



Office of the City Clerk

The City of Morgantown

Linda L. Little, CMC
389 Spruce Street, Room 10
Morgantown, West Virginia 26505
(304) 284-7439 Fax: (304) 284-7525
llittle@cityofmorgantown.org

AGENDA
MORGANTOWN CITY COUNCIL
COMMITTEE OF THE WHOLE
September 30, 2014
7:00 p.m.

NOTE: Committee of the Whole Meetings of the Morgantown City Council are intended to provide an opportunity for the Council to receive information, ask questions, and identify policy options in an informal setting. No official action is taken at these meetings. At this Committee of the Whole Meeting the following matters are scheduled:

PRESENTATIONS:

1. Main Street Morgantown Presentation to Non-Profits
2. Sunnyside Up Report
3. Museum Commission
4. Munimetrix-Paperless Office Solutions
5. WVLTAP to present City with an Award
6. Urban Landscape Public Safety Building Plaza Design
7. Airport Update
8. Public Portion

ITEMS FOR DISCUSSION:

1. Sewer Rate Ordinance
2. Industrial Waste Ordinance
3. Resolution for Coopers Rocks
4. Airport Protection Overlay District
5. Traffic Commission Workshops
6. Proposed Tax Increment Financing District

If you need an accommodation contact us at 284-7439

MEMORANDUM

TO: City Council
Jeff Mikorski, City Manager

FROM: Timothy L. Ball, General Manager, MUB

DATE: September 24, 2014

SUBJECT: **TWO ORDINANCES
COUNCIL COMMITTEE OF THE WHOLE MEETING INFORMATION
September 30, 2014**

This will serve as a read ahead to help you prepare for the meeting. If you have any questions please feel free to contact me.

Attached are two ordinances. Each is a minor revision to existing language, and is described below. They are in draft form for the COW, and we are working with your staff to put them into final form, hopefully for your consideration in the October Council meetings.

I will attend the Council Committee of the Whole meeting, and will be happy to provide any further explanation that you may desire.

Sewer Rate Ordinance - You recently (at MUB's request) approved a sewer rate Ordinance to enact certain surcharges on the Sunshine Estates area. One of those surcharges was a transportation fee of \$0.25 per thousand gallons, to be paid by MUB to the Deckers Creek PSD. As part of its review of our application for a Certificate of Convenience and Necessity, the Public Service Commission ruled that the transportation fee should be increased to \$0.74 per thousand gallons. MUB, DCPSD, and the potential customers at Sunshine Estates have all agreed to the PSC's revision.

The proposed Sewer Rate Ordinance enacts the change described above. It also makes an inconsequential change to the wording of the delayed payment penalty in Schedule 5; that change is proposed for the sake of achieving uniform language for all similar schedules described throughout the existing Ordinance.

The proposed Ordinance makes no change to any other sewer rate.

Industrial Waste Ordinance - The Industrial Waste Ordinance regulates the discharge of industrial wastes. It imposes numeric limits for the maximum allowable concentration of certain pollutants that industrial users may discharge to our sewer system. This is in accordance with the NPDES permit held by MUB for the discharges from our wastewater treatment plant to the Monongahela River.

As part of the renewal of MUB's NPDES permit, the DEP made certain changes to the limits applicable to MUB's discharge. Accordingly, it is necessary for MUB to revise the limits applicable to its industrial users. The proposed ordinance removes the limit on Nickel, and it reduces (tightens) the limit on Mercury from 0.07 lbs per day to 0.03 lbs per day. We have communicated these proposed changes to the permittees to whom they will apply, and we have received no protests. In addition, it is our assessment that these limits will be achievable by our permittees without undue difficulty.

The proposed ordinance also includes several modest updates to the fees that MUB is allowed to charge the permittees. Labor rates are proposed be increased from \$65 per hr to \$75 per hr, and existing permit fees are proposed to be made non-refundable.

We respectfully request that both Ordinances be advanced to your official Council agenda, and be approved and enacted.

CITY OF MORGANTOWN

AN ORDINANCE AMENDING SECTION 925.03 OF THE CITY OF MORGANTOWN'S STREETS, UTILITIES AND PUBLIC SERVICES CODE BY SETTING FORTH THE RATES, FEES AND CHARGES FOR SERVICE TO CUSTOMERS OF THE SEWERAGE SYSTEM OF THE CITY OF MORGANTOWN.

THE COUNCIL OF THE CITY OF MORGANTOWN HEREBY ORDAINS: The following rules, rates and charges are hereby fixed, determined and established for municipal sewerage services provided to all general domestic, commercial, industrial and resale users and customers of the City of Morgantown's Municipal Sewage Treatment Plant and Collection System, commencing upon the effective date as hereinafter provided, and in accordance with the following Rates and Schedules:

SECTION 1 – TARIFF

923.03 RATE SCHEDULES

The following schedules of rates, fees, charges, delayed payment penalty charges, service connection charges, reconnection charges and opening or transferring account charges are hereby fixed and determined as the rates, fees, charges, delayed payment penalty charges, service connection charges, reconnection charges and opening or transferring account charges to be charged to consumers of the sewer works system of the City throughout the entire territory served.

SCHEDULE NO. 1

(a) Applicable to entire territory served, except that served by Cheat Lake Wastewater Treatment Plant, the former Canyon Public Service District, and the former Scott's Run Public Service District. Effective for bills rendered on or after July 1, 2014 except as otherwise noted.

- (1) Availability of service. Available for sanitary sewer service.
- (2) Rate. Based upon the metered amount of water supplied.

Gallons Used

First 60,000 per month,	or 120,000 bi-monthly	\$4.66 per 1,000 gallons
All Over 60,000 per month,	or 120,000 bi-monthly	\$4.00 per 1,000 gallons

- (3) Minimum Charge.
- | | |
|------------|---------|
| Per month | \$ 4.66 |
| Bi-monthly | \$ 9.32 |

(4) Tap fee. The following charges are to be made whenever the utility installs a new tap to serve an applicant. A tap fee of one hundred dollars (\$100.00) will be charged to customers applying for service before construction is completed adjacent to the customer's premises in connection with a certificate proceeding before the Commission. This pre-construction tap fee will be invalid after the completion of construction adjacent to an applicant's premises that is associated with a certificate proceeding. A tap fee of seven hundred dollars (\$700.00) will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap system.

(5) Delayed payment penalty. The above tariff is net. On all current usage billings not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is only to be collected once for each month where it is appropriate.

(6) Reconnection charge. A fee of fifteen dollars (\$15.00) during Utility Board regular working hours and twenty-five dollars (\$25.00) after hours shall be charged whenever the service is disconnected for violation of rules, nonpayment of bills, or fraudulent use of water. No such charge shall be assessed if the customer has paid a water reconnection charge for the same reconnection.

(7) Leak adjustment. 0.396 per M gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible water leakage on the customers of the meter. This rate shall be applied to all such unusual consumption above the customer's historical average usage.

(8) Sunshine Estates Debt Service Surcharge. Applicable only to customers in the Sunshine Estates area: \$32.00 per month per customer, or \$64.00 bi-monthly per customer. This surcharge will be evaluated annually and in the event that a change in the number of customers results in a five percent (5%) change in the rate, the rate will be adjusted.

(I) (9) Sunshine Estates DCPSD Transportation Surcharge. Applicable only to customers in the Sunshine Estates area: ~~\$0.25~~ \$0.74 per 1,000 gallons.

(10) The surcharges described immediately above shall become effective forty-five (45) days after enactment, or as soon thereafter as the same may be approved by the Public Service Commission of West Virginia; and upon completion of the Sunshine Estates Sewer Project.

(I) Indicates Increase

(11) **Returned Check Charge.** A service charge of \$20.00 will be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.

SCHEDULE NO. 2

(b) **Applicable to territory served by Cheat Lake Wastewater Treatment Plant.**
Effective for bills rendered on or after July 1, 2014.

- (1) **Availability of service.** Available for sanitary sewer service.
- (2) **Rate.** Based upon the metered amount of water supplied.

Gallons Used			
First	2,000 per month	or 4,000 bi-monthly	10.85 per 1,000 gallons
Next	8,000 per month	or 16,000 bi-monthly	9.92 per 1,000 gallons
Next	20,000 per month	or 40,000 bi-monthly	9.30 per 1,000 gallons
Next	30,000 per month	or 60,000 bimonthly	8.68 per 1,000 gallons
Next	940,000 per month	or 1,880,000 bi-monthly	7.44 per 1,000 gallons
All Over	1,000,000 per month	or 2,000,000 bi-monthly	6.82 per 1,000 gallons

- (3) **Minimum Charge.**
 - A. Per month 21.70
 - B. Bimonthly 43.40

(4) **Tap fee.** A fee of seven hundred dollars (\$700.00) will be charged for new customers connecting to the sewerage system.

(5) **Delayed Payment Penalty.** The above tariff is net. On all current usage billings not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is only to be collected once for each month where it is appropriate.

(6) **Reconnection Charge.** A fee of fifteen dollars (\$15.00) during Utility Board regular working hours and twenty-five dollars (\$25.00) after hours shall be charges whenever the service is disconnected for violation of rules, nonpayment of bills, or fraudulent use of water. No such charge shall be assessed if the customer has paid a water reconnection charge for the same reconnection.

(7) **Leak Adjustment.** \$1.404 per M gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible water leakage on the customer's side of the meter. This rate shall be applied to all such unusual consumption above the customer's historical average usage.

(8) Returned Check Charge. A service charge of \$20.00 will be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.

SCHEDULE NO. 3

(c) Applicable to territory served by Star City Wastewater Treatment Plant, and delivered by other systems. Effective for bills rendered on or after January 1, 2012.

(1) Availability of service. Available for sanitary sewer service to other systems.

(2) Rates. All wastewater from other systems will be treated at the approved rate of \$1.50 per 1,000 gallons.

SCHEDULE NO. 4

(d) Applicable to the former Canyon Public Service District service area. Effective for bills rendered on or after July 1, 2014.

(1) Availability of service. Available for sanitary sewer service.

(2) Rates. (Customers with metered water supply)

Service Charge	\$8.50 per month, or \$17.00 bi-monthly
Usage Charge	\$8.67 per 1,000 gallons

(3) Minimum Charge. No minimum bill will be rendered for less than the following based on meter size:

Meter Size	Minimum Charge
5/8"	\$25.84 per month, or \$51.68 bi-monthly
1 1/2"	\$125.78 per month, or \$251.56 bi-monthly
2"	\$201.02 per month, or \$402.04 bi-monthly

(4) Flat Rate Charge. Customers with non-metered water supply \$25.84 per month, or \$51.68 bi-monthly.

(5) Tap fee. The following charges are to be made whenever the utility installs a new tap to serve an applicant. A tap fee of one hundred dollars (\$100.00) will be charged to customers applying for service before construction is completed adjacent to the customer's premises in connection with a certificate proceeding before the Commission. This pre-construction tap fee will be invalid after the completion of construction adjacent to an applicant's premises that is associated with a certificate proceeding. A tap fee of seven hundred dollars (\$700.00) will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap system.

