than what was detected during the February inspection. In addition, the bacteria and mal-odors will also increase and likely become an increased nuisance to the surrounding properties.

Although this residence can be remediated to a "normal living condition" the cost to do so will likely be much greater than the current value of the residence. Prior to conducting mold/bacteria remediation an asbestos abatement will need to be conducted to remove asbestos insulation that would be disturbed during mold/bacterial clean-up activities. After the Residence is certified for human re-occupancy then construction materials will have to be replaced. This may include the replacement of sub-floors, ceiling materials, wall materials, carpeting, vanities and counters.

Should you have any questions or desire to discuss project options further, please contact me at directly by cell at (304) 692-2923.

Sincerely,

**Cira and Associates Consulting LLC**



C.J. Cira  
ACAC CIE / CMR

ARTICLE 1149

Public Nuisance

- 1149.01 Purpose; public nuisance abatement.
- 1149.02 Application.
- 1149.03 Definition; public nuisance.
- 1149.04 Report, recommendations to Council and hearing.
- 1149.05 Findings of City Council.
- 1149.06 Reconsideration of permanent public nuisance.
- 1149.07 Appeals and enforcement.
- 1149.08 State Building Code and Fire Code.
- 1149.09 Severability.

CROSS REFERENCES

Power to regulate - see W. Va. Code 8-12-5(23)

1149.01 PURPOSE; PUBLIC NUISANCE ABATEMENT.

Council may, by resolution, abate anything which, in the opinion of a majority of Council, constitutes a public nuisance after due notice to all parties that could be affected and after such hearings as Council deems necessary to ascertain a factual and rational basis for the abatement of any such public nuisance.

(Ord. 08-17. Passed 6-3-08.)

1149.02 APPLICATION.

The provisions of this article shall apply to all public nuisances as hereinafter designated which are now in existence or which may hereafter exist in the City.

(Ord. 08-17. Passed 6-3-08.)

#### 1149.03 DEFINITION; PUBLIC NUISANCE.

(a) A public nuisance is one which affects an indefinite number of persons, or the residents of a particular locality, or people coming within the extent of its range or operation, although the extent of the annoyance or damage inflicted upon individuals may be unequal. Such public nuisance endangers the health, safety and welfare of the community and is dangerous and detrimental to the public health, may violate the laws of the City and/or State as well as obstructs the community from reasonable and comfortable use of property.

(b) A public nuisance may arise from the unreasonable, unwarrantable or unlawful behavior associated with the property, either real or personal, which hinders the neighboring community and the general public from enjoying the common and public rights enjoyed by the general community in like areas where no such public nuisance exists.

(c) For purposes of this article a continuing public nuisance is an uninterrupted or periodically recurring public nuisance, not necessarily a constant or unceasing injury, but a nuisance which occurs so often and is so necessarily an incident of the use of property complained of that it can fairly be said to be continuous. Such a nuisance may be of such character that its continuance is necessarily an injury which will continue without change.

(d) A continuing public nuisance may be found to be a permanent public nuisance when its continuance is necessarily an injury which will continue without change, unless Council takes such action to cease any like nuisance from becoming established and re-occurring at the particular location. It is not enough to show a slight interference to the public welfare and such will not be restrained unless the type of business or manner of operation is injurious to the public health, safety and welfare of the community or has a tendency to promote unlawful behavior or behavior which is considered by the City Administration, including its health and/or safety officials, to be a menace to public order and safety.

(e) The procedure by which the City of Morgantown will address public nuisances is set forth in the remaining sections of this article.

(Ord. 08-17. Passed 6-3-08.)