(6) Delayed payment penalty. The above tariff is net. On all current usage billings not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is only to be collected once for each month where it is appropriate.

(7) Disconnection charge. Whenever water service has been disconnected for non-payment of sewer bills in conjunction with a water service termination agreement with the Cheat View Public Service District, a disconnection fee of \$15.00 shall be charged or in the event the delinquent sewer bill is collected by Cheat View Public Service District, an administrative fee of \$15.00 shall be charged.

Whenever water service, which has been previously disconnected or otherwise withheld for non-payment of a sewer bill in conjunction with a water service termination agreement with Cheat View Public Service District, is reconnected, a reconnection fee of \$15.00 shall be charged.

(8) Leak adjustment. \$0.396 per 1,000 gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible water leakage on the customer's side of the meter. This rate shall be applied to all such unusual consumption above the customer's historical average usage.

(9) Returned Check Charge. A service charge of \$20.00 will be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.

SCHEDULE NO. 5

(e) Applicable to the former Scott's Run Public Service District service area. Effective forty-five (45) days after enactment, or as soon thereafter as the same may be approved by the Public Service Commission of West Virginia; and upon acquisition of the Scott's Run Public Service District.

(1) Availability of service. Available for sanitary sewer service.

(2) Rates. (Customers with metered water supply)
Service Charge \$8.50 per month, or \$17.00 bi-monthly
Usage Charge \$8.53 per 1,000 gallons

(3) Flat Rate Charge. (Customer with non-metered water supply)
Equivalent to 4,000 gallons water usage, \$42.62 monthly, or
Equivalent to 8,000 gallons water usage, \$85.24 bi-monthly

(4) Delayed payment penalty. The above ~~schedule~~ tariff is net. On all ~~accounts~~ current usage billings not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is ~~to be collected~~ only to be collected once for each bill where it is appropriate.

(5) Tap fee. The following charges are to be made whenever the utility installs a new tap to serve an applicant. A tap fee of one hundred dollars (\$100.00) will be charged to customers applying for service before construction is completed adjacent to the customer's premises in connection with a certificate proceeding before the Commission. This pre-construction tap fee will be invalid after the completion of construction adjacent to an applicant's premises that is associated with a certificate proceeding. A tap fee of seven hundred dollars (\$700.00) will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap system.

(6) Disconnect/Reconnect/Administrative Fees. Whenever water service has been disconnected for non-payment of sewer bills in conjunction with a water service termination agreement with Pleasant Valley Public Service District, a disconnection fee of \$20.00 shall be charged or in the event the delinquent sewer bill is collected by Pleasant Valley Public Service District, an administrative fee of \$20.00 shall be charged.

Whenever water service, which has been previously disconnected or otherwise withheld for non-payment of a sewer bill in conjunction with a water service termination agreement with Pleasant Valley Public Service District, is reconnected, a reconnection fee of \$20.00 shall be charged.

(7) Returned Check Charge. A service charge of \$20.00 will be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.

(8) Leak adjustment. 0.396 per 1,000 gallons of water is to be used when a bill reflects unusual water consumption which can be attributed to eligible leakage on customer's side of meter. This rate shall be applied to all consumption above the customer's historical average usage.

The rates, charges and penalties provided herein shall become effective July 1, 2014 or as soon thereafter as the same may be approved by the Public Service Commission of West Virginia.

SECTION 2 – EFFECTIVE DATE

The rates, charges and penalties provided herein shall become effective July 1, 2014 or as soon thereafter as the same may be approved by the Public Service Commission of West Virginia.

SECTION 3 – SEVERABILITY; REPEAL OF CONFLICTING ORDINANCES

The provisions of this Ordinance are severable, and if any clause, provision or section hereof shall be held void or unenforceable by the Public Service Commission of West Virginia or any court of competent jurisdiction, such holding shall not affect the remainder of this Ordinance. Upon the effective date hereof, all ordinances, resolutions, orders or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflicts, hereby repealed, and to the extent that the provisions of this Ordinance do not touch upon the provisions of prior ordinances, resolutions, orders or parts thereof, the same shall remain in full force and effect.

SECTION 4 – STATUTORY NOTICE AND PUBLIC HEARING

Upon introduction hereof, the City Clerk shall cause to be published a copy of this Ordinance in the *Dominion Post*, a qualified newspaper of general circulation in the City of Morgantown, and said notice shall state that this Ordinance has been introduced, and that any person interested may appear before the City Council on October 21, 2014, at 7:00 p.m., which date is not less than five (5) days after the date of the publication of the Ordinance and notice, and present any comment or protest thereto, following which hearing, Council shall take such action as it shall deem proper. Copies of this Ordinance shall be available to the public for inspection at the office of the City Clerk, City of Morgantown, Morgantown, West Virginia.

First Reading: _____

MAYOR

Second Reading
and Public Hearing: _____

CITY CLERK

Filed: _____

Recorded: _____

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTIONS 923.06 AND 923.13 OF ITS STREETS, UTILITIES AND PUBLIC SERVICES CODE, AS THE SAME APPLIES TO INDUSTRIAL WASTES DISCHARGED INTO THE SEWER SYSTEM AND ANCILLARY SERVICES REGARDING INDUSTRIAL WASTES.

The City of Morgantown hereby ordains that Sections 923.06 and 923.13 of its Streets, Utilities and Public Services Code is amended as follows (new matter underlined, deleted matter struck through):

923.06 POLLUTANT LIMITATIONS.

(a) The General Manager is authorized to establish local Limits pursuant to 40 CFR 403.5(c)

(b) Limitations for specific pollutants of concern that may cause pass through, inhibition or cause a degradation of sludge quality have been developed by the Board for specific pollutants of concern. The limits are derived from a mass basis and are allocated on a mass proportion basis to each individual industrial user. The Board also reserves the right to convert mass allocations to concentration based permit limitations and to impose limitations as monthly average, daily maximum, or instantaneous maximum limitations. The Board may derive daily maximum limits by applying a factor of approximately 1.5 to the monthly average limits. Specific limitations for any individual industrial user are delineated in the user's contribution permit.

The following specific total pollutant mass limitations are available to industrial users. These total pollutant mass limitations are monthly average limits. Individual mass limitations are fractional amounts of the listed totals and are proportionally based on the individual industry's contributions. Pollutants not listed may be regulated by the industry's specific wastewater contribution permit.

Cadmium	0.11 lbs./day
Total Chromium	0.90 lbs./day
Copper	2.30 lbs./day
Cyanide	1.60 lbs./day
Lead	1.10 lbs./day
Mercury	0.07 0.03 lbs./day
Nickel	3.60 lbs./day
Silver	2.30 lbs./day
Zinc	6.30 lbs./day
Arsenic	0.28 lbs./day

(c) The General Manager may develop Best Management Practices (BMPs), by ordinance or in individual wastewater discharge permits to implement Local Limits and the requirements of Section 923.04.

(Ord. 11-21, Passed 6-7-11.)

923.13 FEES.

(a) Purpose. It is the purpose of this section to provide for the recovery of costs from users of the City's wastewater disposal system for the implementation of the programs established herein.

(b) Charges and Fees. The City hereby adopts the following charges and fees associated with sampling, analysis, monitoring, inspections and surveillance procedure, which shall be payable to the Board:

(1) For reimbursement of costs of setting up and operating the City's pretreatment program: ~~\$65.00~~ \$75.00 per man-hour

(2) For monitoring, inspection and surveillance procedures: ~~\$65.00~~ \$75.00 per man-hour;

(3) For reviewing accidental/slug discharge procedures and construction: ~~\$65.00~~ \$75.00 per man-hour;

(4) For sampling and analysis, each individual permitted user shall reimburse the Board for the actual cost incurred;

(5) For wastewater contribution permit: \$500.00 (non-refundable);

(6) For filing appeals to the Board: \$300.00;

(7) For consistent removal by the City of pollution not otherwise subject to Federal pretreatment standard:

$C_i = V_o V_i = B_o B_i + S_o S_i$

C_i - charge to industrial users per year.

Vo - average unit cost of transport and treatment chargeable to volume, in dollars per gallon

Vi - volume of wastewater from industrial users, in gallons per year

Bo - average unit cost of treatment, chargeable to Biochemical Oxygen Demand (BOD), in dollars per pound.

Bi - weight of BOD from industrial users, in pounds per year.

So - average cost of treatment (including sludge treatment) chargeable to total solids, in dollars per pound.

Si - weight of total solids from industrial users in pounds per year.

These fees relate solely to the matters covered by this article and are separate from all other fees chargeable by the City.

(Ord. 11-21. Passed 6-7-11.)

First Reading: _____

MAYOR

Second Reading: _____

CITY CLERK

Filed: _____

Recorded: _____

RESOLUTION

Support of Recreation Within the Forks of Scott Run-Pisgah Project at Coopers Rock State Forest

WHEREAS, *Morgantown residents of all ages and income levels enjoy activities such as hiking, hunting, trail running, mountain biking, cross-country skiing, and other outdoor recreational activities permitted at Coopers Rock State Forest; and*

WHEREAS, *active outdoor recreation contributes substantially to health and quality of life; and*

WHEREAS, *the West Virginia Department of Commerce's 2008 Statewide Comprehensive Recreation Plan (SCORP) Survey found that among West Virginians, "walking, hiking, or jogging was the consistent top choice for daily or frequent recreation by all age groups, as well as the top preferred activity by younger residents"; and*

WHEREAS, *a key to Morgantown's future growth as a knowledge-based economy depends on its ability to attract and retain young educated professional people, and opportunities for outdoor recreation help attract and retain young educated professionals at very low expense; and*

WHEREAS, *the mission statement in the Division of Forestry's Guidelines for Managing West Virginia's Seven State Forests includes multiple uses of the forest including 'developed and undeveloped outdoor recreation' and aesthetic preservation' among others; and*

WHEREAS, *the DOF's recently re-proposed Forks of Scott Run-Pisgah (FSRP) Project includes no substantial recreation plan with the exception of unmaintained logging skid roads that may be accessed by the public at the conclusion of the project; and*

WHEREAS, *public input regarding this project both at the DOF's public tour and through written comment letters show that unmaintained skid roads designed for logging operations do not constitute a suitable recreational environment; and*

WHEREAS, *the DOF's Guidelines further specifies the integration of public comments into its development of its seven state forests; and*

WHEREAS, *the DOF originally proposed the FSRP Project in 2012, cancelled the Project, and then re-proposed the same Project in 2014 without any known integration of the public comments received in 2012; and*

WHEREAS, *the DOF's Guidelines further specify that "up to 25 percent of the revenue generated from the sale of forest products on State Forests is returned to the State Forest system for the enhancement of the overall forest environment, including recreation, wildlife resources, conservation, education, forest fire prevention, and watershed protection; and*

WHEREAS, *the FSRP Project includes no documented plan for the reinvestment on Coopers Rock State Forest of up to 25 percent of the revenue generated from the sale of forest products; and*

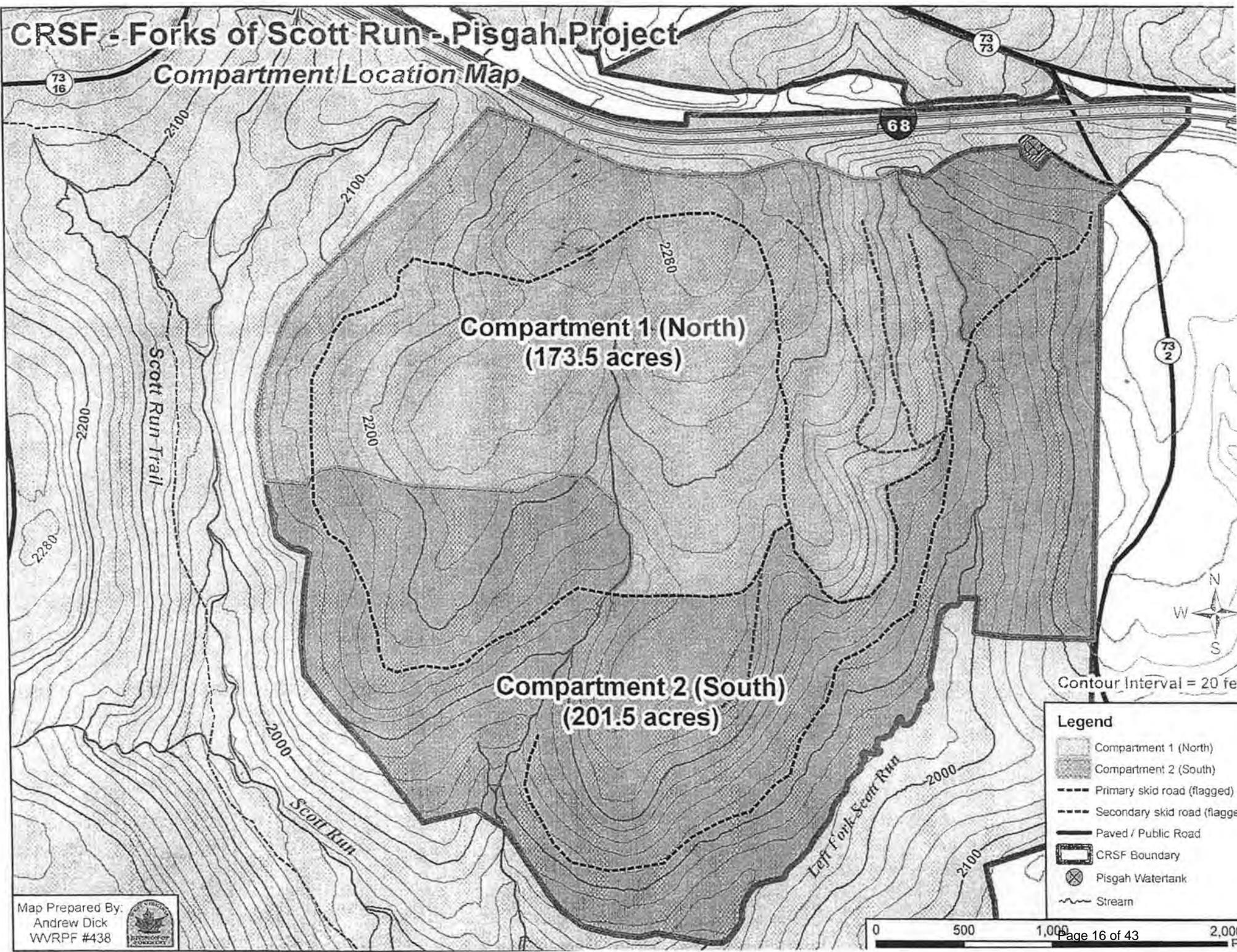
WHEREAS, *several of the facilities at Coopers Rock State Forest are in severe decline, including the only restroom that is available for free to the public and which is closed to the public during the winter months; and*

WHEREAS, *the Morgantown community would benefit greatly from dedicated, official recreational trails within the FSRP Project, from the re-investment of revenue generated by the Project into upgrading facilities such as the addition of a new restroom, and from the inclusion of public comments into the FSRP development plan; and*

NOW, THEREFORE, *be it resolved on this _____ day of October, 2014, that Morgantown City Council asks that the West Virginia Division of Forestry revise its Forks of Scott Run-Pisgah Project in order to develop a credible recreation plan by working with recreational experts, local residents, the Coopers Rock State Forest Recreational Advisory Committee, and local organizations such as the Coopers Rock Foundation.*

CRSF - Forks of Scott Run - Pisgah Project

Compartment Location Map



Map Prepared By:
Andrew Dick
WRPF #438



- Legend**
- Compartment 1 (North)
 - Compartment 2 (South)
 - Primary skid road (flagged)
 - Secondary skid road (flagged)
 - Paved / Public Road
 - CRSF Boundary
 - Pisgah Watertank
 - Stream

Mark L. McKoy
1217 Laurel Run Road
Bruceeton Mills, WV 26525

Sep. 2, 2014

Ms. Barbara A. Breshock
State Lands Manager
330 Harper Park Drive, Suite J
Beckley, WV 25801

Dear Ms. Breshock,

I hereby submit comments on the recently issued "Coopers Rock State Forest, Forks of Scott Run – Pisgah Project, Silvicultural Prescription & Overview for Multiple Use Management."

The Coopers Rock State Forest is the most frequently visited State Forest in West Virginia. It is used by both in-state and out-of-state visitors and is recognized as a valuable economic asset of the State and of the Morgantown region. It is a recreational area that makes the Morgantown region more attractive as a place to live or visit. Because this State Forest serves the purposes of a State Park, it should be treated as such. To this end, I strongly encourage the West Virginia Division of Forestry (WVDoF) to seek public input on this issue and all significant issues surrounding this State Forest.

The *Guidelines for Managing West Virginia's Nine State Forest* (2013) acknowledges that State Forests are to serve multiple purposes but also that "it is difficult to achieve an optimum mix of uses by managing every acre on every forest for every use. Optimum use can better be achieved by providing the full range of multiple uses over the entire State Forest system while setting aside unique areas (perhaps for a single use)." This guidance allows for recognition of the role of Coopers Rock State Forest among all of the State's Forests and the role it plays in State and local tourism and recreation. More to the point, this guidance compels WVDoF to recognize Coopers Rock State Forest for its roles and to further cultivate this Forest for its highest values. Such recognition, and further cultivation, would dictate that logging be done either in small clear cuts (generally much less than 100 acres) and/or in selective tree harvesting while leaving most of the forest intact. The value of this particular State Forest -- direct and indirect, tangible and intangible -- should be given full weight and balanced against the purported benefit of logging at the scale proposed, before deciding to go forward with the current prescription. Generally, people do not engage in recreational activities and tourism in large clear-cut areas or in heavily logged areas. Therefore, I most strongly encourage WVDoF to reconsider its plans for larger-scale logging operations and to adopt plans more consistent with the values and best uses of the Coopers Rock State Forest.

The management in the Coopers Rock State Forest south of I-68 should be considered in the regional context, especially regarding forest activities in Coopers Rock State Forest on the north side of I-68 (a.k.a. "WVU Forest"). There is on-going and relatively extensive logging in the State Forest north of I-68. This includes a recent clear-cut directly across I-68 and Route 73 from the currently proposed

prescription. Given this, bird species that prefer emergent or new succession vegetation would not gain much benefit from the proposed prescription. Along Chestnut Ridge, there are areas of logging and early succession forest such that the proposed prescription does not add to regional habitat diversity and biodiversity.

On the other end of the spectrum of forest succession habitats, there is scarcely any virgin forest and little old growth forest to support species that benefit from or require this type of habitat. The Guidelines state that currently 8 percent of the 63,000 acres of State Forests are old growth and/or mature forests. The Guidelines note that these areas are mostly in protected riparian areas and buffer areas. This means that there are no large blocks of this forest type. There are species of wildlife that benefit from or require old growth forest. I have attached photographs of one such species, the Northern subspecies of Pileated Woodpeckers, which benefit greatly from old growth forests. The attached photos show Northern subspecies Pileated Woodpeckers on a wood pile at the edge of my yard and about 250 feet from the Coopers Rock State Forest on the north side of I-68. I have had very few sightings of these large birds during the 13 years that I have owned property here. I spend significant amounts of time bird watching and photographing birds, and I can attest to the rare occurrence of these Northern subspecies Pileated Woodpeckers in this area (Please note that the bird counts are mostly based on bird sounds and are not reliable or useful for distinguishing the various species of woodpeckers, much less the subspecies and varieties).

Furthermore, logging on State land seems to reduce the demand for timber from private holdings and reduce the prices that private land owners, like me, can get for trees. Logging on State lands has an adverse economic impact on me.

WVDoF should give strong consideration to restoration of original forests to at least some areas. I have read that Chestnut Ridge had forest dominated by Beech and Chestnut trees at the time of the first European settlements. Whether true or not, Coopers Rock State Forest would be an ideal place to plant a small area with blight-resistant chestnut trees. Perhaps the WVDoF's own nursery stocks could supply a small planting effort. This effort should include other species of trees with the goal of recreating the dominant native forest within a small area. This would more appropriately fulfill the research and demonstration goals as stated within the Guidelines.

I noticed that the Guidelines (p. 11) prohibit "clear cutting" in State Forests. Although currently proposed activities are not described as "clear cutting" in the prescription, most logging during recent years would be best described as "clear cutting". Again, I urge WVDoF to change its prescription to permit 90 percent-plus harvesting only in small areas (preferably smaller than 20 acres) and selective harvesting of less than 30 percent of the trees larger than 6-inches DBH elsewhere.

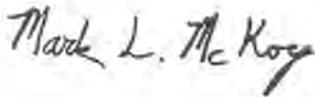
A few other points should be addressed:

- Revenue from timber sales probably does not cover all the costs directly incurred by the State before, during and after the logging event. This information is not readily available to the public but should be.

- WVDoF should publish detailed responses to comments submitted during the previous (and every) comment period on the timber sale. Failure to do so raises questions about whether WVDoF has seriously considered and attempted to address comments submitted by the public. It also raises questions about whether WVDoF is truly working in the best interest of the public or whether it is working in the best interest of certain industry-connected groups.
- The prescription lauds multiple benefits of the proposed logging but makes almost no mention of potential adverse impacts or dismisses such impacts by stating that best management practices (BMPs) would be used to mitigate impacts. Balanced, objective and fair descriptions of the benefits and impacts should be presented in forest management prescriptions. Mitigation measures, along with the enforcement mechanisms, should be described so that readers know what is proposed and what is likely to happen.
- All prescriptions for timbering activities should be consistent with an overarching plan for management of Coopers Rock State Forest. The current prescription fails to mention any such plan from which the current proposal is tiered. The current prescription should appropriately tier from the 2006 Forest Resources Management Plan.
- In one place the draft prescription mentions a "1996 WVDOF CRSF Timber Resources Management plan". If this plan is the intended reference, it should be linked into the webpage where the current draft prescription is posted.