#### 1149.04 REPORT, RECOMMENDATIONS TO COUNCIL AND HEARING.

Public safety and law enforcement officers, as well as affected members of the community, shall report findings and recommendations to the City Manager, and if the City Manager ascertains from the report and findings that the condition presents a public nuisance, as defined within this Article, the City Manager shall make his recommendation to City Council that just cause exists to abate the nuisance. Whereupon by a majority vote of City Council, a hearing shall be held after at least ten days notice is provided to the property owner, tenant, business manager and/or licensee of the time and place of such hearing, which notice shall contain a statement or specifications of the charges, grounds or reasons for such proposed contemplated action, and which shall be served upon the property owner, tenant, business manager and/or licensee as notices under the West Virginia Rules of Civil Procedure or by certified mail, return receipt requested, and shall, in addition, be posted in a conspicuous place on the premises as well as within 100 feet surrounding such premises affected by the recommendation. The term "cause" shall include the going or omitting of any act or permitting any condition to exist which causes a public nuisance as defined in this article. At which time and place, so designated in the notice, City Administration shall put forth its evidence in support of the recommendation made to City Council as well as the property owner, tenant, business manager and/or licensee shall have the right to appear and produce evidence in his/her/its behalf, and to be represented by counsel. At the conclusion of the hearing, City Council shall render a decision.

(Ord. 08-17. Passed 6-3-08.)

#### 1149.05 FINDINGS OF CITY COUNCIL.

At the conclusion of the hearing described in Section 1149.04, City Council will issue its findings on the matter. In doing so, it may determine that a public nuisance does not exist, or that a public nuisance does exist and in such case, what corrective action the property owner, tenant, business manager

and/or licensee must take to eliminate the public nuisance and the time period in which such action must take place. Additionally, upon a showing that there has been a continuing nuisance of similar character and circumstances at a particular location which meets the criteria for a permanent nuisance as set forth in Section 1149.03 of this article, City Council may declare such a permanent public nuisance and prohibit similar acts, occupations, types of businesses or structures at such location. In determining whether or not a permanent public nuisance exists, City Council shall consider reports of City administration, safety, and law enforcement officials, as well as public comment and complaints of the community spanning, at a minimum, a three year period immediately preceding the date of the hearing. (Ord. 08-17. Passed 6-3-08.)

#### 1149.06 RECONSIDERATION OF PERMANENT PUBLIC NUISANCE.

Should City Council declare a location to be a permanent public nuisance, any further use of that same location for the same use shall not be allowed; however, reconsideration by City Council of its Declaration of Permanent Nuisance may occur if such reconsideration request is filed in writing with City Council within three (3) months of City Council's decision on the matter. The relief requested in the petition for reconsideration may be granted by City Council if, in its opinion, the petitioner has presented it with sufficient information demonstrating that, more likely than not, the elements making up and causing the nature of the permanent public nuisance in question will be eliminated. The order of City Council in granting any such petition shall indicate that the use of the premises/realty at issue will be considered probationary for a period of one year from the date the use commences, and that any reoccurrence of similar activity which lead to the prior declaration of a permanent public nuisance or would lead to a new nuisance violation shall automatically reactivate City Council's previous determination that the site is a permanent public nuisance. In that event, upon written notice by the City Manager to and received by the Petitioner, such usage of the site shall cease immediately.

(Ord. 08-17. Passed 6-3-08.)

#### 1149.07 APPEALS AND ENFORCEMENT.

In the event that such property owner, tenant, business manager and/or licensee may be aggrieved by such decision of City Council, which may include and not be limited to revocation or suspension of any licensures and/or the restricted use of such property having been declared a nuisance, petition for such review must be filed with the circuit court within a period of thirty days from and after the date of final action by Council. Any person, firm, corporation, landowner, licensee so affected has the right to apply to the circuit court for a temporary injunction pursuant to the provisions of the W. Va. Code. The Municipality is also entitled to any and all appropriate judicial relief against public nuisances.

(Ord. 08-17. Passed 6-3-08.)

#### 1149.08 STATE BUILDING CODE AND FIRE CODE.

This article shall not supersede those requirements and procedures set forth in either the West Virginia State Building Code or the West Virginia State Fire Code.

(Ord. 08-17. Passed 6-3-08.)

#### 1149.09 SEVERABILITY.

If any section, subsection, provision, clause or phrase of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, subsections, provisions, clauses or phrases or applications of this article and to this end each and every section, subsection, provision, clause and phrase of this article is declared to be severable. This article is in addition to and not dependent upon other articles of this Code.

(Ord. 08-17. Passed 6-3-08.)