For the reasons stated above, I request the WVDoF to reconsider and change the currently proposed prescription and then re-issue the revised prescription for public review and comment.

Sincerely,



Mark L. McKoy
Environmental Manager & Geologist, local resident





Northern Pileated Woodpecker (*Dryocopus pileatus abieticola* {Northern Subspecies}) eating carpenter ants on a pile of decaying wood. The northern subspecies is substantially larger than the southern subspecies. They are not common in this region. Photos by Mark L. McKoy, taken 2012.



MEMORANDUM

Date: THU, 25 SEP 2014

To: Jeff Mikorski, City Manager.....via email
Linda Little, City Clerk.....via email

RE: City Council Committee of the Whole Agenda – 30 SEP 2014
RZ14-07 / Administrative / Airport Overlay District

During its 11 SEP 2014 hearing, the Planning Commission voted unanimously to forward a recommendation to City Council to APPROVE the above referenced administratively requested Zoning Map Amendment petition to create the "Airport Overlay District."

Since the Planning Commission's 11 SEP action, we have consulted with Matthew DiGiulian, Manager of the Federal Aviation Administration's (FAA) Airports District Office (ADO) in Beckley, West Virginia. Mr. DiGiulian advised that no revisions were recommended.

Additionally, Baker International, LLC finalized the "Official Supplementary Airport Overlay District Zoning Map," which has been included in the ordinance creating the "Airport Overlay District."

It is important to note that two (2) ordinances are necessary to implement the "Airport Overlay District" – one (1) ordinance creating the overlay district and one (1) ordinance amending the definition of "Overlay District" so that land uses permitted within a base or underlying zoning district can be regulated by an overlay district. The later ordinance is necessary to protect the Airport's Runway Protection Zone (RPZ).

Attached herewith are the related ordinances and the Staff Report presented to the Planning Commission, which provides background, Staff analysis, and recommendations. Please note that the "Official Supplementary Airport Overly District Zoning Map" should be printed in color on 11" x 17" sized paper. Additionally, the Staff Report and its addenda should be printed in color.

The following dates will keep to standard Planning and Zoning Code map and text amendment protocol:

- City Council Committee of the Whole TUE, 30 SEP 2014
- City Council First Reading..... TUE, 07 OCT 2014
- City Council Public Hearing and Second Reading..... TUE, 04 NOV 2014

Please include this item on the City Council meeting agendas noted above and include this communication and attachments in the 30 SEP Committee of the Whole meeting packet. Only the ordinances themselves should be necessary to include in the packets for the First and Second Reading meetings.

Thank you.

Digitally signed by Christopher M. Fletcher, AICP
Date: 2014.09.25 08:36:16 -04'00'



MORGANTOWN PLANNING COMMISSION

September 11, 2014
6:30 PM
City Council Chambers

President:

Peter DeMasters, 6th Ward

Vice-President:

Carol Pyles, 7th Ward

Planning Commissioners:

Sam Loretta, 1st Ward

Tim Stranko, 2nd Ward

William Blosser, 3rd Ward

Bill Petros, 4th Ward

Mike Shuman, 5th Ward

Ken Martis, Admin.

Bill Kaweck, City Council

STAFF REPORT

CASE NO: RZ14-07 / Administrative / Airport Overlay District

REQUEST and LOCATION:

Administratively requested Zoning Map Amendment to create an Airport Overlay District that considers safety issues and prevents hazards in proximity to the Morgantown Municipal Airport for the purpose of protecting public health, public safety and general welfare and the region served by the Morgantown Municipal Airport.

BACKGROUND and ANALYSIS:

The Morgantown Municipal Airport (MGW) is the only airport in the State of West Virginia that is owned and operated by a municipality. MGW contains approximately 610 acres and is classified by the Federal Aviation Administration (FAA) as a commercial service airport with more than 10,000 enplanements (passenger boardings) per year and non-stop service to and from Washington-Dulles International Airport.

MGW serves as a crucial regional transportation infrastructure asset, international gateway, and economic development advantage serving general, commercial, corporate, institutional, and military aviation needs and opportunities.

To ensure the sustainability and economic vitality of MGW, the City, has aggressively initiated a commitment to extend runway 18/36 from 5,199 feet in length to 6,200 feet. This substantial capital improvement is included in the 2012 Morgantown Municipal Airport Master Plan Update and is projected to result in an investment of \$30.5 million and be completed by 2020.

The City of Morgantown, as the sponsor for MGW, is obligated to make a number of assurances to the FAA annually including the protection of the operations of air navigation facilities and the safe and efficient use of navigable air space. Additionally, the FAA expects airport sponsors to take all possible measures to protect against and remove or mitigate incompatible land uses in proximity to airports.

Any community attempting to promote land-use compatibility around local airports should address four key issues: safety, airspace protection, noise compatibility, and intergovernmental coordination.

Safety Compatibility

The goal of safety compatibility planning should be to reduce the consequences of accidents for those in the aircraft and those on the ground. Safety compatibility areas or zones surrounding an airport are based on an FAA-approved Airport Layout Plan (ALP) and locational pattern of aircraft accidents where location, proximity, and height are relative. The configuration of safety zones reflects local airport operation variables and the local terrain. Some of these considerations include:

- Common approach and departure paths;

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Department**

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



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Bill Kawecky, City Council

- Local air traffic pattern;
- Variations in the type of aircraft using particular runways;
- Aircraft activity forecasts, especially if the character of traffic using a runway is expected to change over time;
- The Airport Master Plan, especially if new runways or runway extensions are planned; and,
- Topography in the airport environs, especially if it influences aircraft flight routes or rises significantly under predominant flight tracks.

Land-use standards considered within airport safety areas often include:

- Building densities or lot coverage to provide opportunities for safe, forced landings;
- Land uses attracting large numbers of people to reduce the risk of harm from accidents to people on the ground;
- Hazardous land uses, such as the storage of hazardous chemicals, explosives, or flammable materials that could greatly increase the harm from an accident;
- Uses that can obscure visibility and compromise low-altitude air navigation, such as those attracting wildlife or producing large quantities of smoke or water vapor; and,
- Critical public utilities or facilities that could compromise public safety if they were severely damaged or destroyed in an aircraft accident.

Airspace Protection

Federal law requires the FAA to manage the national airspace and establish safe air navigation procedures. One of the FAA's duties is to undertake aeronautical studies of the height of structures to determine whether they may become hazards to air navigation. Because the FAA has no local land-use regulatory power, it is the responsibility of the local government to restrict proposed construction considered a hazard.

If the local government is unable or unwilling to restrict development from becoming a hazard, the FAA can modify the published visibility minimums at the airport or, in some cases, even redesign airspace and alter air traffic control procedures to ensure safe air navigation. These modifications and airspace redesigns resulting from unregulated hazards degrade the utility of the airport by removing sections of airspace from use and/or increase the risk of flight diversions during poor weather, or even the loss of service by some carriers.

Noise Compatibility

Airport noise and land-use compatibility planning is one aspect of the airport land-use interface with widely recognized guidelines and criteria, and with a sizable body of experience.

Federal Aviation Regulations (FAR) Part 150, Airport Noise Compatibility Planning, describe procedures for airport operations to observe in developing airport noise compatibility plans and provides land-use compatibility guidelines. The guidelines describe many sensitive land uses that are not compatible with noise levels above DNL

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65 dBA (a day-night average sound level of 65 decibels). Noise compatibility planning is a component of airport master planning.

The 2012 Morgantown Municipal Airport Master Plan Update provides that MGW's noise impact zone is contained within MGW property, with the exception at the ends of the runway. However, the noise impact zone areas at the ends of MGW runway 18/36 are contained within the Runway Protection Zone (RPZ) where land-use restrictions should be the most stringent to protect life and property on the ground. As such, airport noise and land-use compatibility planning is not presently a policy concern for MGW.

Intergovernmental Coordination

MGW is located at the edge of Morgantown's corporate limits, creating the need for intergovernmental coordination for successful airport vicinity land-use planning and regulation to reduce the consequences of accidents for those in the aircraft and those on the ground.

An approach used in several states is to empower the airport operator, if it is a governmental entity, to enact extraterritorial zoning authority throughout the area impacted by the airport. This permits the jurisdiction operating the airport to regulate land use, within specified limits, even if the property is in another jurisdiction. Typically the extraterritorial zoning authority can only be exercised for airport land-use compatibility purposes.

Unfortunately, West Virginia is not a state that grants this very limited authority for municipalities to protect areas surrounding airports. Moreover, legislation has not been established in West Virginia for municipalities or counties to enact local airport land-use compatibility regulations without having to undertake a full comprehensive plan and zoning ordinance under West Virginia State Code Chapter 8A "Land Use Planning."

Fortunately, Monongalia County has enacted zoning regulations within the West Run Planning District and appears positioned to grow the geographic area for zoning regulations. However, the current West Run Planning District does not include unincorporated portions of the County surrounding MGW.

The Office of the City Manager is working closely with the Monongalia County Commission to close this airport land-use compatibility regulatory gap with the hope that the Airport Overlay District ordinance presented herein can be used as a model to achieve a cohesive regional land use regulatory approach to protecting life, property, and the future of the MGW.

Airport Overlay District

West Virginia State Code §8A-7-2-b provides that a zoning ordinance may include:

"(13) Designating an airport area and establishing land-use regulations within a specific distance from the boundaries of the airport."

Attached hereto is a draft ordinance creating an "Airport Overlay District." The ordinance was prepared with the support of the Office of the City Manager and reviewed by

**Development Services
Department**

Christopher Fletcher, AICP
Director

Planning Division

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Michael Baker International, LLC. Baker International provides on-call consulting services for the Morgantown Municipal Airport.

The proposed Airport Overlay District establishes a number of "imaginary" surfaces or "Airport Zones" following FAR Part 77 standards. Figures 1 through 4 in Addendum A of this report provide general illustrations of these three-dimensional "imaginary" surfaces.

Figure 5 generally illustrates the two-dimensional outlines of the "imaginary" surfaces in relation to the ground. The geometry of the overlay district illustrated in Figure 5 will be used to finalize the "Official Supplementary Airport Overlay District Zoning Map," which will appear similar to the example provided by Figure 6.

It is important to reiterate that the proposed Airport Overlay District can only be administered and enforced within the corporate limits of Morgantown and that the Office of the City Manager is working with the Monongalia County Commission to operationalize these regulations within the unincorporated areas of the County.

The proposed Airport Overlay District establishes, within applicable "Airport Zones," height restrictions, FAA notification requirements, standards for review of variances, and land use restrictions.

"Overlay District"

The definition of "Overlay District" that is provided in Article 1329.02 of the Planning and Zoning Code restricts overlay districts from affecting the land uses that may or may not be permitted in the base or underlying zoning district.

Because the proposed Airport Overlay District includes use restrictions, the conflict must be addressed by modifying the definition of "Overlay District" as proposed below (deleted matter struck through; new matter underlined).

1329.02 DEFINITION OF TERMS.

For the purpose of this ordinance, the following words and phrases shall have the meaning respectively prescribed to them by this section. If not defined herein, or within other sections of this ordinance, terms used in this ordinance shall have the meanings provided in any standard dictionary or American Planning Association publication as determined by the Planning Director.

~~OVERLAY DISTRICT – A zoning district that extends on top of a base zoning district and is intended to protect certain critical features and resources. Unlike with a planned unit development, overlay districts govern only development standards. The uses permitted in the underlying zoning district remain the same. An area where certain additional requirements are superimposed upon a base zoning district or underlying zoning district and where the requirements of the base or underlay district may or may not be altered. Where the standards of the overlay and base or underlying zoning district are different, the more restrictive standards shall apply.~~

FAA Consultation

Baker International advised Staff to consult with Matthew DiGiulian, Manager of the FAA Airport District Office (ADO) in Beckley, West Virginia by requesting his review and comment prior to final enactment of the ordinance creating the "Airport Overlay District."

Development Services Department

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Director

Planning Division

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ADO comments are not anticipated in time for the Planning Commission's 11 SEP 2014 hearing. However, Assistant City Manager Glen Kelly respectfully requests that the Planning Commission consider the Planning and Zoning Code amendments presented herein with the understanding that minor modifications may be necessary and can be addressed by City Council.

STAFF RECOMMENDATION:

Staff advises the Planning Commission to submit a recommendation to City Council to:

1. Amend the definition of the term "Overlay District" in Article 1329.02 of the Planning and Zoning Code as presented herein so overlay districts may affect land uses that may or may not be permitted in the base or underlying zoning district;
2. Create an Airport Overlay District as presented herein; and,
3. Amend the official zoning map of the City of Morgantown by establishing the "Official Supplementary Airport Overlay District Zoning Map" accordingly.

Additionally, Staff respectfully requests that City Council, with the Planning Commission's faith and understanding, may revise the draft Airport Overlay District ordinance attached hereto in response to consultation with the FAA Airport District Office in Beckley, West Virginia and finalize the "Official Supplementary Airport Overlay District Zoning Map" prior to enactment.

**Development Services
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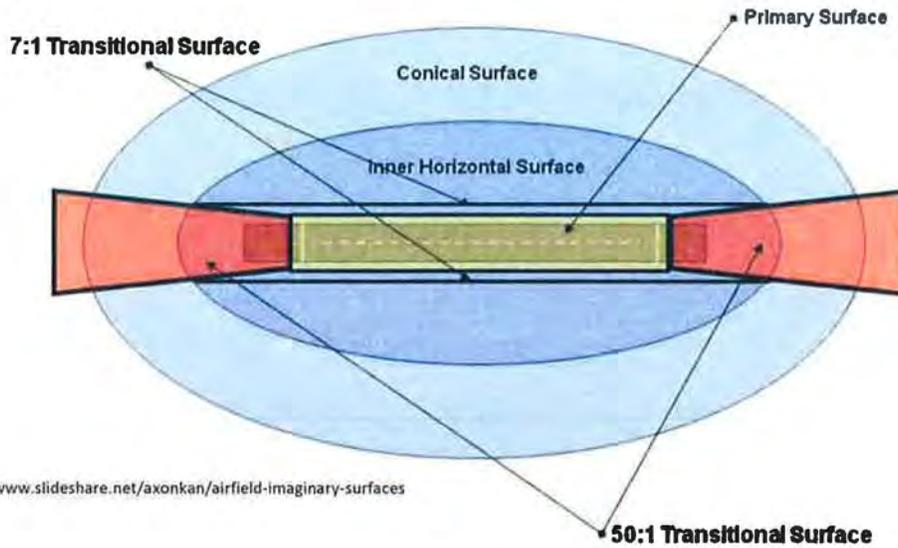
Christopher Fletcher, AICP
Director

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STAFF REPORT ADDENDUM A
RZ14-07 / Administrative / Airport Overlay District

Figure 1



Source - <http://www.slideshare.net/axonkan/airfield-imaginary-surfaces>

Figure 2

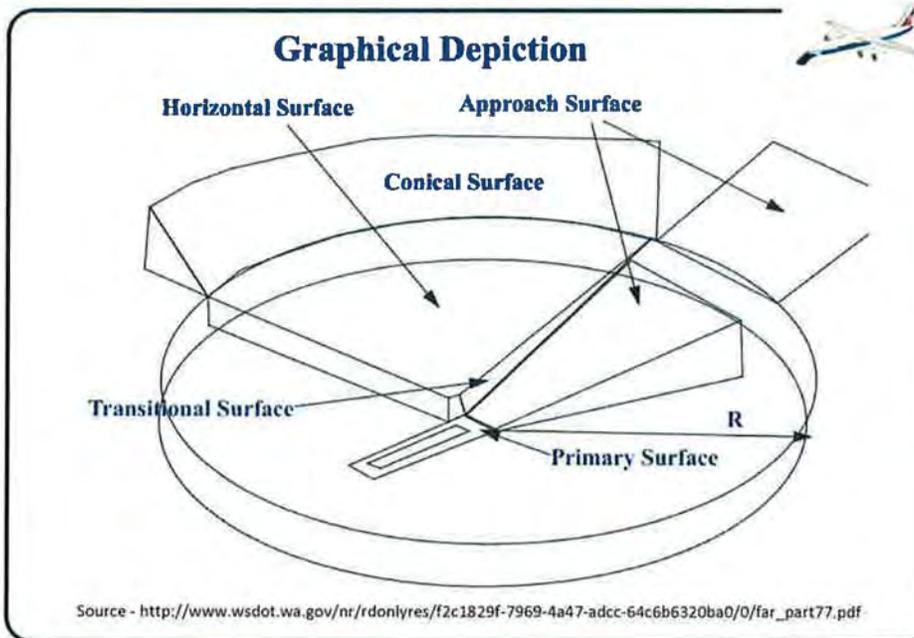


Figure 3

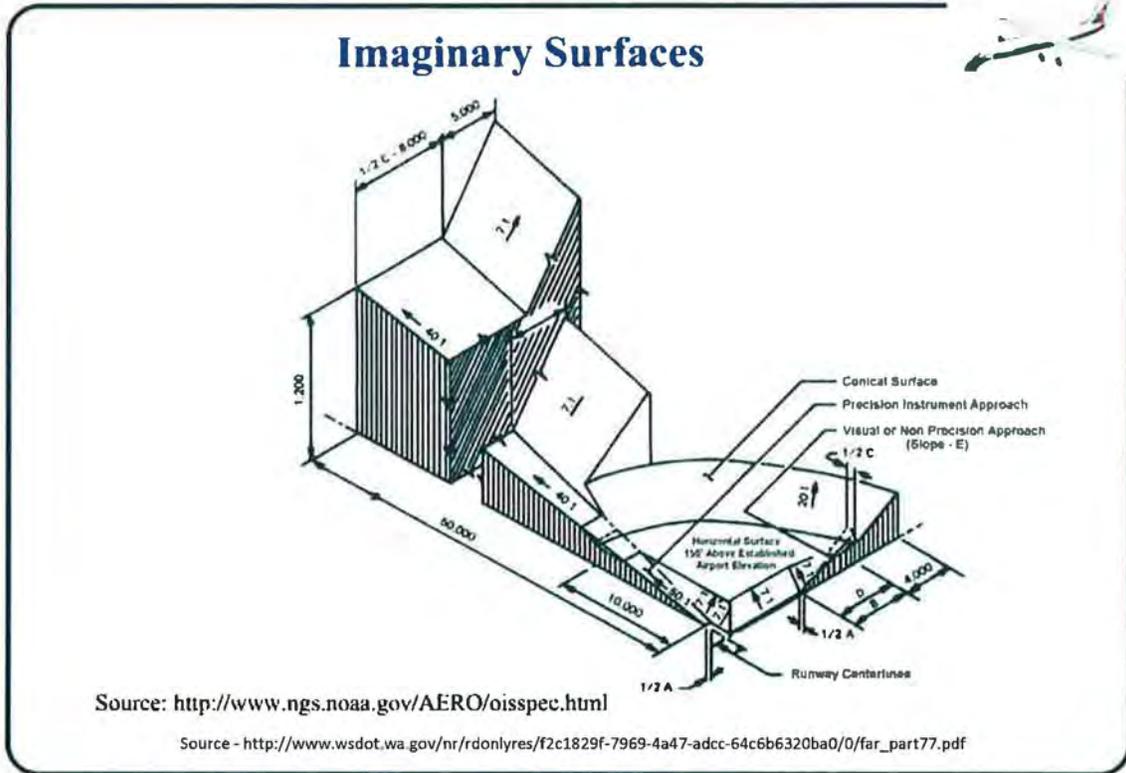
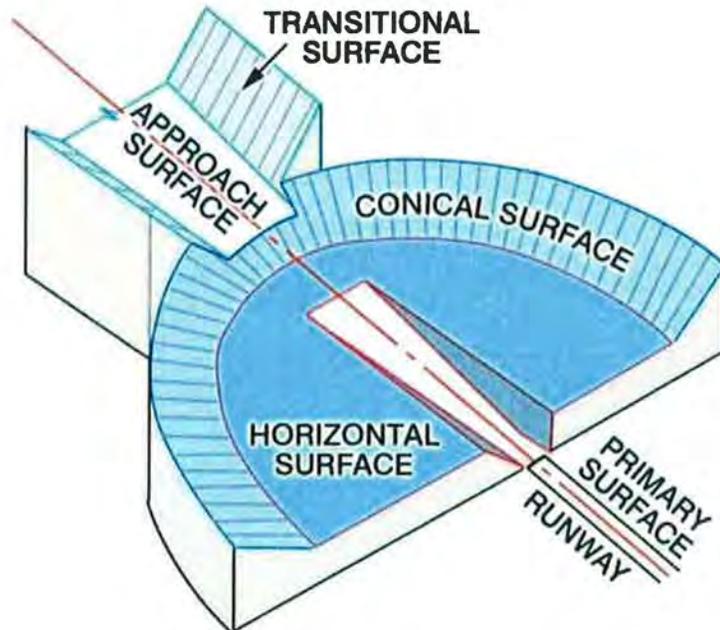
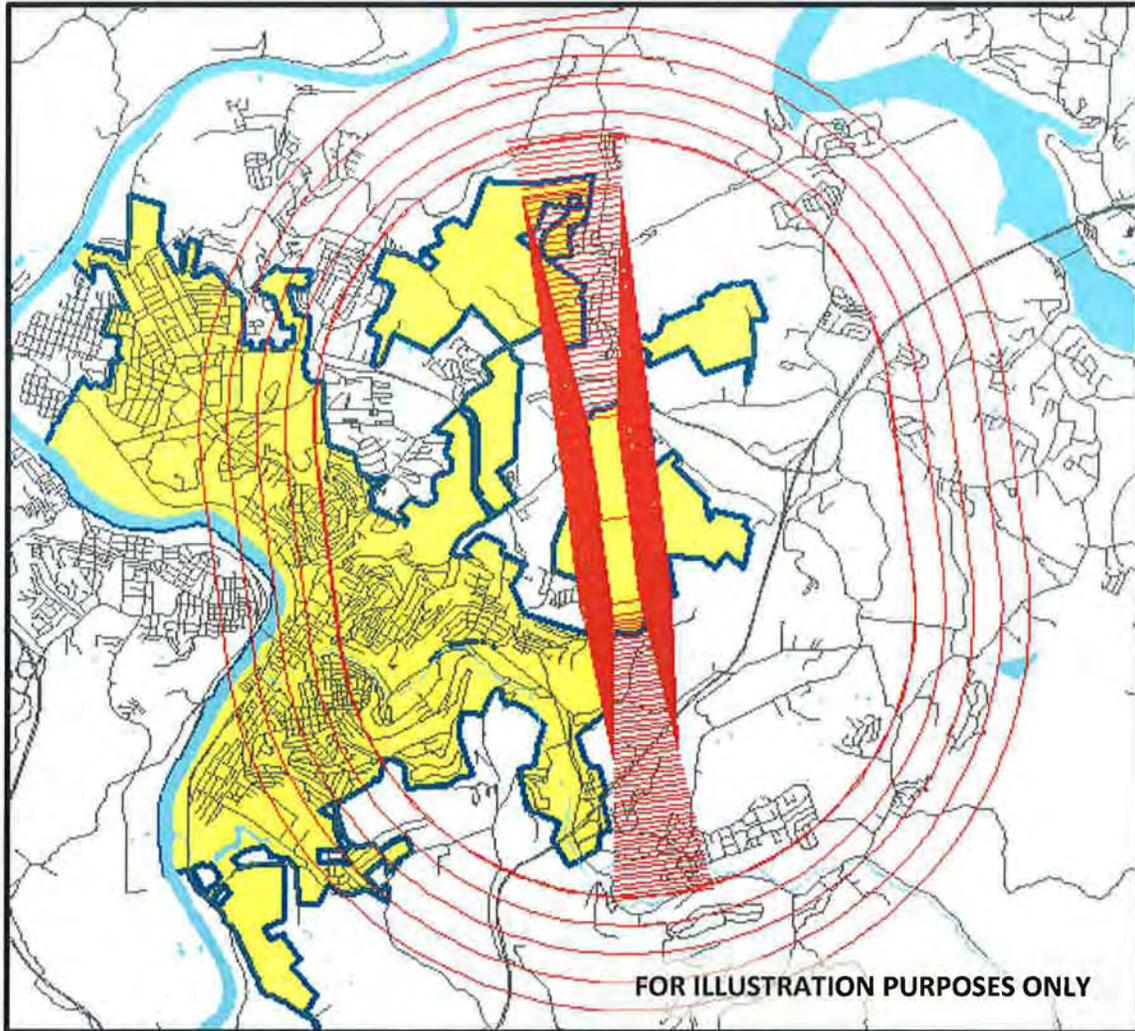


Figure 4



Source - <http://www.slideshare.net/axonkan/airfield-imaginary-surfaces>

Figure 5



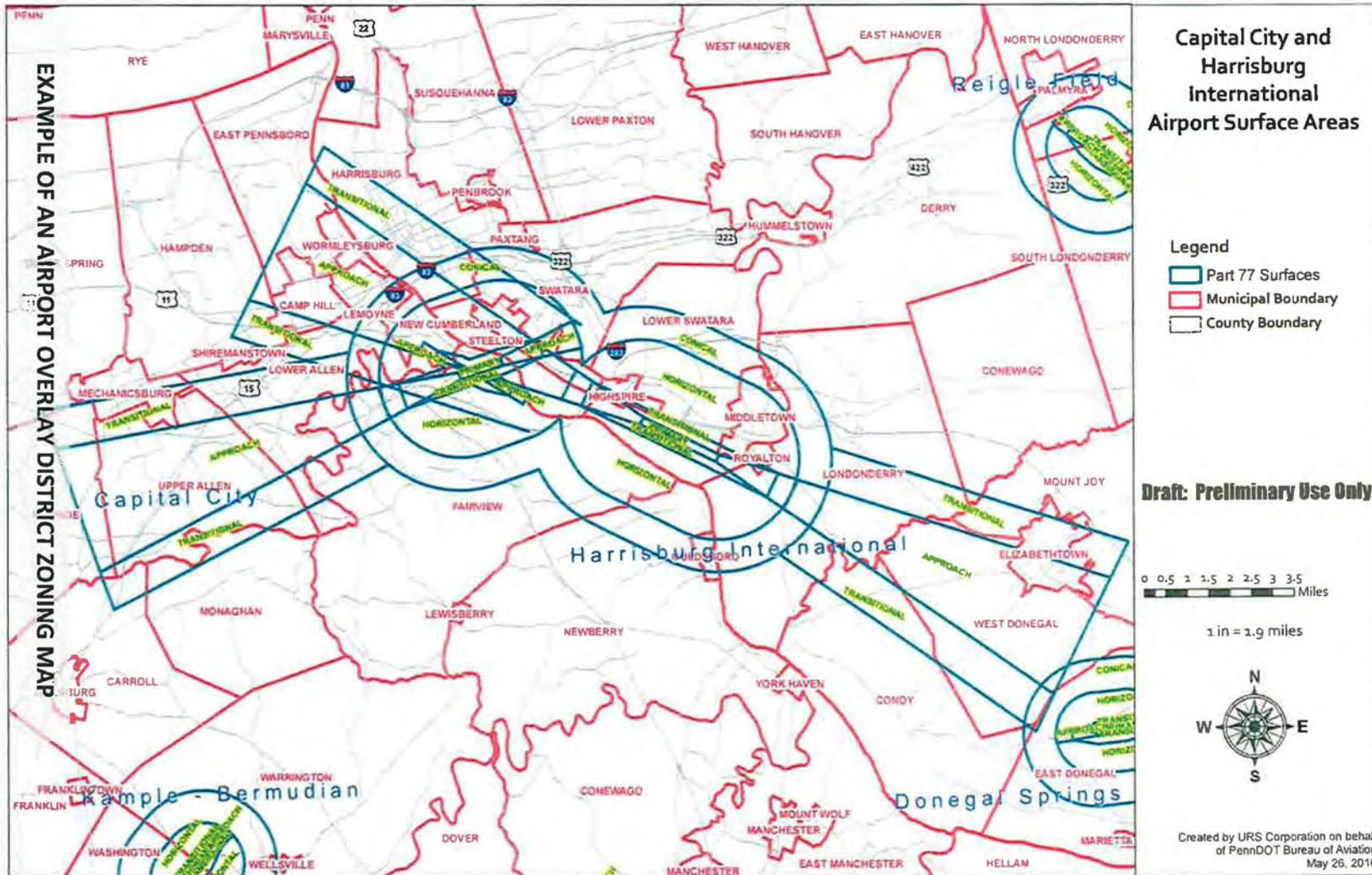


Figure 6

ORDINANCE NO. _____

AN ORDINANCE TO CREATE AN "AIRPORT OVERLAY DISTRICT" THAT CONSIDERS SAFETY ISSUES AROUND THE MORGANTOWN MUNICIPAL AIRPORT (MGW) TO INCLUDE: RESTRICTING HEIGHTS OF ESTABLISHED USES, CONSTRUCTED STRUCTURES AND OBJECT OF NATURAL GROWTH WITH SAID OVERLAY DISTRICT; CREATING A PERMITTING PROCESS RELATED THERETO WITH SAID OVERLAY DISTRICT; AND, AMENDING THE OFFICIAL ZONING MAP BY ADOPTING AN OFFICIAL SUPPLEMENTARY AIRPORT OVERLAY DISTRICT ZONING MAP.

WHEREAS, certain airport hazards, as defined, in effect reduce the size of the area available for landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of the Morgantown Municipal Airport and the public investment therein; and

WHEREAS, the creation or establishment of an airport hazard, as defined, is a public nuisance and may injure the region served by the Morgantown Municipal Airport; and

WHEREAS, it is necessary in the interest of public health, public safety and general welfare that the creation or establishment of airport hazards, as defined, be prevented; and

WHEREAS, the prevention of these airport hazards, as defined, should be accomplished, to the extent legally possible, by the exercise of police power without compensation; and

WHEREAS, both the prevention of the creation or establishment of airport hazards, as defined, and the elimination, removal, alteration, mitigation or marking and lighting of existing airport hazards, as defined, are public purposes for which political subdivisions may raise and expend public funds and acquire land or interests in land.

NOW, THEREFORE BE IT ORDAINED that a new Article 1360 of the Planning and Zoning Code is created as follows (new matter underlined):

ARTICLE 1360 AIRPORT OVERLAY DISTRICT

- 1360.01 Application.
- 1360.02 Purpose and Intent.
- 1360.03 Relation to Other Zone Districts.
- 1360.04 Definitions.
- 1360.05 Establishment of Airport Zones and Height Limitations.
- 1360.06 Height Restrictions.
- 1360.07 Variance from Height Restrictions.
- 1360.08 Use Restrictions.

1360.09 Pre-existing Non-conforming Uses.

1360.10 Obstruction Marking and Lighting.

1360.11 Violations and Penalties.

1360.12 Appeals.

1360.13 Conflicting Regulations.

1360.14 Severability.

1360.01 APPLICATION.

(A) The regulations and standards contained within this Airport Overlay Districts shall apply to the:

- (1) Erection of a new structure; and/or,
- (2) Addition to or increase in the height of an existing structure; and/or,
- (3) Establishment, erection, and/or maintenance of any use, structure, or object (natural or manmade), within the Airport Overlay District.

(B) The application of this Airport Overlay District shall be limited to the corporate limits of the City of Morgantown.

1360.02 PURPOSE AND INTENT

(A) The purpose and intent of this Airport Overlay District are to:

- (1) Create an overlay district that considers safety issues around the Morgantown Municipal Airport (MGW).
- (2) Regulate and restrict the heights of established uses, constructed structures, and objects of natural growth.
- (3) Create a permitting process for certain uses, structures, and objects within said related zones.

1360.03 RELATION TO OTHER ZONING DISTRICTS.

(A) This Airport District Overlay shall not modify the boundaries of any underlying zoning district or any other overlay district. Where identified, the Airport Overlay District shall impose certain requirements on land use, construction and development in addition to those contained in the applicable underlying zoning district and/or applicable overlay zoning district for the same area.

1360.04 DEFINITIONS.

The following words and phrases when used in Article 1360 shall have the meaning given to them in this section unless the context clearly indicates otherwise.

AIRPORT – MORGANTOWN MUNICIPAL AIRPORT (MGW) – Any area of land or water which is used, or intended to be used, for the landing and takeoff of aircraft and any appurtenant areas which are used, or intended to be used, for airport buildings or air navigation facilities for rights-of-way, together with all airport buildings and facilities thereon.

AIRPORT ELEVATION – The highest point of an airport's useable landing area measured in feet above sea level. The airport elevation of the Morgantown Municipal Airport (MGW) is 1,248 feet above mean sea level.

AIRPORT HAZARD – Any structure or object, natural or manmade, or use of land which obstructs the airspace required for flight or aircraft in landing or taking off at an airport or is otherwise hazardous as defined in 14 CFR Part 77.

AIRPORT HAZARD AREA – Any area of land or water upon which an airport hazard might be established if not prevented as provided for in this Airport Overlay District.

AIRPORT LAYOUT PLAN (ALP) – An FAA approved plan that shows: 1) Boundaries and proposed additions to all areas owned or controlled by the sponsor for airport purposes; 2) The location and nature of existing and proposed airport facilities and structures; and, 3) The location on the airport of existing and proposed non-aviation areas and improvements thereon.

AIRPORT NOISE IMPACT ZONE – A rectangular shape defined by utilizing the longest existing or planned runway at the airport. This zone is established by offsetting the runway centerline a distance half the length of the longest existing or planned runway in all directions, i.e. from the sides and from the ends of each runway.

APPROACH SURFACE (ZONE) – An imaginary surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface. An approach surface is applied to each end of the runway based on the planned approach. The inner edge of the approach surface is the same width as the primary surface and expands uniformly depending on the planned approach. The approach surface zone, as shown on the Official Supplementary Airport Overlay District Zoning Map, is derived from the approach surface.

CFR – Code of Federal Regulations.

CONICAL SURFACE (ZONE) – An imaginary surface extending outward and upward from the periphery of the horizontal surface at a slope of twenty (20) feet horizontally to one (1) foot vertically for a horizontal distance of 4,000 feet. The conical surface zone, as shown on the Official Supplementary Airport Overlay District Zoning Map, is based on the conical surface.

DECISION HEIGHT (DH) – Is a specified height above the ground in an instrument approach procedure at which the pilot must decide whether to initiate an immediate missed approach if the pilot does not see the required visual reference, or to continue the approach. Decision height is expressed in feet above ground level.

EDUCATIONAL FACILITY RESTRICTION ZONE – An area extending along the centerline of any runway and measured from the end of the runway and extending for a distance of five (5) miles and having a width equal to one-half of the runway length.

FAA – Federal Aviation Administration of the United States Department of Transportation.

HEIGHT – For the purpose of determining the height limits in all zones set forth in this Airport Overlay District and shown on the Official Supplementary Airport Overlay District Zoning Map, the datum shall be mean sea level elevation unless otherwise specified.

HORIZONTAL SURFACE (ZONE) – An imaginary plane 150 feet above the established airport elevation that is constructed by swinging arcs of various radii from the center of the end of the primary surface and then connecting the adjacent arc by tangent lines. The radius of each arc is based on the planned approach. The horizontal surface zone, as shown on the Official Supplementary Airport Overlay District Zoning Map, is derived from the horizontal surface.

LARGER THAN UTILITY RUNWAY – A runway that is constructed for and intended to be used by propeller driven aircraft of greater than 12,500 pounds maximum gross weight and jet powered aircraft.

MINIMUM DESCENT ALTITUDE (MDA) – Is the lowest altitude specified in an instrument approach procedure, expressed in feet above mean sea level, to which descent is authorized on final approach or during circle-to-land maneuvering until the pilot sees the required visual references for the heliport or runway of intended landing.

MINIMUM OBSTRUCTION CLEARANCE ALTITUDE (MOCA) – Is the lowest published altitude in effect between radio fixes on VOR airways, off-airway routes, or route segments, which meets obstacle clearance requirements for the entire route segment and which ensures acceptable navigational signal coverage only within 25 statute (22 nautical) miles of a VOR.

NONCONFORMING USE – Any pre-existing structure, object of natural growth, or use of land which is inconsistent with the provisions of this Airport Overlay District or an amendment thereto.

NON-PRECISION INSTRUMENT RUNWAY – A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in non-precision instrument approach procedure has been approved or planned.

OBSTRUCTION – Any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth by this Airport Overlay District.

PRECISION INSTRUMENT RUNWAY – A runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS) or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated on an approved airport layout plan or any other planning document.

PRIMARY SURFACE (ZONE) – An imaginary surface longitudinally centered on the runway, extending 200 feet beyond the end of paved runways or ending at each end of turf runways. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The primary surface zone.

as shown on the Official Supplementary Airport Overlay District Zoning Map, is derived from the primary surface.

RUNWAY – A defined area of an airport prepared for landing and takeoff of aircraft along its length.

RUNWAY PROTECTION ZONE (RPZ) – An area, trapezoidal in shape and centered about the extended runway centerline, designated to enhance the safety of aircraft operations and the safety and protection of people and property on the ground. The RPZ for Runway 18 begins 200 feet beyond the runway end. The inner width is 1,000 feet centered on the extended runway centerline extending to an outer width of 1,750 feet. The length of the Runway 18 RPZ is 2,500 feet. The RPZ for Runway 36 begins 200 feet beyond the runway end. The inner width is 1,000 feet centered on the extended runway centerline extending to an outer width of 1,510 feet. The length of the Runway 36 RPZ is 1,700 feet.

STRUCTURE – An object, including a mobile object, constructed or installed by man, including but without limitation, buildings, towers, cranes, smokestacks, earth formation and overhead transmission lines.

TRANSITIONAL SURFACE (ZONE) – An imaginary surface that extends outward and upward from the edge of the primary surface to the horizontal surface at a slope of seven (7) feet horizontally to one (1) foot vertically (7:1). The transitional surface zone, as shown on the Official Supplementary Airport Overlay District Zoning Map, is derived from the transitional surface.

TREE – Any object of natural growth.

UTILITY RUNWAY – A runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 pounds maximum gross weight or less.

VISUAL RUNWAY – A runway intended solely for the operation of aircraft using visual approach procedures.

1360.05 ESTABLISHMENT OF AIRPORT ZONES.

There are hereby created and established certain zones within the Airport Overlay District, which are based on the FAA-approved Airport Layout Plan (ALP) for the Morgantown Municipal Airport (MGW). Said zones are defined in Section 1360.04 and, with exception of the Educational Facility Restriction Zone, illustrated on the Official Supplementary Airport Overlay District Zoning Map, hereby adopted as part of this Airport Overlay District, which include:

- (A) Airport Noise Impact Zone.
- (B) Approach Surface Zone.
- (C) Conical Surface Zone.
- (D) Educational Facility Restriction Zone.
- (E) Horizontal Surface Zone.
- (F) Primary Surface Zone.

- (G) Runway Protection Zone.
- (H) Transitional Surface Zone.

1360.06 HEIGHT RESTRICTIONS.

- (A) The owner of any proposed construction and/or alteration within this Airport Overlay District shall comply with the provisions of 14 CFR Part 77 Subpart B by filing a Notice of Construction or Alteration (FAA Form 7460-1, as amended or replaced) with the FAA. Construction and/or alteration includes the:
 - (1) Erection of a new structure; and/or,
 - (2) Addition to or increase in the height of an existing structure; and/or,
 - (3) Establishment, erection and/or maintenance of any use, structure, or object (natural or manmade).
- (B) Prior to the issuance of any building permit within this Airport Overlay District, the applicant shall submit documentation to the City demonstrating compliance with the federal requirement for notification of the proposed construction or alteration, a valid aeronautical evaluation, and a copy of the FAA's determinations to said notification.
- (C) If the FAA returns a determination of no penetration of protected airspace, the building permit request shall be considered in compliance with the intent of this Airport Overlay District. If the FAA returns a determination of a penetration of protected airspace, the permit shall be denied, and the applicant may seek a variance from such regulations as outlined in Section 1360.07.
- (D) Exceptions. In the following circumstances, the filing of a Notice of Construction or Alteration with the FAA within the Airport Overlay District shall not be required:
 - (1) To make maintenance repairs to or to replace parts of existing structures which do not enlarge or increase the height of an existing structure.
 - (2) Within the Primary Surface, Approach Surface, and Transitional Surface Zones, when construction and/or alteration of a structure is below 1,248 feet above mean sea level.
 - (3) Within the Horizontal Surface and Conical Surface Zones, when the construction and/or alteration of a structure is below 1,398 feet above mean sea level.
- (E) In addition to the height restrictions of this Airport Overlay District, no structure or obstruction shall be permitted within the corporate limits of the City of Morgantown that would cause a Minimum Obstruction Clearance Altitude, a Minimum Descent Altitude, or a decision height to be raised.

1360.07 VARIANCE FROM HEIGHT RESTRICTIONS.

- (A) In addition to provisions set forth in Article 1381 "Variances" of the City's Planning and Zoning Code, any request for a variance to the height restrictions

of this Airport Overlay District shall include documentation in compliance with 14 CFR Part 77 Subpart B.

- (B) Applicants seeking variance relief to height restrictions of this Airport Overlay District must, as a part of the variance application, submit all documentation concerning the applicant's Notice of Construction or Alteration (FAA Form 7460-1, as amended or replaced) filed with the FAA, a valid aeronautical evaluation, and the FAA's determinations to said notification.
- (C) The Board of Zoning Appeals' considerations of whether to grant a variance to the height restrictions of this Airport Overlay District must include the determinations made by the FAA as to the effect of the proposed construction and/or alteration on the operation of air navigation facilities and the safe, efficient use of navigable air space. In particular, the request for a variance shall consider which of the following categories the FAA has placed the proposed development in:
 - (1) No Objection – The subject construction and/or alteration is determined to not exceed obstruction standards and marking/lighting is not required to mitigate potential hazard. Under this determination a variance shall be granted, as it relates to relief from the height restrictions of this Airport Overlay District.
 - (2) Conditional Determination – The proposed construction and/or alteration is determined to create some level of encroachment into an airport hazard area which can be effectively mitigated. Under this determination, a variance shall be granted, as it relates to relief from height restrictions of this Airport Overlay District, contingent upon implementation of mitigating measures as described in Section 1360.10 – Obstruction Marking and Lighting and in consultation with the FAA.
 - (3) Objectionable – The proposed construction/alteration is determined to be a hazard and is thus objectionable. A variance, as it relates to relief from the height restrictions of this Airport Overlay District, shall be denied and the reasons for this determination shall be outlined to the applicant.
- (D) Such requests for variances from height restrictions of this Airport Overlay District shall be granted where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship and that relief granted will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the intent of this Airport Overlay District.

1360.08 USE RESTRICTIONS.

- (A) Notwithstanding any other provisions of this Airport Overlay District, no use shall be made of land or water within this Airport Overlay District in such a manner as to:
 - (1) Create electrical interference with navigational signals or radio communications between the airport and aircraft;
 - (2) Make it difficult for pilots to distinguish between airport lights and others;

- (3) Impair visibility in the vicinity of the airport;
- (4) Create wildlife hazards; or,
- (5) Otherwise endanger or interfere with the landing, takeoff or maneuvering of aircraft utilizing the Morgantown Municipal Airport (MGW).

(B) Runway Protection Zone (RPZ).

- (1) The following uses are permitted to enter the limits of the RPZ:
 - (a) Agricultural Activity as defined in Section 1329.02 of the Planning and Zoning Code.
 - (b) Irrigation channels, provided wildlife attractant conditions are not formed therefrom.
 - (c) Airport service roads.
 - (d) Underground facilities.
 - (e) Unstaffed NAVAIDs and associated facilities.
- (2) Prior to the granting of any approval or permit for new or modified development not included in Section 1360.08(B)(1), the City shall consult with the FAA Airports District Office to determine whether or not the land use and/or development proposed to enter the limits of the RPZ is acceptable based on a Land Use Compatibility and Alternatives Analysis. Table 1360.08.01 generally identifies development that typically requires analysis.

Table 1360.08.01: Development Typically Requiring Analysis

<ul style="list-style-type: none"> ▪ <u>Buildings and structures including, but not limited to: residences, schools, churches, hospitals or other medical care facilities, commercial/industrial buildings, etc.</u>
<ul style="list-style-type: none"> ▪ <u>Recreational land uses including, but not limited to: golf courses, sports fields, amusement parks, other places of public assembly, etc.</u>
<ul style="list-style-type: none"> ▪ <u>Transportation facilities including, but limited to: rail facilities, public roads/highways, vehicle parking facilities.</u>
<ul style="list-style-type: none"> ▪ <u>Fuel storage facilities (above and below ground).</u>
<ul style="list-style-type: none"> ▪ <u>Hazardous material storage (above and below ground).</u>
<ul style="list-style-type: none"> ▪ <u>Wastewater treatment facilities.</u>
<ul style="list-style-type: none"> ▪ <u>Above-ground utility infrastructure (i.e. electrical substations), including any type of solar panel installation.</u>

- (3) The land use compatibility and alternatives analysis shall identify and document the full range of alternatives that include:
 - (a) Avoidance of introducing the land use issue within the RPZ.
 - (b) Minimizing the impact of the land use in the RPZ (i.e., routing a new roadway through the controlled activity area, move farther away from the runway end, etc.).

- (c) Mitigating risk to people and property on the ground (i.e., tunneling, depressing and/or protecting a roadway through the RPZ, implement operational measures to mitigate any risks, etc.).
- (4) Documentation of the alternatives should include:
 - (a) A description of each alternative including a narrative discussion and exhibits or figures depicting the alternative.
 - (b) Full cost estimates associated with each alternative regardless of potential funding sources.
 - (c) A practicability assessment based on the feasibility of the alternative in terms of cost, constructability and other factors.
 - (d) Identification of the preferred alternative that would meet the project purpose and need while minimizing risk associated with the location within the RPZ.
 - (e) Identification of all Federal, State and local transportation agencies involved or interested in the issue.
 - (f) Analysis of the specific portion(s) and percentages of the RPZ affected, drawing a clear distinction between the Central Portion of the RPZ versus the Controlled Activity Area, and clearly delineating the distance from the runway end and runway landing threshold.
 - (g) Analysis of (and issues affecting) the City's control of the land within the RPZ.
 - (h) Any other relevant factors for FAA consideration.
- (5) Any new or modified development described in Table 1360.09.01 that would enter the limits of the Runway Protection Zone shall be categorized a Type III Site Plan – Major Development of Significant Impact. The land use compatibility and alternatives analysis and FAA's related response must be included with the Type III Site Plan application for it to be considered complete.
- (C) Educational Facilities. No educational facility of a public or private K-12 school shall be permitted within the Educational Facility Restriction Zone. Exceptions approving construction of an educational facility of a public or private K-12 school within the Educational Facility Restriction Zone shall only be granted when the Planning Commission makes specific findings, as a part of a Type III Site Plan for a Development of Significant Impact, detailing how the public policy reasons for allowing the construction outweigh public health and safety concerns prohibiting such a facility.
- (D) Landfills. In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Center (Ford Act) (Pub. L. No. 106-181, April 5, 2000), codified at 49 U.S.C. §40101 et seq., the construction of a new Municipal Solid Waste Landfill (MSWLFs) within six miles of the Morgantown Municipal Airport (MGW) shall be prohibited unless a waiver is granted by the FAA.
- (E) Airport Noise Impact Zone. RESERVED.

1360.09 PRE-EXISTING NON-CONFORMING USES.

- (A) The regulations prescribed by this Airport Overlay District shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations as of the effective date of this Airport Overlay District, or otherwise interfere with the continuance of a non-conforming use. No existing non-conforming use shall be structurally altered or permitted to grow higher, so as to increase the non-conformity, and a non-conforming use, once substantially abated as set forth under Article 1373 "Nonconforming Provisions" of the City's Planning and Zoning Code may only be reestablished consistent with the provisions herein.

1360.10 OBSTRUCTION MARKING AND LIGHTING.

- (A) Any permit or variance granted pursuant to the provisions of this Airport Overlay District may be conditioned according to the process described in Section 1360.07 to require the owner of the structure or object of natural growth in question to permit the municipality, at its own expense, or require the person requesting the permit or variance, to install, operate, and maintain such marking or lighting as deemed necessary to assure both ground and air safety.

1360.11 VIOLATIONS AND PENALTIES.

See Article 1393 "Violations and Enforcement" of the City's Planning and Zoning Code.

1360.12 APPEALS.

See Article 1383 "Administrative Appeals" of the City's Planning and Zoning Code.

1360.13 CONFLICTING REGULATIONS.

See Article 1327.07(B) of the City's Planning and Zoning Code.

1360.14 SEVERABILITY.

See Article 1327.07(C) of the City's Planning and Zoning Code.

This Ordinance shall be effective the date of adoption.

FIRST READING:

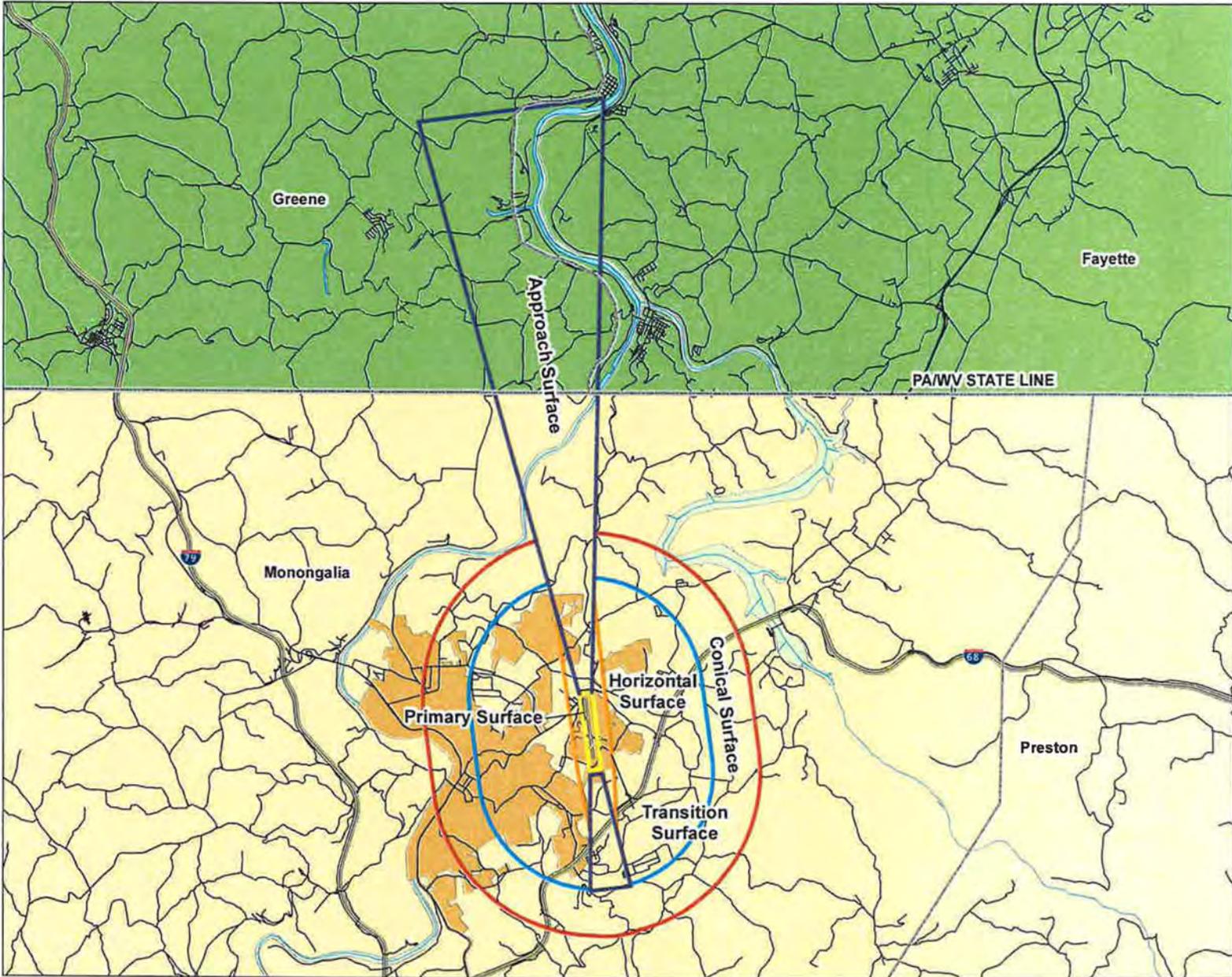
Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk



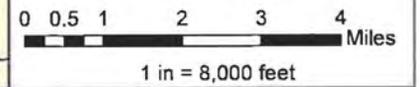
Official Supplementary
 Airport Overlay
 District
 Zoning Map

MORGANTOWN
 MUNICIPAL AIRPORT



Legend

- County Line
 - State Line
 - Morgantown Corporate Limits
 - Roads
 - Interstate Highway
 - Rivers / Streams
 - Water Bodies
- Part 77 Surfaces**
- Surface Name**
- Approach Surface
 - Conical Surface
 - Horizontal Surface
 - Primary Surface
 - Transition Surface



ORDINANCE NO. _____

AN ORDINANCE AMENDING ARTICLE 1329.02 "DEFINITION OF TERMS" OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO "OVERLAY DISTRICT."

The Morgantown City Council hereby ordains that Article 1329.02 "Definition of Terms" of the City's Planning and Zoning Code is amended as follows (deleted matter struck through; new matter underlined):

1329.02 DEFINITION OF TERMS.

For the purpose of this ordinance, the following words and phrases shall have the meaning respectively prescribed to them by this section. If not defined herein, or within other sections of this ordinance, terms used in this ordinance shall have the meanings provided in any standard dictionary or American Planning Association publication as determined by the Planning Director.

~~OVERLAY DISTRICT – A zoning district that extends on top of a base zoning district and is intended to protect certain critical features and resources. Unlike with a planned unit development, overlay districts govern only development standards. The uses permitted in the underlying zoning district remain the same. An area where certain additional requirements are superimposed upon a base zoning district or underlying zoning district and where the requirements of the base or underlay district may or may not be altered. Where the standards of the overlay and base or underlying zoning district are different, the more restrictive standards shall apply.~~

This Ordinance shall be effective the date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk