

Office of the City Clerk

# The City of Morgantown

Linda L. Tucker, CMC  
389 Spruce Street, Room 10  
Morgantown, West Virginia 26505  
(304) 284-7439 Fax: (304) 284-7525  
ltucker@morgantownwv.gov

**AGENDA**  
**MORGANTOWN CITY COUNCIL**  
**COMMITTEE OF THE WHOLE**  
**January 26, 2016**  
**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. **2016: Year to go Green: A Path to a cleaner Morgantown  
Green Team annual report to Council**
2. **Annulling of Wall Street & Trail Parking Access License Presentation by Developer**

**PUBLIC PORTION:**

**ITEMS FOR DISCUSSION:**

1. **Annulling of Wall Street & Trail Parking Access License**
2. **Ordinance amending article 1511 of the City Code relating to the Fire Prevention Board**
3. **RZ16-01 / Commercial Developers, LLC**
4. **RZ16-02 / WesBanco Bank, Inc.**
5. **Met Theatre Management and Duties of Met Commission**
6. **Ordinance accepting conveyance of rights, title and interest of Airpark, Inc.**

**\*If you need an accommodation contact us at 284-7439\***

**AN ORDINANCE VACATING, ABANDONING AND ANNULLING A PORTION OF A 13' WIDE RIGHT-OF-WAY KNOWN AS WALL STREET RUNNING A DISTANCE OF APPROXIMATELY TWO HUNDRED TWENTY-NINE FEET FROM UNIVERSITY AVENUE IN A WESTERLY DIRECTION TOWARD THE MONONGAHELA RIVER IN THE THIRD WARD OF THE CITY OF MORGANTOWN, MONONGALIA COUNTY, WEST VIRGINIA, AND PROVIDING FOR AN ACCESS AGREEMENT SERVING THE NEARBY PUBLIC RIGHT-OF-WAY.**

**WHEREAS,** It appears to the Common Council of the City of Morgantown, West Virginia, ("City") that the portion of a 13' wide right-of-way known as Wall Street running a distance of approximately two hundred twenty-nine feet from University Avenue in a westerly direction toward the Monongahela River in the Third Ward of the City of Morgantown, Monongalia County, West Virginia, and as laid down, designated and dedicated to public use as a street on a map or plat, as shown on the exhibit hereto attached as "Exhibit 1," is not useful for street purposes, is not needed for street purposes, nor for any other public uses and purposes, and

**WHEREAS,** It appears to the Common Council of the City that it is in the interests of the City of Morgantown and of the public generally that said 13' wide right-of-way known as Wall Street running a distance of approximately two hundred twenty-nine feet from University Avenue in a westerly direction toward the Monongahela River, be vacated, abandoned, and annulled as a public street within said City as stated in this Ordinance; and

**WHEREAS,** It appears to the Common Council of the City that the property of no person, firm or corporation will be injured or damaged by annulment pursuant to the conditions defined in this ordinance, and that the owners of all property abutting on said portion of Wall Street have consented to the application to the Common Council to vacate, abandon and annul the portion of said street;

**NOW, THEREFORE,** the City of Morgantown hereby ordains as follows:

Section 1. That for the reasons set forth and presented to the Common Council of the City that a 13' wide right-of-way known as Wall Street running a distance of approximately two hundred twenty-nine feet from University Avenue in a westerly direction toward the Monongahela River, as shown on the attached Exhibit 1, in the City of Morgantown, West Virginia, is hereby vacated, abandoned and annulled and from and after the date this ordinance becomes effective the same shall cease to be a public way or public street within the City of Morgantown, and the easement of the City of Morgantown therein, thereon and thereover for street purposes and any and all other public uses or purposes, is hereby vacated, abandoned and annulled, and all right, title, and interest of the City of Morgantown therein as an easement for street purposes and any and all other public uses or purposes is hereby expressly released and relinquished from and after the date this ordinance becomes effective.

Section 2. That as set forth in Section 1 of this Ordinance the easement and right-of-way of

the City of Morgantown for street purposes and any and all other public uses or purposes in, of, on and over the 13' wide right-of-way known as Wall Street running a distance of approximately two hundred twenty-nine feet from University Avenue in a westerly direction toward the Monongahela River, as shown on the attached exhibit, is vacated, abandoned, and annulled from and after the date this ordinance becomes effective.

Section 3. That the City accepts the "Access Agreement" attached hereto as "Exhibit 2" and incorporated herein by reference, providing for the pedestrian and bicycling use and enjoyment of the trails together with vehicle parking and access located within the Access Areas generally bounded by Walnut Street, the Caperton Trail, and Fayette Street, and as more particularly described in Exhibit 2

Section 4. That following the date this ordinance becomes effective the City Clerk of the City of Morgantown shall cause a duly certified copy of the ordinance to be recorded in the appropriate deed book in the office of the Clerk of the County Commission of Monongalia County, West Virginia, as evidence of the vacating, abandoning and annulling of said portion of Wall Street as shown on Exhibit 1 hereto attached, for public uses and public purposes as a public street or public way within the City of Morgantown, and said Clerk shall also file with said certified copy of said ordinance an exhibit showing the location of said street so vacated, abandoned and annulled.

To ensure that the annulment of said street does not damage or harm any private interest of any adjoining property owner and to secure the promotion of public access to the public property commonly known as Walnut Street and the Caperton Trail, this Ordinance shall be effective only upon the occurrence of the following conditions:

- (i) consolidation of the parcels identified as Tax Map 26A, Parcel 113, currently owned by Cynthia, Victor II, and Gary Solomon, and Vic's Garage, Inc.; Tax Map 26A, Parcel 11, currently owned by Sharper Industries, Inc.; Tax Map 26A, Parcel 10, currently owned by Sharper Industries, Inc.; and Tax Map 26A, Parcel 9, currently owned by Woodford Oil Company; into a single parcel; and
- (ii) execution and delivery of the Access Agreement attached hereto as Exhibit 2 and incorporated in this Ordinance by reference, providing for public access adjoining Walnut Street and the Caperton Trail.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

\_\_\_\_\_  
CITY CLERK

RECORDED:

This document prepared by:  
Ryan P. Simonton, Esq.  
389 Spruce Street  
Morgantown, WV 26505

STATE OF WEST VIRGINIA  
COUNTY OF MONONALIA, to wit:

I, \_\_\_\_\_, a Notary Public of said County, do hereby certify that  
\_\_\_\_\_, Clerk, and \_\_\_\_\_, on  
behalf of the City of Morgantown, whose names are signed to the foregoing document dated as  
of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, have this day  
acknowledged the same before me in my said County.

Given under my hand this \_\_\_\_\_, day of \_\_\_\_\_, \_\_\_\_\_.

My Commission expires \_\_\_\_\_, \_\_\_\_\_.

{SEAL}

\_\_\_\_\_  
Notary Public

**EXHIBIT 1 :  
ANNULMENT  
APPLICATION**

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between:

**ENTER PARTIES**

Landmark Properties

Parties of the first part, grantors, and THE CITY OF MORGANTOWN, West Virginia, a municipal corporation, part of the second part, grantee.

**WITNESSETH**

THAT WHEREAS, the grantors are the owners of the following lots and parcels of land, situate in the 3rd Ward of the City of Morgantown, Morgan District, Monongalia County, West Virginia.

**ENTER PARCELS**

Tax Map 26A, Parcel 13: Cynthia, Victor II, Gary Solomon, & Vic's Garage Inc.

Tax Map 26A, Parcel 11: Sharper Industries, Inc.

Tax Map 26A, Parcel 10: Sharper Industries, Inc.

Tax Map 26A, Parcel 09: Woodford Oil Company

WHEREAS, the said grantors have petitioned the Common Council of the City of Morgantown for an annulment, has filed this agreement in duplicate and have paid the required fees, the street to be annulled being:

**ENTER STREET DESCRIPTION**

Wall Street, 13-foot in width, for plus or minus 229 feet from the intersection with University Avenue (WV State Route 7 – US Highway 19) in a westerly direction toward the Monongahela River.

WHEREAS, it appears that said street is not used nor useful as a public way within the City of Morgantown, West Virginia, and is not necessary for public uses and purposes, and that the rights of the public will not be prejudiced by such an annulment, that the property of no person will be injured by the same, and that such annulment will promote public interest; and,

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That for and in consideration of the sum of One Dollar (\$1.00) cash in hand paid by each of the parties hereto to the other, and other good and valuable considerations, including the annulment of said street, the conveyance of the easements and rights of way hereinafter described, and the release and quit clam for street purposes, the parties hereto mutually covenant and agree as follows:

1. The grantors grant and conveys unto the grantee, the City of Morgantown, West Virginia, a municipal corporation, its successor municipalities or assigns, a perpetual easement and right of way for the purpose of laying, relaying, constructing, maintaining, and inspecting, storm and sanitary sewers therein or thereon with the right to make surveys and construct and maintain manholes as may be necessary or proper in, on, or through said part of said annulled public way and said grantors do also grant and convey a perpetual right of way and easement for such utility installations including gas and water mains and electric and telephone transmission lines, as shall in the judgment of said grantee, its successor municipalities or assigns, be necessary or proper for public uses and purposes in, on, over, under and through said part of said public

way so vacated abandoned and annulled. The easements and rights of ways so granted and conveyed shall be zero feet in width and located:

**ENTER DESCRIPTION**

Any existing utilities will be relocated as part of a proposed project development. See the attached documentation from the appropriate utilities.

2. It is stipulated and agreed between the parties hereto that the City of Morgantown, its successor municipalities or assigns, shall not be liable for any damages in the use of said easements and rights of way, or in the construction or maintenance of any facilities hereinabove described in, on, under, and through the easements and rights of way so granted and conveyed.

3. A map or plat showing the part of the public way so vacated, abandoned, and annulled is attached to this agreement as a part hereof and to be recorded herewith.

4. For the considerations aforesaid the said grantee, The City of Morgantown, West Virginia, hereby releases and quit claims, unto the said grantors their heirs, personal representatives and assigns, all of its easements and rights of way for street purposes in said annulled public way subject to the easements and rights of ways hereinbefore granted for sewer and public utility purposes so that the said grantors shall have that moiety or part of said public way so vacated, abandoned, and annulled which is adjacent to his/their property for his/their full use and enjoyment in fee simple, except to said sewer and public utility easements and rights of way.

5. Gary Solomon, Cynthia Solomon, + Victor Solomon hereby consent subject to the condition that annulment not occur unless or until their interests in their property are not consent

WITNESS the following signatures and seals:

**SHARPER INDUSTRIES, INC.**, a West Virginia corporation

By: Dan Shearer  
Name: Dan Shearer  
Title: President  
(SEAL)

STATE OF WEST VIRGINIA COUNTY OF MONONGALIA, to wit:

I, Cynthia Petite, a Notary Public in and for the County and State aforesaid do certify that Dan Shearer, who signed the foregoing writing bearing date the 27 day of August, 2015, as the President of Sharper Industries, Inc., a West Virginia corporation, has this day in my said County before me acknowledged the said writing to be the act and deed of said corporation.

Given under my hand and notarial seal this 27 day of August, 2015.

My commission expires October 8, 2019.



Cynthia Petite  
Notary Public

*[Signatures continue on the following page]*

Gary Solomon  
GARY SOLOMON

STATE OF WEST VIRGINIA COUNTY OF MONONGALIA, to wit:

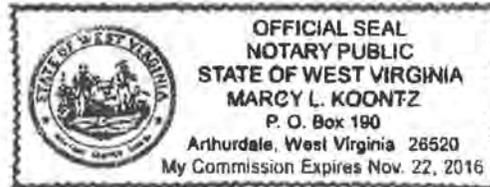
I, Marcy L. Koontz, a Notary Public in and for the County and State aforesaid do certify that Gary Solomon who signed the foregoing writing bearing date the 23rd day of September, 2015, has this day in my said County before me acknowledged the said writing to be his act and deed.

Given under my hand and notarial seal this 23rd day of September, 2015.

My commission expires 11/22/2016.

Marcy L. Koontz  
Notary Public

Cynthia Solomon  
CYNTHIA SOLOMON



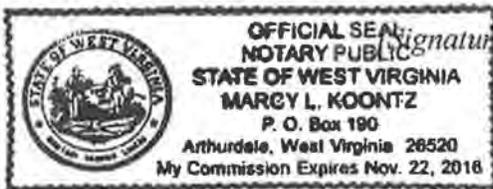
STATE OF WEST VIRGINIA COUNTY OF MONONGALIA, to wit:

I, Marcy L. Koontz, a Notary Public in and for the County and State aforesaid do certify that Cynthia Solomon who signed the foregoing writing bearing date the 23rd day of September, 2015, has this day in my said County before me acknowledged the said writing to be her act and deed.

Given under my hand and notarial seal this 23rd day of September, 2015.

My commission expires 11/22/2016.

Marcy L. Koontz  
Notary Public



*Signatures continue on the following page]*

VIC'S GARAGE, INC., a West Virginia corporation

By Victor Solomon II  
Name: VICTOR SOLOMON II  
Title: President  
(SEAL)

STATE OF WEST VIRGINIA COUNTY OF MONONGALIA, to wit:

I, Jo Marie Bowers, a Notary Public in and for the County and State aforesaid do certify that Victor Solomon II, who signed the foregoing writing bearing date the 25<sup>th</sup> day of September, 2015, as the President of Vic's Garage, Inc., a West Virginia corporation, has this day in my said County before me acknowledged the said writing to be the act and deed of said corporation.

Given under my hand and notarial seal this 25<sup>th</sup> day of September 2015.

My commission expires July 5, 2020



Jo Marie Bowers  
Notary Public

Victor Solomon II  
VICTOR SOLOMON, II

STATE OF WEST VIRGINIA COUNTY OF MONONGALIA, to wit:

I, Jo Marie Bowers, a Notary Public in and for the County and State aforesaid do certify that Victor Solomon, II who signed the foregoing writing bearing date the 25<sup>th</sup> day of September 2015, has this day in my said County before me acknowledged the said writing to be his act and deed.

Given under my hand and notarial seal this 25<sup>th</sup> day of September 2015.

My commission expires July 5, 2020



Jo Marie Bowers  
Notary Public

*(Signature continues on the following page)*

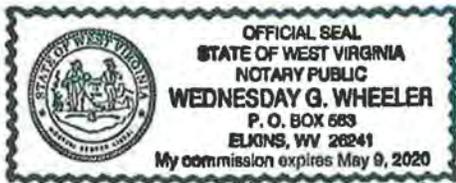
**WOODFORD OIL COMPANY, a West Virginia corporation**

By: *Todd Woodford*  
Name: *Todd Woodford*  
Title: *VP + COO*  
(SEAL)

STATE OF WEST VIRGINIA COUNTY OF MONONGALIA, to wit:

I, *Wednesday G. Wheeler*, a Notary Public in and for the County and State aforesaid do certify that *Todd C. Woodford*, who signed the foregoing writing bearing date the *12<sup>th</sup>* day of *August*, 2015, as the *VP + COO* of Woodford Oil Company, a West Virginia corporation, has this day in my said County before me acknowledged the said writing to be the act and deed of said corporation.

Given under my hand and notarial seal this *12<sup>th</sup>* day of *August*, 2015



*Wednesday G. Wheeler*  
Notary Public

*[Signatures continue on the following page]*

THE CITY OF MORGANTOWN, WEST VIRGINIA, a municipal corporation

By: \_\_\_\_\_

City Manager

ATTEST:

\_\_\_\_\_

City Clerk

STATE OF WEST VIRGINIA COUNTY OF MONONGALIA, to wit:

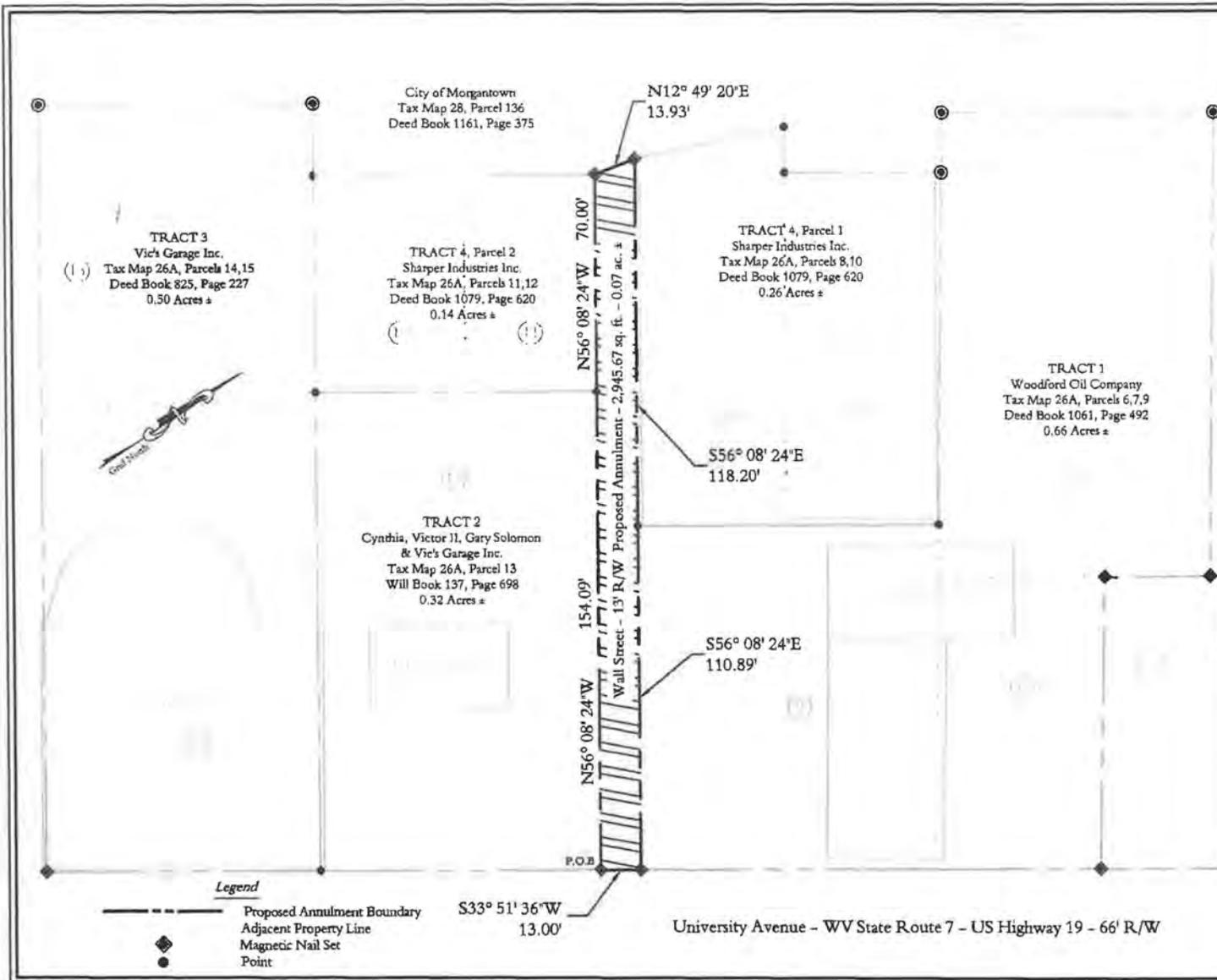
I, \_\_\_\_\_, a Notary Public in and for the County and State aforesaid do certify that \_\_\_\_\_, who signed the foregoing writing bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, for \_\_\_\_\_, a corporation, has this day in my said County before me acknowledged the said writing to be the act and deed of said corporation.

Given under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My commission expires \_\_\_\_\_.

\_\_\_\_\_

Notary Public



## Proposed Annulment of Wall Street

Third Ward, City of Morgantown  
Monongalia County, West Virginia  
Project #: 15100025MOR  
Drawn By: DBS Approved By: TLH  
Scale: 1" = 40' Date: 06/01/2015

**CTL Engineering of  
West Virginia, Inc.**  
1091 Claudia Hill Road  
Morgantown, WV 26601 S. Charleston, WV 25303  
Phone: 304/292-1135 Fax: 304/746-1140  
Fax: 304/296-9300 Fax: 304/746-1143

CIVIL & SITE PLANNING - SURVEYING & MAPPING  
ENVIRONMENTAL MINING - GEOTECHNICAL  
TESTING & CONSTRUCTION OBSERVATION  
LABORATORY

**Scale**

1 inch = 40 feet

## **Wall Street Annulment**

### **Third Ward**

### **City of Morgantown**

### **Monongalia County, West Virginia**

Beginning at a magnetic nail set on the western right-of-way of University Avenue, a 66 foot public roadway, and being a common corner to lands now or formerly owned by Cynthia, Victor II, & Gary Solomon, & Vic's Garage Inc. (Tax Map 26-A, Parcel 13) (Will Book 137, Page 698); thence with the line of said Solomon lands, N. 56° 08' 24" W. 154.09 feet to a point, said point being a common corner to lands now or formerly owned by Sharper Industries, Inc. (Tax Map 26-A, Parcel 11) (Deed Book 1079, Page 620); thence with the line of said Sharper Industries lands, N. 56° 08' 24" W. 70.00 feet to a magnetic nail set, said nail being a common corner to lands now or formerly owned by the City of Morgantown (Tax Map 28, Parcel 136) (Deed Book 1161, Page 375); thence with the line of said City of Morgantown Lands, N. 12° 49' 20" E. 13.93 feet to a magnetic nail set, said nail being a common corner to lands now or formerly owned by the aforementioned Sharper Industries, Inc. (Tax Map 26-A, Parcel 10); thence with the common line of said Sharper Industries lands, S. 56° 08' 24" E. 118.20 feet to a point, said point being a common corner to lands now or formerly owned by Woodford Oil Company (Tax Map 26-A, Parcel 9) (Deed Book 1061, Page 492); thence with the line of said Woodford Oil Company lands, S. 56° 08' 24" E. 110.89 feet to a magnetic nail set, said nail being on the western right-of-way of the aforementioned University Avenue; thence with the University Avenue right-of-way, S. 33° 51' 36" W. 13.00 feet to the point of beginning, containing 2,945.67 square feet, or 0.07 acres, more or less.

**Dominion Hope**  
48 Columbia Boulevard, Clarksburg, WV 26301  
Web Address: [www.dom.com](http://www.dom.com)



October 19, 2015

Mr. Damien Davis  
Director of Public Works/City Engineer  
City of Morgantown  
389 Spruce Street  
Morgantown, WV 26505

Mr. Jason Doornbos  
Landmark Properties, Inc.  
455 Epps Bridge Parkway, Suite 201  
Athens, GA 30606

Re: Letter of intent for Annulment along Wall Street

Dear Gentlemen,

This letter confirms that Hope Gas, Inc., d/b/a Dominion Hope presently has existing facilities along Wall Street, however, it is the intent of this letter to advise that Hope Gas, Inc., d/b/a will provide a formal Letter of Annulment once a specific date is given for the project to commence and the customer services have been disconnected. Furthermore, Hope Gas, Inc., has no future plans to install a pipeline or related facilities within the area of Wall Street as shown on the plat attached hereto.

We will process your request for the official Annulment letter once a specific date is given for the project to commence. However, if this project does not commence, this letter of Intent for annulment will become null and void.

Sincerely,

A handwritten signature in blue ink that reads "Denise A. Poling".

Denise A. Poling  
Land Services Coordinator





**RECEIVED**  
# 606  
DATE: 11/2/15

**Damien Davis, PE, CFM**  
Director of Public Works/City Engineer  
City of Morgantown  
389 Spruce Street  
Morgantown, WV 26505  
O: 304.284.7412  
M: 304.290.3460  
F: 304.284.7409  
[www.morgantownwv.gov](http://www.morgantownwv.gov)

Re: Wall St Utility Abandonment Annulment Request

Mr. Davis,

Frontier has 1 cable that feeds 75 Wall St. Frontier will give up claim to any prescribed right of way on Wall St from University Ave to 75 Wall St. This will become effective after the termination of service. removal of Frontier's cable and demolition of this building. Questions please contact me.

Sincerely

Timothy Spencer  
Engineering assistant  
Frontier Communications  
1325 Airport Blvd  
Morgantown, WV 26505  
304-296-7459 ofc  
304-904-3139 cell  
[TIMOTHY.SPENCER@FTR.COM](mailto:TIMOTHY.SPENCER@FTR.COM)



November 19, 2015

City of Morgantown  
Damien Davis, P.E. CFM  
Public Works Director/Engineer  
389 Spruce Street  
Morgantown, WV 26505  
Via Email: [ddavis@cityofmorgantown.org](mailto:ddavis@cityofmorgantown.org)

**Re: Proposed Annulment - Wall Street**

Dear Mr. Davis:

Your recent email on November 17<sup>th</sup> did not identify specifically which section of Wall Street or if all of Wall Street is to be abandoned. This letter will specifically be directed to the section of Wall Street located between University Avenue and the Rail Trail.

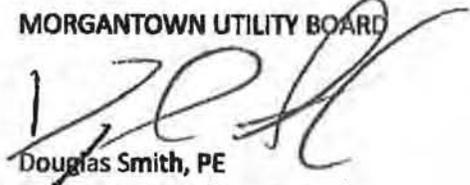
The Morgantown Utility Board owns, operates and maintains a four-inch water line in the above referenced street. Prior to abandoning any interests in the right-of-way, the service to the existing building located at 75 Wall Street would need to be discontinued by the owner and the existing water line would need to be removed from service by the Morgantown Utility Board. Both of these items would be at the expense of the Developer.

Additionally, the Morgantown Utility Board and the Developer will need to enter into an agreement to have the waterline reinstalled should for any reason that the project is not completed.

If I can be of any further assistance, please don't hesitate to contact me.

Best regards,

MORGANTOWN UTILITY BOARD



Douglas Smith, PE  
Assistant General Manager /  
Chief Engineer

**EXHIBIT 2:  
ACCESS AGREEMENT**

## ACCESS AGREEMENT

This Access Agreement (the "Agreement") is entered into and effective as of the \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by THE STANDARD AT MORGANTOWN, LLC, a Delaware limited liability company, ("Grantor") and THE CITY OF MORGANTOWN, West Virginia, a municipal corporation ("Grantee").

### WITNESSETH:

WHEREAS, Grantor is the owner of certain real property located in Morgantown, West Virginia and more particularly described on Exhibit "A" attached hereto (the "Grantor's Property"); and

WHEREAS, Grantor has agreed to allow Grantee and its invitees and agents to enter upon and use certain portions of Grantor's Property, which such portions are more specifically described and depicted on Exhibit "B" attached hereto (the "Access Area"), subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of License to Grantee. Grantor hereby grants to Grantee, including Grantee's invitees and agents (which, for the avoidance of doubt, shall include the general public) a perpetual and irrevocable non-exclusive license (the "License") to (i) enter the Access Area solely for the pedestrian and bicycling use and enjoyment of the trails located within the Access Area (the "Permitted Use"), except during times of extreme adverse weather, construction, or when otherwise unsafe conditions exist on the Access Area (in each case, as shall be determined by Grantor in its sole and absolute discretion), (ii) the right to self park in the parking spaces identified on Exhibit "B" attached hereto (the "Spaces") such license to park includes a non-exclusive right of pedestrian and vehicular ingress and egress over the Grantor's Property as necessary and appropriate to access the Access Area and the Spaces (including right to access the Grantor's Property off of Fayette Street in order to gain access to the Spaces and the Access Area). Grantee and its invitees and agents shall not enter upon, use or occupy any other portion of the Grantor's Property for any purpose whatsoever. The parties hereto hereby acknowledge and agree that the License is granted without compensation being paid by the parties hereto, and is merely a permissive use granted by Grantor to Grantee, and does not operate to confer on, or vest in, Grantee any title, interest or estate in the Grantor's Property or the Access Area. Nothing herein contained shall be deemed to be a gift or dedication of any portion of Grantor's Property to the general public or for general public purposes whatsoever. All costs associated with the Access Area and the construction or maintenance of the trails or other improvements in the Access Area shall be the responsibility of the Grantor.

2. Access Area. Grantor shall retain complete ownership, dominion and control over the Access Area and the Grantor's Property. Grantor reserves the right, in its sole discretion, to establish, implement and post reasonable rules and regulations of use for the Access Area. Grantor shall maintain, in reasonably good order, condition and repair, the Access Area and make any and all replacements, restorations and repairs that may from time to time be required with respect thereto, except in the event that such replacement, restoration or repair is necessitated by the grossly negligent acts of Grantee, in which case Grantee shall reimburse Grantor for the cost of such replacements, restoration or repairs (as applicable) within ten (10) days after demand by Grantor. Grantor shall have the right to close the Access Area and Spaces, or portions thereof, on a temporary basis in order to make repairs or perform maintenance services,

or to alter, modify, pave, re-stripe or renovate the same, or if required by casualty, condemnation, act of God or governmental requirement, or to prevent the acquisition of rights by third parties or the public, or any other reason beyond Grantor's reasonable control.

3. Irrevocable License and Termination. The License shall commence as of the date of this Agreement and shall be an irrevocable, perpetual license; provided, however, that in the event of a material default by Grantee hereunder which is not cured within thirty (30) days after written notice thereof by Grantor to Grantee, then Grantor may terminate the License.

4. Entire Agreement. This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and may not be changed without the prior written consent of both parties.

5. Successors and Assigns. The rights and obligations set forth herein shall run with the land and be binding upon Grantee, Grantor and their respective successors and assigns, including any future owners of the Grantor's Property.

6. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

7. Notice. All notices shall be given in writing and delivered either by personal messenger, or by overnight courier, or by facsimile, with a copy by mail, postage prepaid. Notices to the parties shall be effective on delivery and shall be delivered to the following addresses:

If to Grantor: The Standard at Morgantown  
455 Epps Bridge Parkway, Suite 201  
Athens, Georgia 30606  
Attention: W. Christopher Hart, Esq.  
Fax: 706-543-1909

with a copy to: King & Spalding LLP  
1180 Peachtree Street, NE  
Atlanta, Georgia 30309  
Attention: Brent S. Gilfedder  
Fax: 404-572-5131

If to Grantee: City of Morgantown  
Attn: City Manager  
389 Spruce Street  
Morgantown, WV 26505

8. License Subject to Encumbrances. Grantee and Grantor hereby acknowledge, stipulate and agree that the License is subject and subordinate to all recorded liens, encumbrances, easements and other matters affecting the Grantor's Property.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia.

10. Severability. The invalidity of any one of the covenants, agreements, conditions or provisions of this Agreement, or any portion thereof, shall not affect the remaining portions thereof, or any part thereof, and this agreement shall be modified to substitute in lieu of the invalid provision, a like and valid provision which reflects the agreement of the parties with respect to the covenant, agreement, condition or provision which has been deemed invalid or void.

[signature pages follow]

Attachments:

Exhibit "A" Grantor's Property

Exhibit "B" Access Area and Spaces

IN WITNESS WHEREOF, the parties hereto have signed and delivered this Agreement as their own free act and deed as of the date and year first hereinabove written.

**GRANTOR:**

**The Standard at Morgantown, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**STATE OF WEST VIRGINIA,**

**COUNTY OF \_\_\_\_\_, to-wit:**

I \_\_\_\_\_, a notary public of said county, do certify that \_\_\_\_\_ as the \_\_\_\_\_ of \_\_\_\_\_ who signed the writing hereto annexed, bearing date as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, has this day in my said county, before me, acknowledged the same to be his act and deed.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

My commission expires: \_\_\_\_\_.

Notary Public

(NOTARIAL SEAL)

*[Signatures continue on the following page]*

**GRANTEE:**

**The City of Morgantown, West Virginia,**  
a West Virginia municipal corporation

By: \_\_\_\_\_  
Name:  
Title:

**STATE OF WEST VIRGINIA,**

**COUNTY OF \_\_\_\_\_, to-wit:**

I \_\_\_\_\_, a notary public of said county, do certify that  
[ \_\_\_\_\_ ] as the [ \_\_\_\_\_ ] who signed the writing hereto annexed, bearing date as of the  
\_\_ day of \_\_\_\_\_, 20 \_\_, has this day in my said county, before me, acknowledged the same to be  
his act and deed.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 201 \_\_\_\_

My commission expires: \_\_\_\_\_.

Notary Public

(NOTARIAL SEAL)

THIS INSTRUMENT PREPARED BY AND  
AFTER RECORDING RETURN TO:  
Brent S. Gilfedder, Esq.  
King & Spalding  
1180 Peachtree Street, NE  
Atlanta, Georgia 30309  
Phone: 404/572-4600

**EXHIBIT "A"**

**Grantor's Property**

Tract 1

Tax Map 26-A, Parcels 6, 7, &9

Beginning at a magnetic nail set on the western right-of-way of University Avenue, a 66 foot public roadway, said nail being the common corner to lands now or formerly owned by Mode Roman Ltd. Co. (Tax Map 26A, Parcels 1,2,3,4,& 5) (Deed Book 1286, Page 479), said nail also being S. 33° 51' 36" W. 142.51 feet from a City of Morgantown concrete monument; thence with the right-of-way of University Avenue, S. 33° 51' 36" W. 148.51 feet to a magnetic nail set at the intersection of University Avenue and the northern right-of-way of Wall Street, a 13 foot roadway; thence leaving the right-of-way of University Avenue, and with the northern right-of-way Wall Street, N. 56° 08' 24" W. 110.89 feet to point, said point being a common corner to lands now or formerly owned by Sharper Industries Inc. (Tax Map 26A, Parcels 8 & 10) (Deed Book 1079, Page 620); thence with the common line of said Sharper Industries Inc. lands, N. 33° 51' 36" E. 96.97 feet to point; thence N. 55° 22' 24" W. 113.57 feet to a 5/8" rebar with cap set, said rebar being a common corner to lands now or formerly owned by the City of Morgantown (Tax Map 28, Parcel 136) (Deed Book 1161, Page 375); thence with said City of Morgantown lands, N. 55° 22' 24" W. 19.30 feet to a 5/8" rebar with cap set; thence N. 34° 03' 06" E. 87.50 feet to a 5/8" rebar with cap set, said rebar being on the common line of said Mode Roman Ltd. Co. lands; thence with said Mode Roman Ltd. Co. lands, S. 55° 24' 54" E. 149.48 feet to a magnetic nail set; thence S. 33° 51' 36" W. 34.00 feet to a magnetic nail set; thence S. 55° 00' 52" E. 94.01 feet to the point of beginning, containing 0.66 acres, more or less.

Tract 2

Tax Map 26-A, Parcel 13

Beginning at a magnetic nail set at the intersection of the western right-of-way of University Avenue, a 66 foot public roadway, and the southern right-of-way of Wall Street, a 13 foot public roadway; thence with the right-of-way of University Avenue, S. 33° 51' 36" W. 89.95 feet to a point, said point being a common corner to lands now or formerly owned by Vic's Garage Inc. (Tax Map 26A, Parcels 14 & 15) (Deed Book 825, Page 227); thence leaving said University Avenue, and with the common line of said Vic's Garage Inc.

lands, N. 56° 08' 24" W. 154.09 feet to a point, said point being a common corner to lands now or formerly owned by Sharper Industries Inc. (Tax Map 26A, Parcels 11 & 12) (Deed Book 1079, Page 620); thence with the common line of said Sharper Industries Inc. lands, N. 33° 51' 36" E. 89.95 feet to a point, said point being on the southern right-of-way of Wall Street, a 13 foot public roadway; thence with the right-of-way of said Wall Street, S. 56° 08' 24" E. 154.09 feet to the point of beginning, containing 0.32 acres, more or less.

Tract 3

Tax Map 26-A, Parcels 14 & 15

Beginning at a magnetic nail set at the intersection of the western right-of-way of University Avenue, a 66 foot public roadway, and the northern right-of-way of Walnut Street, a 66 foot public roadway; thence with the right-of-way of Walnut Street, N. 56° 08' 24" W. 247.50 feet to a 5/8" rebar with cap set, said rebar being on the common line with lands now or formerly owned by the City of Morgantown (Tax Map 28, Parcel 136) (Deed Book 1161, Page 375); thence with the line of the City of Morgantown, N. 33° 51' 36" E. 87.50 feet to a 5/8" rebar with cap set, thence S. 56° 08' 24" E. 247.50 feet to a point, said point being on the western right-of-way of University Avenue; thence with the right-of-way of said University Avenue, S. 33° 51' 36" W. 87.50 feet to the point of beginning, containing 0.50 acres, more or less.

Tract 4

Tax Map 26-A, Parcels 8, 10, 11, & 12

Parcel 1 - Tax Parcels 8 & 10

Beginning at a magnetic nail set at the intersection of the western right-of-way of University Avenue, a 66 foot public roadway, and the northern right-of-way of Wall Street, a 13 foot public roadway; thence with the right-of-way of Wall Street, N. 56° 08' 24" W. 110.89 feet to a point, said point being the TRUE POINT OF BEGINNING; thence continuing with the right-of-way of Wall Street, N. 56° 08' 24" W. 118.20 feet to a magnetic nail set, said nail being on the common line of lands now or formerly owned by the City of Morgantown (Tax Map 28, Parcel 136) (Deed Book 1161, Page 375); thence with line of the City of Morgantown, N. 21° 48' 46" E. 49.08 feet to a point, thence S. 56° 08' 24" E. 14.88 feet to a point; thence N. 33° 51' 36" E. 50.49 feet to a 5/8" rebar with cap set, said rebar being on the common line of lands now or formerly owned by Woodford Oil Company (Tax Map 26A, Parcels 6, 7, & 9) (Deed Book

1061, Page 492); thence with the line of said Woodford Oil Company, S. 55° 22' 24" E. 113.57 feet to a point; thence S. 33° 51' 36" W. 96.97 feet to the beginning, containing 0.26 acres, more or less.

Parcel 2 - Tax Parcels 11 & 12

Beginning at a magnetic nail set at the intersection of the western right-of-way of University Avenue, a 66 foot public roadway, and the southern right-of-way of Wall Street, a 13 foot public roadway; thence with the right-of-way of Wall Street, N. 56° 08' 24" W. 154.09 feet to a point, said point being the TRUE POINT OF BEGINNING; thence leaving said right-of-way of Wall Street, and with the common line of lands now or formerly owned by Cynthia, Victor II, & Gary Solomon, and Vic's Garage Inc. (Tax Map 26A, Parcel 13) (Will Book 137, Page 698), S. 33° 51' 36" W. 89.95 feet to a point, said point being on the common line of lands now or formerly owned by Vic's Garage Inc. (Tax Map 26A, Parcels 14 & 15) (Deed Book 825, Page 227); thence with the line of Vic's Garage Inc., N. 56° 08' 24" W. 70.00 feet to a point, said point being on the common line of lands now or formerly owned by the City of Morgantown (Tax Map 28, Parcel 136) (Deed Book 1161, Page 375); thence with the line of the City of Morgantown, N. 33° 51' 36" E. 89.95 feet to a point, said point being on the southern right-of-way of Wall Street; thence with the said right-of-way of Wall Street, S. 56° 08' 24" E. 70.00 feet to the point of beginning, containing 0.14 acres, more or less.

**EXHIBIT "B"**

**Access Area and Spaces**

ACCESS AGREEMENT EXHIBIT B



Total Acreage of Property: 1.95 Acres  
 Total Acreage covered by Building: 1.50  
 Total Acreage covered by Lift Station: 0.02 Acres.  
 78% Lot Coverage

Not for Construction

**AN ORDINANCE AUTHORIZING A LICENSE AGREEMENT WITH THE  
STANDARD AT MORGANTOWN, LLC**

The City of Morgantown hereby ordains that the City Manager is authorized to execute the attached agreement, which is incorporated in this Ordinance by reference, granting a license for public access and use of property of The Standard at Morgantown, LLC.

**FIRST READING:**

\_\_\_\_\_  
**Mayor**

**ADOPTED:**

**FILED:**

\_\_\_\_\_  
**City Clerk**

**RECORDED:**

## ACCESS AGREEMENT

This Access Agreement (the "Agreement") is entered into and effective as of the \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by THE STANDARD AT MORGANTOWN, LLC, a Delaware limited liability company, ("Grantor") and THE CITY OF MORGANTOWN, West Virginia, a municipal corporation ("Grantee").

### WITNESSETH:

WHEREAS, Grantor is the owner of certain real property located in Morgantown, West Virginia and more particularly described on Exhibit "A" attached hereto (the "Grantor's Property"); and

WHEREAS, Grantor has agreed to allow Grantee and its invitees and agents to enter upon and use certain portions of Grantor's Property, which such portions are more specifically described and depicted on Exhibit "B" attached hereto (the "Access Area"), subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of License to Grantee. Grantor hereby grants to Grantee, including Grantee's invitees and agents (which, for the avoidance of doubt, shall include the general public) a perpetual and irrevocable non-exclusive license (the "License") to (i) enter the Access Area solely for the pedestrian and bicycling use and enjoyment of the trails located within the Access Area (the "Permitted Use"), except during times of extreme adverse weather, construction, or when otherwise unsafe conditions exist on the Access Area (in each case, as shall be determined by Grantor in its sole and absolute discretion), (ii) the right to self park in the parking spaces identified on Exhibit "B" attached hereto (the "Spaces") such license to park includes a non-exclusive right of pedestrian and vehicular ingress and egress over the Grantor's Property as necessary and appropriate to access the Access Area and the Spaces (including right to access the Grantor's Property off of Fayette Street in order to gain access to the Spaces and the Access Area). Grantee and its invitees and agents shall not enter upon, use or occupy any other portion of the Grantor's Property for any purpose whatsoever. The parties hereto hereby acknowledge and agree that the License is granted without compensation being paid by the parties hereto, and is merely a permissive use granted by Grantor to Grantee, and does not operate to confer on, or vest in, Grantee any title, interest or estate in the Grantor's Property or the Access Area. Nothing herein contained shall be deemed to be a gift or dedication of any portion of Grantor's Property to the general public or for general public purposes whatsoever. All costs associated with the Access Area and the construction or maintenance of the trails or other improvements in the Access Area shall be the responsibility of the Grantor.

2. Access Area. Grantor shall retain complete ownership, dominion and control over the Access Area and the Grantor's Property. Grantor reserves the right, in its sole discretion, to establish, implement and post reasonable rules and regulations of use for the Access Area. Grantor shall maintain, in reasonably good order, condition and repair, the Access Area and make any and all replacements, restorations and repairs that may from time to time be required with respect thereto, except in the event that such replacement, restoration or repair is necessitated by the grossly negligent acts of Grantee, in which case Grantee shall reimburse Grantor for the cost of such replacements, restoration or repairs (as applicable) within ten (10) days after demand by Grantor. Grantor shall have the right to close the Access Area and Spaces, or portions thereof, on a temporary basis in order to make repairs or perform maintenance services,

or to alter, modify, pave, re-stripe or renovate the same, or if required by casualty, condemnation, act of God or governmental requirement, or to prevent the acquisition of rights by third parties or the public, or any other reason beyond Grantor's reasonable control.

3. Irrevocable License and Termination. The License shall commence as of the date of this Agreement and shall be an irrevocable, perpetual license; provided, however, that in the event of a material default by Grantee hereunder which is not cured within thirty (30) days after written notice thereof by Grantor to Grantee, then Grantor may terminate the License.

4. Entire Agreement. This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and may not be changed without the prior written consent of both parties.

5. Successors and Assigns. The rights and obligations set forth herein shall run with the land and be binding upon Grantee, Grantor and their respective successors and assigns, including any future owners of the Grantor's Property.

6. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

7. Notice. All notices shall be given in writing and delivered either by personal messenger, or by overnight courier, or by facsimile, with a copy by mail, postage prepaid. Notices to the parties shall be effective on delivery and shall be delivered to the following addresses:

If to Grantor: The Standard at Morgantown  
455 Epps Bridge Parkway, Suite 201  
Athens, Georgia 30606  
Attention: W. Christopher Hart, Esq.  
Fax: 706-543-1909

with a copy to: King & Spalding LLP  
1180 Peachtree Street, NE  
Atlanta, Georgia 30309  
Attention: Brent S. Gilfedder  
Fax: 404-572-5131

If to Grantee: City of Morgantown  
Attn: City Manager  
389 Spruce Street  
Morgantown, WV 26505

8. License Subject to Encumbrances. Grantee and Grantor hereby acknowledge, stipulate and agree that the License is subject and subordinate to all recorded liens, encumbrances, easements and other matters affecting the Grantor's Property.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia.

10. Severability. The invalidity of any one of the covenants, agreements, conditions or provisions of this Agreement, or any portion thereof, shall not affect the remaining portions thereof, or any part thereof, and this agreement shall be modified to substitute in lieu of the invalid provision, a like and valid provision which reflects the agreement of the parties with respect to the covenant, agreement, condition or provision which has been deemed invalid or void.

[signature pages follow]

Attachments:

Exhibit "A" Grantor's Property

Exhibit "B" Access Area and Spaces

IN WITNESS WHEREOF, the parties hereto have signed and delivered this Agreement as their own free act and deed as of the date and year first hereinabove written.

**GRANTOR:**

**The Standard at Morgantown, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**STATE OF WEST VIRGINIA,**  
**COUNTY OF \_\_\_\_\_, to-wit:**

I \_\_\_\_\_, a notary public of said county, do certify that \_\_\_\_\_ as the \_\_\_\_\_ of \_\_\_\_\_ who signed the writing hereto annexed, bearing date as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, has this day in my said county, before me, acknowledged the same to be his act and deed.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

My commission expires: \_\_\_\_\_.

Notary Public

(NOTARIAL SEAL)

*[Signatures continue on the following page]*

**GRANTEE:**

**The City of Morgantown, West Virginia,**  
a West Virginia municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**STATE OF WEST VIRGINIA,**

**COUNTY OF \_\_\_\_\_, to-wit:**

I \_\_\_\_\_, a notary public of said county, do certify that  
[ \_\_\_\_\_ ] as the [ \_\_\_\_\_ ] who signed the writing hereto annexed, bearing date as of the  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, has this day in my said county, before me, acknowledged the same to be  
his act and deed.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_

My commission expires: \_\_\_\_\_.

Notary Public

(NOTARIAL SEAL)

THIS INSTRUMENT PREPARED BY AND  
AFTER RECORDING RETURN TO:  
Brent S. Gilfedder, Esq.  
King & Spalding  
1180 Peachtree Street, NE  
Atlanta, Georgia 30309  
Phone: 404/572-4600

**EXHIBIT "A"**

**Grantor's Property**

Tract 1

Tax Map 26-A, Parcels 6, 7, &9

Beginning at a magnetic nail set on the western right-of-way of University Avenue, a 66 foot public roadway, said nail being the common corner to lands now or formerly owned by Mode Roman Ltd. Co. (Tax Map 26A, Parcels 1,2,3,4,& 5) (Deed Book 1286, Page 479), said nail also being S. 33° 51' 36" W. 142.51 feet from a City of Morgantown concrete monument; thence with the right-of-way of University Avenue, S. 33° 51' 36" W. 148.51 feet to a magnetic nail set at the intersection of University Avenue and the northern right-of-way of Wall Street, a 13 foot roadway; thence leaving the right-of-way of University Avenue, and with the northern right-of-way Wall Street, N. 56° 08' 24" W. 110.89 feet to point, said point being a common corner to lands now or formerly owned by Sharper Industries Inc. (Tax Map 26A, Parcels 8 & 10) (Deed Book 1079, Page 620); thence with the common line of said Sharper Industries Inc. lands, N. 33° 51' 36" E. 96.97 feet to point; thence N. 55° 22' 24 W. 113.57 feet to a 5/8" rebar with cap set, said rebar being a common corner to lands now or formerly owned by the City of Morgantown (Tax Map 28, Parcel 136) (Deed Book 1161, Page 375); thence with said City of Morgantown lands, N. 55° 22' 24" W. 19.30 feet to a 5/8" rebar with cap set; thence N. 34° 03' 06" E. 87.50 feet to a 5/8" rebar with cap set, said rebar being on the common line of said Mode Roman Ltd. Co. lands; thence with said Mode Roman Ltd. Co. lands, S. 55° 24' 54" E. 149.48 feet to a magnetic nail set; thence S. 33° 51' 36" W. 34.00 feet to a magnetic nail set; thence S. 55° 00' 52" E. 94.01 feet to the point of beginning, containing 0.66 acres, more or less.

Tract 2

Tax Map 26-A, Parcel 13

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lands, N. 56° 08' 24" W. 154.09 feet to a point, said point being a common corner to lands now or formerly owned by Sharper Industries Inc. (Tax Map 26A, Parcels 11 & 12) (Deed Book 1079, Page 620); thence with the common line of said Sharper Industries Inc. lands, N. 33° 51' 36" E. 89.95 feet to a point, said point being on the southern right-of-way of Wall Street, a 13 foot public roadway; thence with the right-of-way of said Wall Street, S. 56° 08' 24" E. 154.09 feet to the point of beginning, containing 0.32 acres, more or less.

Tract 3

Tax Map 26-A, Parcels 14 & 15

Beginning at a magnetic nail set at the intersection of the western right-of-way of University Avenue, a 66 foot public roadway, and the northern right-of-way of Walnut Street, a 66 foot public roadway; thence with the right-of-way of Walnut Street, N. 56° 08' 24" W. 247.50 feet to a 5/8" rebar with cap set, said rebar being on the common line with lands now or formerly owned by the City of Morgantown (Tax Map 28, Parcel 136) (Deed Book 1161, Page 375); thence with the line of the City of Morgantown, N. 33° 51' 36" E. 87.50 feet to a 5/8" rebar with cap set, thence S. 56° 08' 24" E. 247.50 feet to a point, said point being on the western right-of-way of University Avenue; thence with the right-of-way of said University Avenue, S. 33° 51' 36" W. 87.50 feet to the point of beginning, containing 0.50 acres, more or less.

Tract 4

Tax Map 26-A, Parcels 8, 10, 11, & 12

Parcel 1 - Tax Parcels 8 & 10

Beginning at a magnetic nail set at the intersection of the western right-of-way of University Avenue, a 66 foot public roadway, and the northern right-of-way of Wall Street, a 13 foot public roadway; thence with the right-of-way of Wall Street, N. 56° 08' 24" W. 110.89 feet to a point, said point being the TRUE POINT OF BEGINNING; thence continuing with the right-of-way of Wall Street, N. 56° 08' 24" W. 118.20 feet to a magnetic nail set, said nail being on the common line of lands now or formerly owned by the City of Morgantown (Tax Map 28, Parcel 136) (Deed Book 1161, Page 375); thence with line of the City of Morgantown, N. 21° 48' 46" E. 49.08 feet to a point, thence S. 56° 08' 24" E. 14.88 feet to a point; thence N. 33° 51' 36" E. 50.49 feet to a 5/8" rebar with cap set, said rebar being on the common line of lands now or formerly owned by Woodford Oil Company (Tax Map 26A, Parcels 6, 7, & 9) (Deed Book

1061, Page 492); thence with the line of said Woodford Oil Company, S. 55° 22' 24" E. 113.57 feet to a point; thence S. 33° 51' 36" W. 96.97 feet to the beginning, containing 0.26 acres, more or less.

Parcel 2 - Tax Parcels 11 & 12

Beginning at a magnetic nail set at the intersection of the western right-of-way of University Avenue, a 66 foot public roadway, and the southern right-of-way of Wall Street, a 13 foot public roadway; thence with the right-of-way of Wall Street, N. 56° 08' 24" W. 154.09 feet to a point, said point being the TRUE POINT OF BEGINNING; thence leaving said right-of-way of Wall Street, and with the common line of lands now or formerly owned by Cynthia, Victor II, & Gary Solomon, and Vic's Garage Inc. (Tax Map 26A, Parcel 13) (Will Book 137, Page 698), S. 33° 51' 36" W. 89.95 feet to a point, said point being on the common line of lands now or formerly owned by Vic's Garage Inc. (Tax Map 26A, Parcels 14 & 15) (Deed Book 825, Page 227); thence with the line of Vic's Garage Inc., N. 56° 08' 24" W. 70.00 feet to a point, said point being on the common line of lands now or formerly owned by the City of Morgantown (Tax Map 28, Parcel 136) (Deed Book 1161, Page 375); thence with the line of the City of Morgantown, N. 33° 51' 36" E. 89.95 feet to a point, said point being on the southern right-of-way of Wall Street; thence with the said right-of-way of Wall Street, S. 56° 08' 24" E. 70.00 feet to the point of beginning, containing 0.14 acres, more or less.

**EXHIBIT "B"**

**Access Area and Spaces**

AN ORDINANCE AMENDING ARTICLE 1511 OF THE CITY CODE RELATING TO THE  
FIRE PREVENTION BOARD

WHEREAS, the City of Morgantown has adopted the West Virginia State Fire Code, in accord with West Virginia Code section 29-3-5, and as promulgated by the State Fire Commission; and

WHEREAS, the West Virginia State Fire Code incorporates the codes adopted by the National Fire Protection Association; and

WHEREAS, National Fire Protection Association code section NFPA 1-1.10 governs the composition, duties, and procedure of the Fire Code Board of Appeals; and

WHEREAS, the City intends to remove any inconsistent provisions in the City Code and utilize the Fire Code Board of Appeals provided by NFPA 1-1.10, which the City has adopted by reference;

NOW, THEREFORE, the City of Morgantown hereby ordains that Article 1511 of the City Code is amended as follows:

**1511.02 CODE ENFORCEMENT.**

(a) The Fire Chief shall be responsible for the enforcement of the City of Morgantown Fire Prevention Code. To assist in the performance of the responsibilities and duties placed upon the Fire Chief, a Bureau of Fire Prevention and a Bureau of Fire Investigation in the Fire Department are hereby created. Both Bureaus shall operate under the supervision of the Fire Chief, who shall designate fire officials of the Fire Department as Fire Marshals for each. The Fire Marshals shall report to the Fire Chief, shall be the administrators of the Bureau of Fire Prevention and Bureau of Fire Investigation and shall be responsible for administration and enforcement of the Fire Prevention Code. The Fire Chief may also designate members of the Fire Department, who have met the qualifications and training as set forth in Morgantown Fire Department S.O.G. 308.01 as Deputy Fire Marshals. The Fire Chief is authorized, if he/she deems it necessary, to create additional bureaus and appoint additional Fire Marshals. The Fire Marshals and Deputy Fire Marshals are hereby empowered to enforce the Fire Prevention Code and to cite for any Fire Code violations upon observation of each such offense. Violations for which citations may be issued by the Fire Marshals and Deputy Fire Marshals include, but are not limited to:

- (1) Locked or blocked fire exits.
- (2) Overcrowding in violation of posted occupant loads.
- (3) Failure to maintain occupant load posting.
- (4) Blocking or obstructing designated fire lanes.
- (5) Outdoor burning without a State forester permit, when such a permit is required.
- (6) Burning of materials not authorized in the State burning permit.
- (7) Having a bonfire or other similar fire without approval of the Morgantown Fire Department.
- (8) Refusing to cease burning of materials when ordered to do so by proper authority.

- (9) Tampering with any portable or fixed fire extinguishing system or device or any fire warning system.
- (10) Illegal burning.
- (11) Malicious burning.
- (12) Obstructing a Fire Marshal.
- (13) Failure to Comply with Orders.
- (14) Any violation of the Morgantown Fire Prevention Code, West Virginia State Fire Code, or any other fire codes or standards adopted by specific reference by the State of West Virginia.

(b) Fire Marshals and Deputy Fire Marshals are hereby empowered to make arrests anywhere within the City of Morgantown of any person charged with the violations of Malicious Burning, Obstructing a Fire Marshal, or Failure to Comply with Orders; and when a witness to the perpetrations of these offenses, to make arrests without warrant; or to detain any persons suspected of the commission of these offenses for investigatory purposes.

(c) Fire Marshals and Deputy Fire Marshals are hereby empowered to make complaint in writing before the Municipal Judge or appropriate municipal court officer and procure a warrant for the arrest of any offender of the violations of Malicious Burning, Obstructing a Fire Marshal, or Failure to Comply with Orders. Fire Marshals and Deputy Fire Marshals may execute any summons or warrant issued by the Municipal Judge or appropriate municipal court officer for the offenses of Malicious Burning, Obstructing a Fire Marshal, or Failure to Comply with Orders upon the offender within the City of Morgantown. Any return by a Fire Marshal or Deputy Fire Marshal showing the manner of executing the warrant or summons has the same force and effect as if made by a police officer.

(d) The Fire Chief, who is responsible for the enforcement of the Fire Prevention Code, may revoke or rescind, at any time, any Fire Department member's enforcement powers when, in the opinion of the Fire Chief, these powers have been abused or improperly enforced.

(e) Nothing within this article shall prevent a Fire Marshal or an Assistant Fire Marshal from seeking injunctive relief against the responsible party at any time once any Code violation is noted.

(f) ~~There is hereby established a Morgantown Fire Prevention Board which shall ultimately be responsible for the orderly enforcement of the Fire Prevention Code. The membership of the Board shall be composed of the City Manager, who shall be its permanent chairperson, the Chief of the Fire Department and the City Engineer. All actions contemplated by the City's Fire Marshal or Deputy Fire Marshals shall first be reviewed by the Fire Chief who at his discretion may delay any such action until such time as the matter has been presented to the Board for deliberation and recommendation. The Board shall prescribe its own rules and regulations governing its meetings and proceedings, and may, from time to time promulgate appropriate rules and regulations, not otherwise inconsistent with the ordinances of the City or the statutes of the State, which the Board may deem necessary for the orderly enforcement of the Fire Prevention Code. The Board shall have the right to conduct appeal hearings pursuant to Section 1511.05. Fire Code Board of Appeals,~~

which shall be composed in accordance with, and have all authorities and responsibilities granted by, NFPA 1-1.10, current edition.

**~~1511.04 MODIFICATIONS.~~**

~~—The Fire Prevention Board of the City shall have the power to add to, or delete therefrom, provisions of the Fire Prevention Code when, in the opinion of the majority of the Board, the best interests of the general public and the City will thus be served. The Board may modify any of the provisions of the Fire Prevention Code upon application in writing by the owner or lessee, or his duly authorized agent, of any property or installation affected thereunder, when there are practical difficulties in the way of carrying out the strict letter of the Code, provided that the spirit of the Code shall be observed, public safety secured and substantial justice done. The particulars of such additions, deletions or modifications, when granted, allowed or ordered by the Board, shall be entered upon the records of the Board and a signed copy shall be furnished to the applicant, if any.  
(Ord. 11-6-74.)~~

**~~1511.05 APPEALS.~~**

~~—Any person or corporation who feels aggrieved because the Board has disapproved any application submitted by such person or corporation, or has refused to grant a permit applied for by such person or corporation, or when it is claimed or contended by such person or corporation that the provisions of the Code do not apply to the situation in issue, or that the true meaning and intent of the Code has been misconstrued or wrongly interpreted by the Board, such person or corporation may petition the Board for a hearing and review of its decision concerning the situation in issue.  
—Should such hearing and review before the Board result in a decision adverse to the petitioner, the petitioner may appeal from the decision of the Board to the Circuit Court of Monongalia County, West Virginia, provided however, that such appeal must be taken within sixty days from the date of the final decision of the Board.  
(Ord. 11-6-74.)~~

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

\_\_\_\_\_  
City Clerk

RECORDED:

**1.7.15 Stop Work Order.** The AHJ shall have the authority to order an operation, construction, or use stopped when any of the following conditions exists:

- (1) Work is being done contrary to provision of this *Code*.
- (2) Work is occurring without a permit required by Section 1.12.
- (3) An imminent danger has been created.

**1.7.16 Imminent Dangers and Evacuation.**

**1.7.16.1** When, in the opinion of the AHJ, an imminent danger exists, the AHJ shall be authorized to order the occupants to vacate, or temporarily close for use or occupancy, a building, the right-of-way, sidewalks, streets, or adjacent buildings or nearby areas.

**1.7.16.2** The AHJ shall be authorized to employ the necessary resources to perform the required work in order to mitigate the imminent danger.

**1.7.16.3** Costs incurred by the AHJ in the performance of emergency work shall be the responsibility of the property owner or other responsible party creating such imminent danger.

**1.7.17 Standby and Fire Watch Personnel.**

**1.7.17.1** The AHJ shall have the authority to require standby fire personnel or an approved fire watch when potentially hazardous conditions or a reduction in a life safety feature exist due to the type of performance, display, exhibit, occupancy, contest, or activity; an impairment to a fire protection feature; or the number of persons present.

**1.7.17.2** The owner, agent, or lessee shall employ one or more qualified persons, as required and approved, to be on duty.

**1.7.17.2.1** The cost of standby fire personnel shall be at no cost to the AHJ.

**1.7.17.3\*** Such standby fire personnel or fire watch personnel shall be subject to the AHJ's orders at all times and shall be identifiable and remain on duty during the times such places are open to the public, when such activity is being conducted, or as required by the AHJ.

**1.7.18 Public Fire Education.**

**1.7.18.1** The AHJ shall have the authority to develop and implement a public fire safety education program as deemed necessary for the general welfare with respect to the potential fire hazards within the jurisdiction.

**1.7.18.2** The AHJ shall have the authority to ensure duly authorized public fire safety education programs or public fire safety messages are disseminated to the general public.

**1.8 Duties and Powers of the Incident Commander.**

**1.8.1 Authority.** The incident commander conducting operations in connection with the extinguishment and control of any fire, explosion, hazardous materials incident, natural disaster, rescue, and/or other emergency shall have authority to direct all operations of fire extinguishment, mitigation of a hazardous materials incident, natural disaster, rescue, and/or control and to take necessary precautions to save life, protect property, and prevent further injury or damage.

**1.8.2 Controlling Scene.** During any emergency described in 1.8.1, including the investigation of the cause of such emergency, the incident commander or authorized representative shall be permitted to control or prohibit the approach to the scene of such emergency by any vehicle, vessel, or person.

**1.8.3 Obstruction of Operations.** Persons shall not obstruct the operations of the fire department or disobey any command of the incident commander or authorized representative or any part thereof, or any order of a police officer assisting the fire department.

**1.8.4 Scene Barrier.** The incident commander or authorized representative in charge of an emergency scene shall have the authority to establish barriers to control access in the vicinity of such emergency and to place, or cause to be placed, ropes, guards, barricades, or other obstructions across any street or alley to delineate such emergency scene barrier.

**1.8.5** Persons, except as authorized by the incident commander in charge of the emergency, shall not be permitted to cross barriers established in accordance with 1.8.4.

**1.9 Liability.**

**1.9.1** The AHJ, and other individuals charged by the AHJ, or the incident commander of emergency operations, charged with the enforcement of this *Code* or any other official duties, acting in good faith and without malice in the discharge of their duties, shall not thereby be rendered personally liable for any damage that could accrue to persons or property as a result of any act or by reason of any act or omission in the discharge of their duties.

**1.9.2** The fire department and AHJ, acting in good faith and without malice in the discharge of the organizations' public duty, shall not thereby be rendered liable for any damage that could accrue to persons or property as a result of any act or by reason of any act or omission in the discharge of such duties.

**1.9.3** Any suit brought against the AHJ, the incident commander, or such individuals because of such act or omission performed in the enforcement of any provision of such codes or other pertinent laws or ordinances implemented through the enforcement of this *Code* or enforced by the code enforcement agency shall be defended by this jurisdiction until final termination of such proceedings, and any judgment resulting therefrom shall be assumed by this jurisdiction.

**1.9.4** This *Code* shall not be construed to relieve from or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects, nor shall the code enforcement agency or its parent jurisdiction be held as assuming any such liability by reason of the inspections authorized by this *Code* or any permits or certificates issued under this *Code*.

**1.10 Fire Code Board of Appeals.**

**1.10.1 Establishment of Fire Code Board of Appeals.** A Board of Appeals shall be established to rule on matters relating to the fire code and its enforcement.

**1.10.1.1 Membership.**

**1.10.1.1.1** The members of the Board of Appeals shall be appointed by the governing body of the jurisdiction.

**1.10.1.1.2** The Board of Appeals shall consist of five or seven principal members and one ex officio member representative of the AHJ. Each principal member shall be permitted to have an alternate with similar experience to serve in his or her stead when necessary.

**1.10.1.1.2.1** The jurisdiction governing body shall have the authority to appoint alternates who shall serve when a principal member is unable to fulfill their obligations. Alternates

shall have the full authority and responsibility of principal members when serving in place of a principal member.

**1.10.1.1.3** Members and alternate members shall be appointed based on their education, experience, and knowledge.

**1.10.1.1.4** Members and alternates shall be appointed to a 3-year term.

**1.10.1.1.5** Members and alternates shall be composed of individuals experienced in the following fields or professions:

- (1) Engineering or architectural design
- (2) General contracting
- (3) Fire protection contracting
- (4) Fire department operations or fire code enforcement
- (5) Building code enforcement
- (6) Legal
- (7) General public

**1.10.1.1.5.1** Members and alternates shall not be employees, agents, or officers of the jurisdiction.

**1.10.1.1.5.2** Members and alternates shall be residents of the jurisdiction.

**1.10.1.1.5.3** No more than one member shall represent the same field or provision listed in 1.10.1.1.5.

**1.10.1.1.6** The representative of the AHJ shall be an ex officio member and shall be entitled to participate in all discussions. The ex officio member shall not be entitled to a vote.

**1.10.1.1.7** No member of the Board of Appeals shall sit in judgment on any case in which the member holds a direct or indirect property or financial interest in the case.

**1.10.1.1.8** The board shall select one of its members to serve as chair and one member to serve as vice chair.

**1.10.2 Rules and Procedures of the Board of Appeals.** The Board of Appeals shall have the authority to establish rules and regulations for conducting its business that are consistent with the provisions of this *Code*.

### **1.10.3 Authority of the Board of Appeals.**

**1.10.3.1** The Board of Appeals shall provide for the reasonable interpretation of the provisions of this *Code* and issue rulings on appeals of the decisions of the AHJ.

**1.10.3.2** The ruling of the Board of Appeals shall be consistent with the letter of the *Code* or when involving issues of clarity, ensuring that the intent of the *Code* is met with due consideration for public safety and fire fighter safety.

**1.10.3.3** The Board of Appeals shall have the authority to grant alternatives or modifications through procedures outlined in Section 1.4 of the *Code*.

**1.10.3.4** The Board of Appeals shall not have the authority to waive the requirements of the *Code*.

**1.10.3.5** The Board of Appeals decisions shall not be precedent setting.

### **1.10.4 Means of Appeals.**

**1.10.4.1** Any person with standing shall be permitted to appeal a decision of the AHJ to the Board of Appeals when it is claimed that any one or more of the following conditions exist:

- (1) The true intent of the *Code* has been incorrectly interpreted.
- (2) The provisions of the *Code* do not fully apply.

(3) A decision is unreasonable or arbitrary as it applies to alternatives or new materials.

**1.10.4.2** An appeal shall be submitted to the AHJ in writing within 30 calendar days of notification of violation. The appeal shall outline all of the following:

- (1) The *Code* provision(s) from which relief is sought
- (2) A statement indicating which provisions of 1.10.4.1 apply
- (3) Justification as to the applicability of the provision(s) cited in 1.10.4.1
- (4) A requested remedy
- (5) Justification for the requested remedy stating specifically how the *Code* is complied with, public safety is secured, and fire fighter safety is secured

**1.10.4.3\*** Documentation supporting an appeal shall be submitted to the AHJ at least 7 calendar days prior to the Board of Appeals hearing.

### **1.10.5 Meetings and Records.**

**1.10.5.1** Meetings of the Board of Appeals shall be held at the call of the chair, at such other times as the board determines, and within 30 calendar days of the filing of a notice of appeal.

**1.10.5.2** All hearings before the Board of Appeals shall be open to the public.

**1.10.5.3** The Board of Appeals shall keep minutes of its proceedings showing the vote of each member on every question or, if the member is absent or fails to vote, these actions shall be recorded.

**1.10.5.4** The Board of Appeals shall keep records of its examinations and other official actions.

**1.10.5.5** Minutes and records of the Board of Appeals shall be public record.

**1.10.5.6** A quorum shall consist of not less than 5 members or alternates.

**1.10.5.7** In varying the application of any provision of this *Code*, or in modifying an order of the AHJ, a two-thirds vote of the quorum shall be required.

### **1.10.6 Decisions.**

**1.10.6.1** Every decision of the Board of Appeals shall be entered in the minutes of the board meeting.

**1.10.6.2** A decision of the Board of Appeals to modify an order of the AHJ shall be in writing and shall specify the manner in which such modification is made, the conditions upon which it is made, the reasons therefore, and justification linked to specific code sections.

**1.10.6.3** Every decision shall be promptly filed in the office of the AHJ and shall be open for public inspection.

**1.10.6.4** A certified copy shall be sent by mail or delivered in person to the appellant, and a copy shall be publicly posted in the office of the AHJ for 2 weeks after filing.

**1.10.6.5** The decision of the Board of Appeals shall be final, subject to such remedy as any aggrieved party might have through legal, equity, or other avenues of appeal or petition.

**1.10.6.6** If a decision of the Board of Appeals reverses or modifies a refusal, order, or disallowance of the AHJ, or varies the application of any provision of this *Code*, the AHJ shall take action immediately in accordance with such decision.



**Development Services**  
389 Spruce Street  
Morgantown, WV 26505  
304.284.7431

## MEMORANDUM

---

**Date:** 19 JAN 2016  
**To:** Jeff Mikorski, City Manager ..... *via email*  
Linda Tucker, City Clerk..... *via email*  
**RE:** City Council Committee of the Whole Agenda – 26 JAN 2016  
RZ16-01 / Commercial Developers, LLC  
RZ16-02 / Wesbanco Bank, Inc.

During its 14 JAN 2016 hearing, the Planning Commission voted unanimously to forward a recommendation to City Council to APPROVE the above referenced Zoning Map Amendment petitions.

Attached herewith are the related Staff Report presented to the Planning Commission and the draft ordinance. The following dates will keep to standard Planning and Zoning Code Map Amendment protocol:

**City Council Meetings**

Committee of the Whole..... Tuesday, January 26, 2016; 7:00 PM  
City Council Chambers  
  
1<sup>st</sup> Reading: ..... Tuesday, February 2, 2016; 7:00 PM  
City Council Chambers  
  
Public Hearing and 2<sup>nd</sup> Reading:..... Tuesday, March 1, 2016; 7:00 PM  
City Council Chambers

Please include this item on the City Council meeting agendas noted above and include this communication and attachments in the 26 JAN Committee of the Whole meeting packet (in color). Only the ordinance should be included in the 02 FEB and 01 MAR meeting packets.

Thank you.

Digitally signed by Christopher M. Fletcher, AICP  
Date: 2016.01.19 14:04:26 -05'00'

# **EXHIBIT 1**

# **STAFF REPORT**



## MORGANTOWN PLANNING COMMISSION

January 14, 2016  
6:30 PM  
City Council Chambers

### Planning Commissioners:

Sam Loretta, 1<sup>st</sup> Ward  
Tim Stranko, 2<sup>nd</sup> Ward  
William Wyant, 3<sup>rd</sup> Ward  
Bill Petros, 4<sup>th</sup> Ward  
Mike Shuman, 5<sup>th</sup> Ward  
Peter DeMasters, 6<sup>th</sup> Ward  
Carol Pyles, 7<sup>th</sup> Ward  
Ken Martis, Admin.  
Bill Kawecki, City Council

## STAFF REPORT

**CASE NO:** RZ16-01 / Commercial Developers, LLC / 20 Hartman Run Road  
RZ16-02 / WesBanco Bank, Inc. / 1350 Earl Core Road

### REQUESTS and LOCATIONS:

Request by Robert DeMoss, on behalf of Commercial Developers, LLC, for a Zoning Map Amendment to reclassify property from R-1A, Single-Family Residential District to B-2, Service Business District; Tax Map 31, Parcels 17.2, 17.3 & 17.5.

Request by Stephen Decker, on behalf of WesBanco, Inc. for a Zoning Map Amendment to reclassify property from R-1A, Single-Family Residential District and B-5, Shopping Center District to B-2, Service Business District; Tax Map 31, Parcels 101.3 and 98.2.

### SURROUNDING ZONING:

North and West; B-2, Service Business District  
South; B-5, Shopping Business District  
East; R-1A, Single Family Residential District

### BACKGROUND:

The petitioners seek approval to reclassify their respective tracts of realty to B-2, Shopping Center District. Addendum A of this report illustrates the locations of the subject properties along with surrounding zoning classifications.

Because the subject area adjoins the B-2 District at the site's western and northern sides, the proposed zoning map amendment is considered a zoning district boundary adjustment and not "spot zoning."

### ANALYSIS:

According to Article 1335.01 of the Planning and Zoning Code, the purpose of the R-1A District is to:

- (A) Provide for single family neighborhoods on smaller lots, located within convenient walking distance of other uses, and
- (B) Preserve the desirable character of existing single family neighborhoods, and
- (C) Protect the single family residential areas from change and intrusion that may cause deterioration, and
- (D) Provide for adequate light, ventilation, quiet, and privacy for neighborhood residents.

According to Article 1347.01, the purpose of the B-2 District is to provide areas that are appropriate for most kinds of businesses and services, particularly large space users such as department stores.

### **Development Services Department**

Christopher Fletcher, AICP  
Director

### **Planning Division**

389 Spruce Street  
Morgantown, WV 26505  
304.284.7431



## MORGANTOWN PLANNING COMMISSION

January 14, 2016

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### Planning Commissioners:

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Ken Martis, Admin.

Bill Kawecki, City Council

According to Mr. Robert DeMoss, the Commercial Developers, LLC property (Case No. RZ16-01) was originally constructed for and occupied by Center Service Auto Body. Commercial Builders, Inc. occupied a portion of the auto body building circa 1972 and over time grew to occupy the entire building along with a few additions.

Mr. DeMoss also noted the site on which the present Wesbanco Bank is located (Case No. RZ16-02) was once occupied by a gas/service station and later redeveloped into the Central Bank.

It appears the zoning classification for the subject tracts of realty prior to the 05 NOV 1991 creation of the R-1A, Single-Family Residential District (Ordinance 91-25) was R-2, Single- and Two-Family Residential District. Staff has no working knowledge why the subject tracts were included in the creation of the R-1A District. One explanation could be a cartography error in the map included in Ordinance 91-25. Another explanation could be a simple oversight in excluding the petitioners' properties from the R-1A District that, in doing so, would have properly paralleled the commercial use of the tracts since at least the early 1970's.

The petitioners' principal buildings, accessory structures, and land uses are protected as legal, pre-existing, nonconforming structures and uses which may continue until or unless modified or terminated. However, the petitioners are pursuing the B-2 zoning classification to provide future commercial occupancy flexibility.

For instance, if Commercial Builders, Inc. and/ or Wesbanco were to vacate their respective sites, than only corresponding land use classifications or land uses permitted by-right or with conditional use approval within the R-1A District would be permitted to occupy the subject properties. Upon review of Table 1331.05.01 "Permitted Land Uses," there are very few commercial type uses permitted within the R-1A District.

### *Comprehensive Plan Concurrence*

As recommended in Chapter 9 "Implementation" of the 2013 Comprehensive Plan Update, Addendum B of this report identifies how the proposed development program relates to the land management intent, location, and pattern and character principles of the current Comprehensive Plan.

It should be noted that "shall" statements within the Comprehensive Plan must be understood as desired objectives and strategies that do not have the force or effect of law unless incorporated into the City's Planning and Zoning Code.

The Plan identifies the subject parcels as a part of the "Corridor Enhancement" general concept area, which provides for:

"Improving development along corridors with a mix of uses, increase intensity at major nodes or intersection and roadway improvements to improve traffic flow, pedestrian and biking experience."

The subject parcels are not located within "Neighborhood Conservation" or the "Controlled Growth / Traditional Neighborhood Area" general concept areas.

### **Development Services Department**

Christopher Fletcher, AICP  
Director

**Planning Division**  
389 Spruce Street  
Morgantown, WV 26505  
304.284.7431



# MORGANTOWN PLANNING COMMISSION

January 14, 2016  
6:30 PM  
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**Planning Commissioners:**

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- Ken Martis, Admin.
- Bill Kawecki, City Council

The proposed zoning map amendment from R-1A and B-5 to B-2 appears to better represent past and present uses as well as the development pattern within the Earl Core Road commercial corridor. More important, the proposed map amendment appears to be in general concurrence with the Plan's principles for land management and encouraged growth objectives.

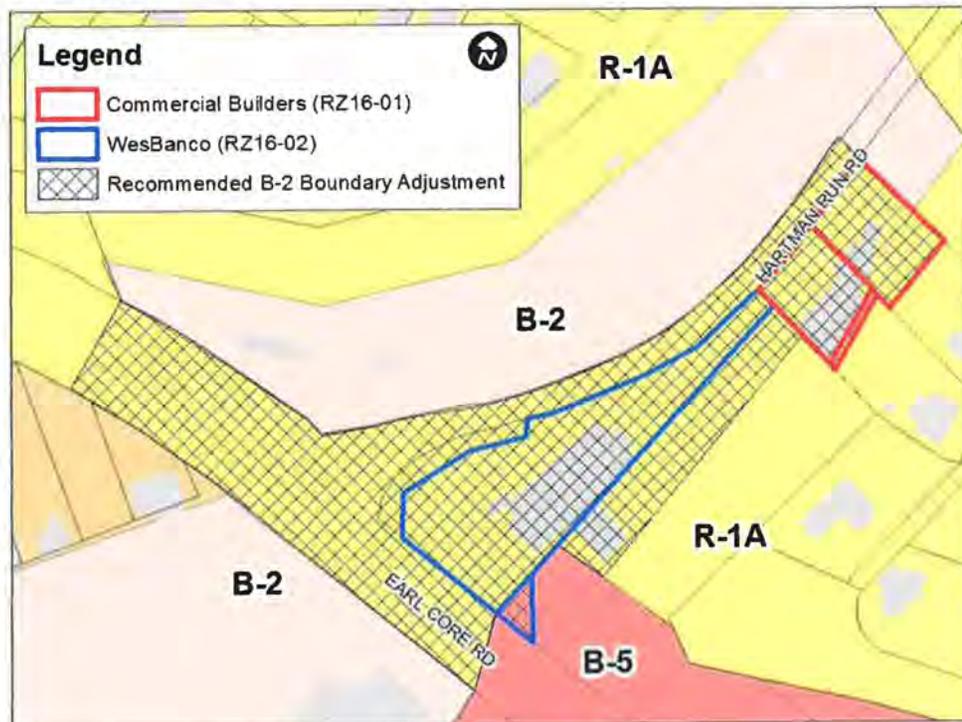
Staff encourages the Planning Commission to review the Comprehensive Plan for guidance as Addendum B is not intended to represent a complete comparative assessment.

**STAFF RECOMMENDATION:**

Zoning map amendment requests should be evaluated on their land-use merits alone. The petitioners' development intentions are extraneous and the Commission should consider the requests on their merits as a land-use decision.

In conducting such an analysis, the Commission should determine if the B-2, Service Business District is the appropriate zoning classification for the subject realty, weighing all possible future development and land use scenarios as permitted by the Planning and Zoning Code; particularly, Article 1347 "B-2, Service Business District" and Table 1331.05.01 "Permitted Land Uses".

Staff advises the Commission to forward a recommendation to City Council to approve the requested zoning map amendment petitions so that the zoning classifications of Parcels 17.2, 17.3 and 17.5 (Case No. RZ16-01) and Parcels 101.3 and 98.2 (Case No. RZ16-02) of Tax Map 31 are amended from the R-1A District and B-5 District to the B-2 District as illustrated below.

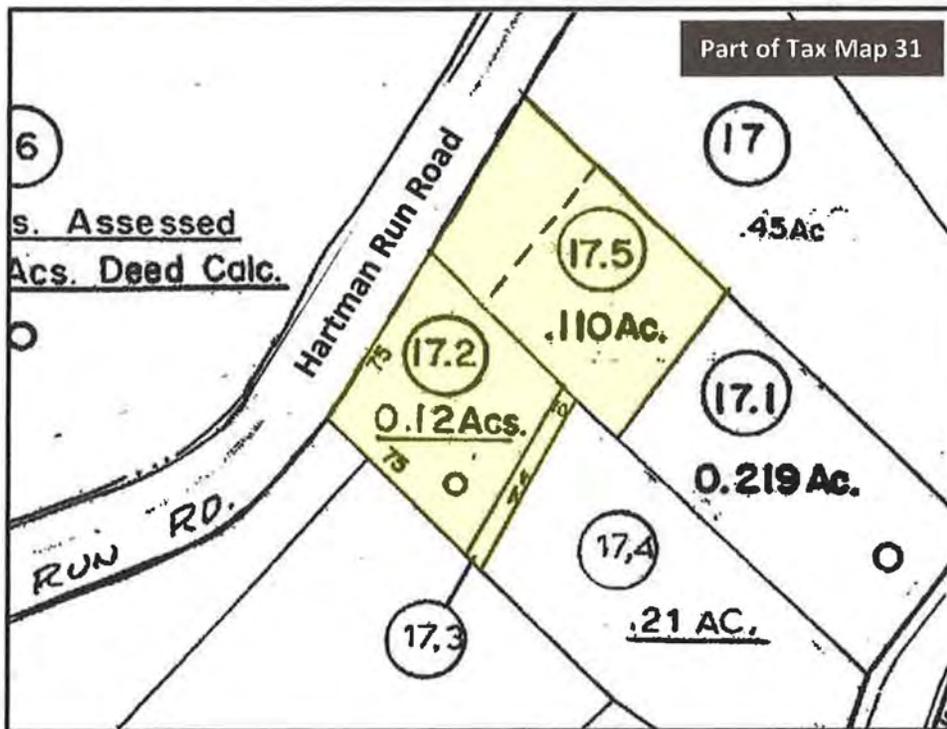


**Development Services Department**  
Christopher Fletcher, AICP  
Director

**Planning Division**  
389 Spruce Street  
Morgantown, WV 26505  
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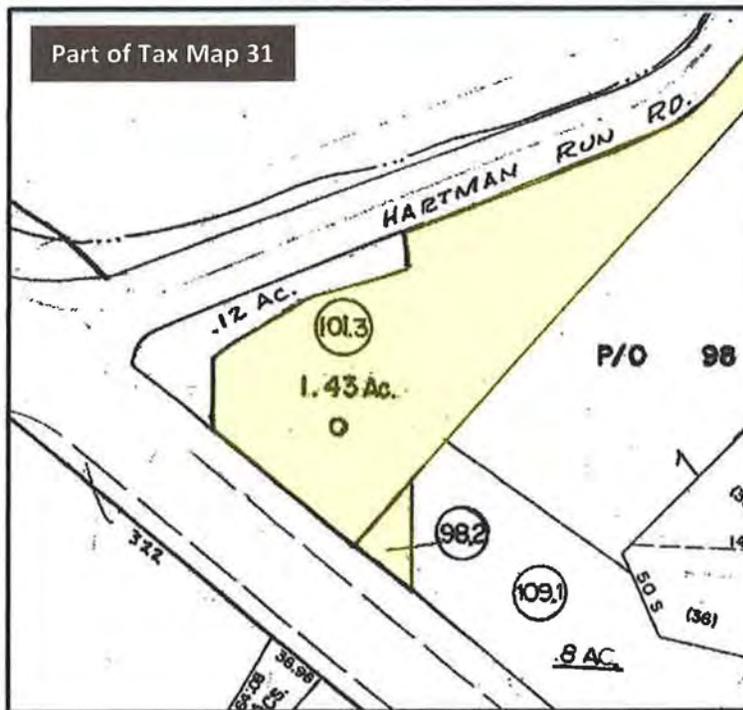
**COMBINED STAFF REPORT ADDENDUM A**  
**RZ16-01 / Commercial Developers, LLC / 20 Hartman Run Road**  
**RZ16-02 / WesBanco Bank, Inc. / 1350 Earl Core Road**

Parcels included in the Commercial Developers, LLC zoning map amendment petition Case No. RZ16-01 are Tax Map 31, Parcels 17.2, 17.3, and 17.5 as illustrated below.



**COMBINED STAFF REPORT ADDENDUM A**  
**RZ16-01 / Commercial Developers, LLC / 20 Hartman Run Road**  
**RZ16-02 / WesBanco Bank, Inc. / 1350 Earl Core Road**

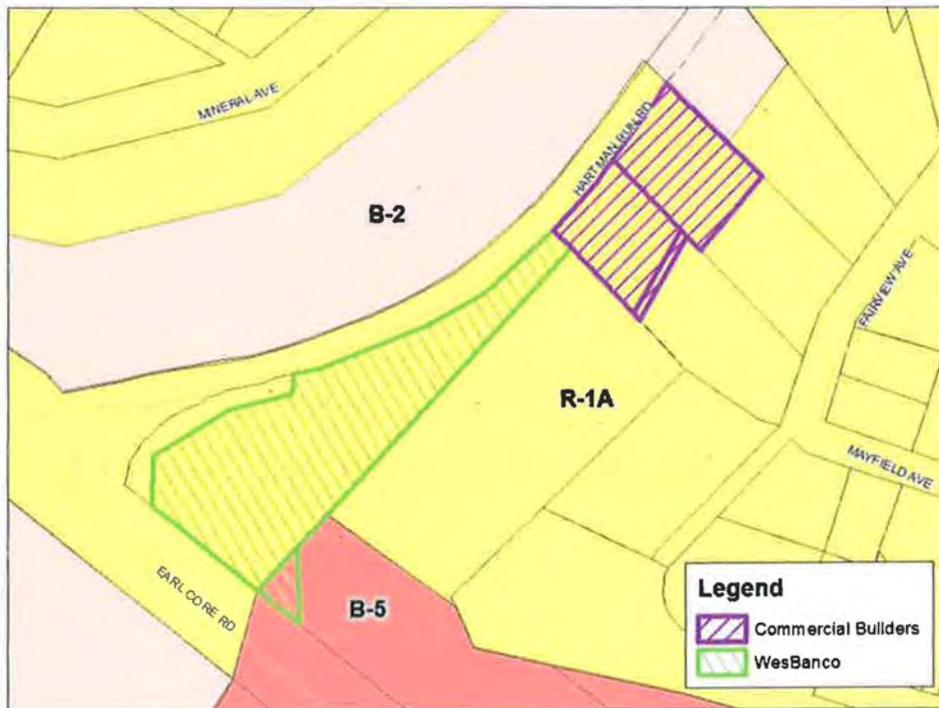
Parcels included in the WesBanco Bank, Inc. zoning map amendment petition Case No. RZ16-01 are Tax Map 31, Parcels 98.2 and 101.3 as illustrated below.



# COMBINED STAFF REPORT ADDENDUM A

RZ16-01 / Commercial Developers, LLC / 20 Hartman Run Road

RZ16-02 / WesBanco Bank, Inc. / 1350 Earl Core Road



## COMBINED STAFF REPORT ADDENDUM B

RZ16-01 / Commercial Developers, LLC / 20 Hartman Run Road

RZ16-02 / WesBanco Bank, Inc. / 1350 Earl Core Road

### Concurrence with the 2013 Comprehensive Plan Update

The following narrative identifies where, in the opinion of the Planning Division, the subject zoning map amendment petitions are in concurrence and/or are inconsistent with the 2013 Comprehensive Plan Update.

---

#### INTENT

Development proposals will reflect the spirit and values expressed in the Plan's principals.

---

#### Principles for Land Management

- 
- |             |   |  |
|-------------|---|--|
| Principal 1 | Infill development and redevelopment of underutilized and/or deteriorating sites takes priority over development in green field locations at the city's edge. | <input checked="" type="checkbox"/> Concurrence<br><input type="checkbox"/> Inconsistent<br><input type="checkbox"/> Other |
|-------------|---|--|

*The subject site is located along and adjoining the well-established Earl Core Road commercial corridor.*

- 
- |             |   |  |
|-------------|---|--|
| Principal 2 | Expansion of the urban area will occur in a contiguous pattern that favors areas already served by existing infrastructure. | <input checked="" type="checkbox"/> Concurrence<br><input type="checkbox"/> Inconsistent<br><input type="checkbox"/> Other |
|-------------|---|--|

*The subject tracts of realty are within the urban area and have been developed since at least the 1960's and 1970's.*

- 
- |             |  |  |
|-------------|--|--|
| Principal 3 | Downtown, adjacent neighborhoods and the riverfront will be the primary focus for revitalizations efforts. | <input type="checkbox"/> Concurrence<br><input type="checkbox"/> Inconsistent<br><input checked="" type="checkbox"/> Other |
|-------------|--|--|

*Although the subject tracts of realty are not located within or adjacent to the central business district, they are located within an existing commercial corridor and identified as a "Corridor Enhancement" general concept area.*

- 
- |             |  |  |
|-------------|--|--|
| Principal 4 | Existing neighborhoods throughout the city will be maintained and/or enhanced. | <input checked="" type="checkbox"/> Concurrence<br><input type="checkbox"/> Inconsistent<br><input type="checkbox"/> Other |
|-------------|--|--|

*The proposed zoning reclassification should not compromise or undermine desired land use and/or development pattern goals and objectives within the nearby neighborhoods of Jerome Park and Norwood Addition.*

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Principal 5	Quality design is emphasized for all uses to create an attractive, distinctive public and private realm and promote positive perceptions of the region.	<input checked="" type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input type="checkbox"/> Other
<i>The proposed B-2 District classification should serve to attract and sustain market interest in commercial uses that would otherwise be prohibited under the R-1A District classification thereby hindering advancement of "Corridor Enhancement" goals and objectives.</i>		
Principal 6	Development that integrates mixed-uses (residential, commercial, institutional, civic, etc.) and connects with the existing urban fabric is encouraged.	<input checked="" type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input type="checkbox"/> Other
<i>The proposed B-2 District classification creates opportunities for mixed-use development and properly aligns the subject tracts of realty with the permitted land uses and development patterns present within the Earl Core Road commercial corridor.</i>		
Principal 7	Places will be better connected to improve the function of the street network and create more opportunities to walk, bike and access public transportation throughout the region.	<input checked="" type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input type="checkbox"/> Other
<i>Minimum B-2 District design standards for physical improvements (i.e., sidewalks, landscaping, access management etc.) should serve to advance multi-modal connectivity in the event of redevelopment improvement compared to related R-1A District standards.</i>		
Principal 8	A broad range of housing types, price levels and occupancy types will provide desirable living options for a diverse population.	<input checked="" type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input type="checkbox"/> Other
<i>A broader range of residential dwelling types are permitted within the B-2 District over the R-1A District including mixed-use, over-store, multi-family, and townhouse dwellings.</i>		
Principal 9	Residential development will support the formation of complete neighborhoods with diverse housing, pedestrian-scaled complete streets, integrated public spaces, connection to adjacent neighborhoods, and access to transportation alternative and basic retail needs.	<input type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input checked="" type="checkbox"/> Other
<i>Although a broader range of residential dwelling unit types are permitted in the B-2 District, it appears the petitioners' present intentions are to provide future commercial occupancy flexibility for the existing buildings and remove the nonconforming status of the present land use occupants.</i>		

- Principal 10 Parks, open space, and recreational areas are incorporated as part of future development.  Concurrence  
 Inconsistent  
 Other

*The subject tracts of realty do not appear favorable for active open space development given the auto-dependent commercial character of the Earl Core Road corridor, relatively small footprint, and adjoining steep slopes.*

- Principal 11 Environmentally sensitive and sustainable practices will be encouraged in future developments.  Concurrence  
 Inconsistent  
 Other

*It appears the petitioners' present intentions are not to redevelop one or more of the subject tracts but to provide future commercial occupancy flexibility for the existing buildings and remove the nonconforming status of the present land use occupants.*

**LOCATION**

Development proposals will be consistent with the Land Management Map. If the proposal applies to an area intended for growth, infill, revitalization, or redevelopment, then it should be compatible with that intent and with any specific expectations within Areas of Opportunity. If the proposal applies to an area of conservation or preservation, it should be compatible with and work to enhance the existing character of the immediate surroundings.

The following graphic is clipped from the **Conceptual Growth Framework Map** included on Page 19 of the 2013 Comprehensive Plan Update. The subject development site is located within an **"Infill and Redevelopment"** concept area and next to a **"Encouraged Growth"** concept area.



**Infill and Redevelopment**



**Encouraged Growth**

**PATTERN  
AND  
CHARACTER**

Development proposals in growth areas will be consistent with preferred development types. Development in areas where growth is not intended should be compatible with the relevant Character Areas description and expectations for how those areas should evolve in the future.

The following graphic is clipped from **Map 3 – Pattern and Character** included on Page 27 of the 2013 Comprehensive Plan Update. The subject development site is located within the **“Mountain / Valley Corridor”** and a **“Commercial Corridor”** pattern and character areas.



**Mountain / Valley Corridor.** Mountain / Valley Corridors are narrow strips of development that occur along roadways that trace ridges and valleys. They have many qualities associated with rural development such as streets that lack curb and gutter, small, one or two story buildings, and each address typically has direct driveway access to the thoroughfare. However, unlike typical rural areas where buildings are often set back far from the street, development in these corridors is often clustered in pockets that are very close to the street. Uses along these corridors tend to be eclectic, including single-family and multi-family residential, commercial, light industrial, warehousing and other uses.



**Commercial Corridor.** Corridors are linear districts defined by development along arterial or collector roadways. Commercial Corridors are auto-oriented and are dominated by large single-story buildings setback from the street and parking areas facing the street. These corridors are generally not pedestrian friendly due to lack of sidewalks, long block lengths and many vehicle access points (curb cuts) which create conflicts for pedestrians.

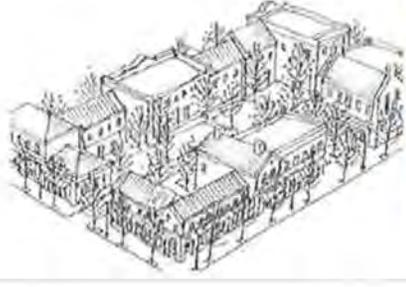


The following graphic is clipped from **Map 4 – Land Management** included on Page 39 of the the 2013 Comprehensive Plan Update. The subject development site is located within the “**Corridor Enhancement**” concept area.



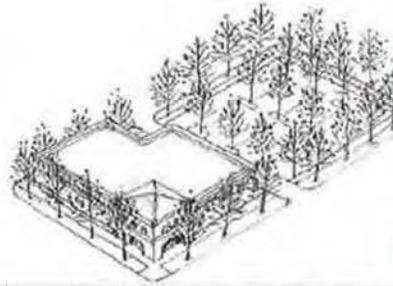
**Corridor Enhancement\*\*:** Improving development along corridors with a mix of uses, increased intensity at major nodes or intersections and roadway improvements to improve traffic flow, pedestrian and biking experience.

The following graphics are clipped from Pages 41 through 43 of the 2013 Comprehensive Plan Update and identify the development types desired within the "Corridor Enhancement" concept area.

		Appropriate Development Types										
CONCEPT AREA		SF	TF	MF	C	NX	UC	CC	O	I	CD	OS
 Corridor Enhancement*				•	•	•		•	•			•
DEVELOPMENT TYPE DESCRIPTIONS		PATTERN AND CHARACTER EXAMPLES										
<b>MF Multi-family Residential</b>	Includes various forms such as apartment buildings where three or more separate residential dwelling units are contained with a structure and townhouse dwelling types. They vary considerably in form and density depending on the context – from four-story or larger buildings set close to the street in and at the edge of the downtown core and along major corridors, to smaller two- to four-story buildings with greater street setbacks in areas between the downtown core and single-family neighborhoods.											
<b>C Civic and Institutional</b>	These sites include both public uses (government buildings, libraries, community recreation centers, police and fire stations, and schools) and semi-public or private uses (universities, churches, hospital campuses). Public uses should be strategically located and integrated with surrounding development. Civic and Institutional sites may be distinctive from surrounding buildings in their architecture or relationship to the street.											
<b>NX Neighborhood Center Mixed-Use</b>	A mix of housing, office, commercial, and civic uses adjacent to one another or contained within the same structure (such as offices or apartments above ground-floor retail). Such uses should be compatible with and primarily serve nearby neighborhoods (within 1/2 mile). Parking should be located behind or to the side of buildings and may be shared between multiple uses.											

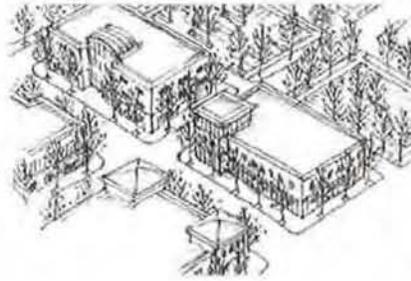
**CC Community Commercial**

Larger scale, primarily retail, restaurant and accommodation uses that serve the broader community. Buildings should be located close to the street with parking to the rear or side and should be well-connected to surrounding development and pedestrian infrastructure.



**O Office / Research**

Larger-scale 2-6 story buildings generally housing professional offices or research/development activities with single or multiple tenants. May involve multiple large-scale buildings in a campus setting, but buildings should be in a walkable configuration with shared parking typically behind or to the side. Supportive retail establishments may occupy the lower levels of a multistory building. Supportive retail uses include coffee shops, delicatessens, barbers, and bookstores among others.



**OS Greenspace**

Includes formal parks, recreation areas, trails, and natural open space.





City of Morgantown, West Virginia  
**APPLICATION FOR  
 FOR ZONING MAP AMENDMENT**

OFFICE USE	
CASE NO.	R216-01
RECEIVED:	
COMPLETE:	

PAID

Zoning Map Amendment Process – See Addendum A of this Application

(PLEASE TYPE OR PRINT IN BLACK INK)

DEC 04 2015

BY: [Signature]

**I. OWNER / APPLICANT**

Name:	COMMERCIAL DEVELOPERS LLC	Phone:	
Mailing Address:	Street: 2358 SONOMA DRIVE W City: NOKOMIS State: FL Zip: 34275	Mobile:	304-826-6326
		Email:	RED.MOSS@HOTMAIL.COM (ALL LOWER CASE)

Com

**II. AGENT / CONTACT INFORMATION**

Name:	ROBERT E. DEMOSS	Phone:	
Mailing Address:	Street: 2358 SONOMA DRIVE W City: NOKOMIS State: FL Zip: 34275	Mobile:	304-826-6326
		Email:	red.moss@HOTMAIL.COM

Com

Mailings – Send all correspondence to (check one):  Applicant OR  Agent/Contact

**IV. PROPERTY**

Street Address (if assigned):	20 HARTMAN RUN ROAD,		
Tax Map(s) #:	31	Parcel(s) #:	17.2, 17.3 & 17.5
Current Zoning Classification:	R-1A	Proposed Zoning Classification:	B2
Current Land Use:	CONSTRUCTION COMPANY	Proposed Land Use*:	AUTO REPAIR SHOP

\*The Planning Commission does not take proposed use into consideration. The question is asked merely for staff to determine if the proposed district allows the intended use.

**V. ATTEST**

I hereby certify that I am the owner of record of the named property, or that this application is authorized by the owner of record and that I have been authorized by the owner to make this application as his/her authorized agent and I agree to conform to all applicable laws of this jurisdiction, whether specified herein or not. I certify that I have read and examined this document and know the same to be true and correct. The undersigned has the power to authorize and does hereby authorize City of Morgantown representatives on official business to enter the subject property as necessary to process the application and enforce related approvals and conditions.

COMMERCIAL DEVELOPERS LLC	ROBERT E. DEMOSS	11-25-15
Type/Print Name of Applicant/Agent	Type/Print Name of Applicant/Agent	Date

Zoning Map Amendment Fee - \$75 CK 1253



City of Morgantown, West Virginia  
**APPLICATION FOR  
 FOR ZONING MAP AMENDMENT**

OFFICE 1107  
 CASE NO. **RZ16-02**  
 RECEIVED: \_\_\_\_\_  
 COMPLETE: \_\_\_\_\_

Zoning Map Amendment Process – See Addendum A of this Application

(PLEASE TYPE OR PRINT IN BLACK INK)

**PAID**  
**DEC 03 2015**

I. OWNER / APPLICANT			
Name:	WesBanco Bank, Inc		Phone: 304-905-7231
Mailing Address:	One Bank Plaza		Mobile: 304-692-1164
	Street	Wheeling WV 26003	Email: decker@wesbanco.com
	City	State Zip	
II. AGENT / CONTACT INFORMATION			
Name:	Stephen Decker		Phone: 304-905-7231
Mailing Address:	1350 Earl Core Road		Mobile: 304-692-1164
	Street	Morgantown WV 26505	Email: decker@wesbanco.com
	City	State Zip	
Mailings –	Send all correspondence to (check one): <input type="checkbox"/> Applicant OR <input checked="" type="checkbox"/> Agent/Contact		
IV. PROPERTY			
Street Address (if assigned):	1350 Earl Core Road Morgantown, WV 26505		
Tax Map(s) #:	31	Parcel(s) #:	101.3 <b>98.2</b> Size (sq. ft. or acres): <b>1.348</b> acres
Current Zoning Classification:	R-1A, <b>B5</b>	Proposed Zoning Classification:	B2
Current Land Use:	Financial Services Establishment	Proposed Land Use*:	Financial Services Establishment
<i>*The Planning Commission does not take proposed use into consideration. The question is asked merely for staff to determine if the proposed district allows the intended use.</i>			
V. ATTEST			
I hereby certify that I am the owner of record of the named property, or that this application is authorized by the owner of record and that I have been authorized by the owner to make this application as his/her authorized agent and I agree to conform to all applicable laws of this jurisdiction, whether specified herein or not. I certify that I have read and examined this document and know the same to be true and correct. The undersigned has the power to authorize and does hereby authorize City of Morgantown representatives on official business to enter the subject property as necessary to process the application and enforce related approvals and conditions.			
WesBanco Bank, Inc	<u>Stephen Decker</u>	12/03/2015	
Type/Print Name of Applicant/Agent	Type/Print Name of Applicant/Agent	Date	

Zoning Map Amendment Fee - **\$75** **OK 759703**

**EXHIBIT 2**  
**DRAFT ORDINANCE**

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF FIVE (5) PARCELS OF REAL ESTATE IN THE SIXTH WARD OF THE CITY OF MORGANTOWN FROM R-1A, SINGLE-FAMILY RESIDENTIAL DISTRICT AND B-5, SHOPPING CENTER DISTRICT TO B-2, SERVICE BUSINESS DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN.

Property included in this consideration is identified in the Monongalia County Assessor's records as Parcels 17.2, 17.3, 17.5, 98.2, and 101.3 of County Tax Map 31; Morgantown Corporation District.

**THE CITY OF MORGANTOWN HEREBY ORDAINS:**

1. That the zoning designation for Parcels 17.2, 17.3, 17.5, and 101.3 of County Tax Map 31 of the Monongalia County tax assessment as described herein and illustrated on the exhibit hereto attached and declared to be a part of this Ordinance to be read herewith as if the same was fully set forth herein are reclassified from R-1A, Single-Family Residential District to B-2, Service Business District.
2. That the zoning designation for Parcel 98.2 of County Tax Map 31 of the Monongalia County tax assessment as described herein and illustrated on the exhibit hereto attached and declared to be a part of this Ordinance to be read herewith as if the same was fully set forth herein are reclassified from B-5, Shopping Center District to B-2, Service Business District.
3. That the Official Zoning Map be accordingly changed to show said zoning classification.

This Ordinance shall be effective from the date of adoption.

FIRST READING:

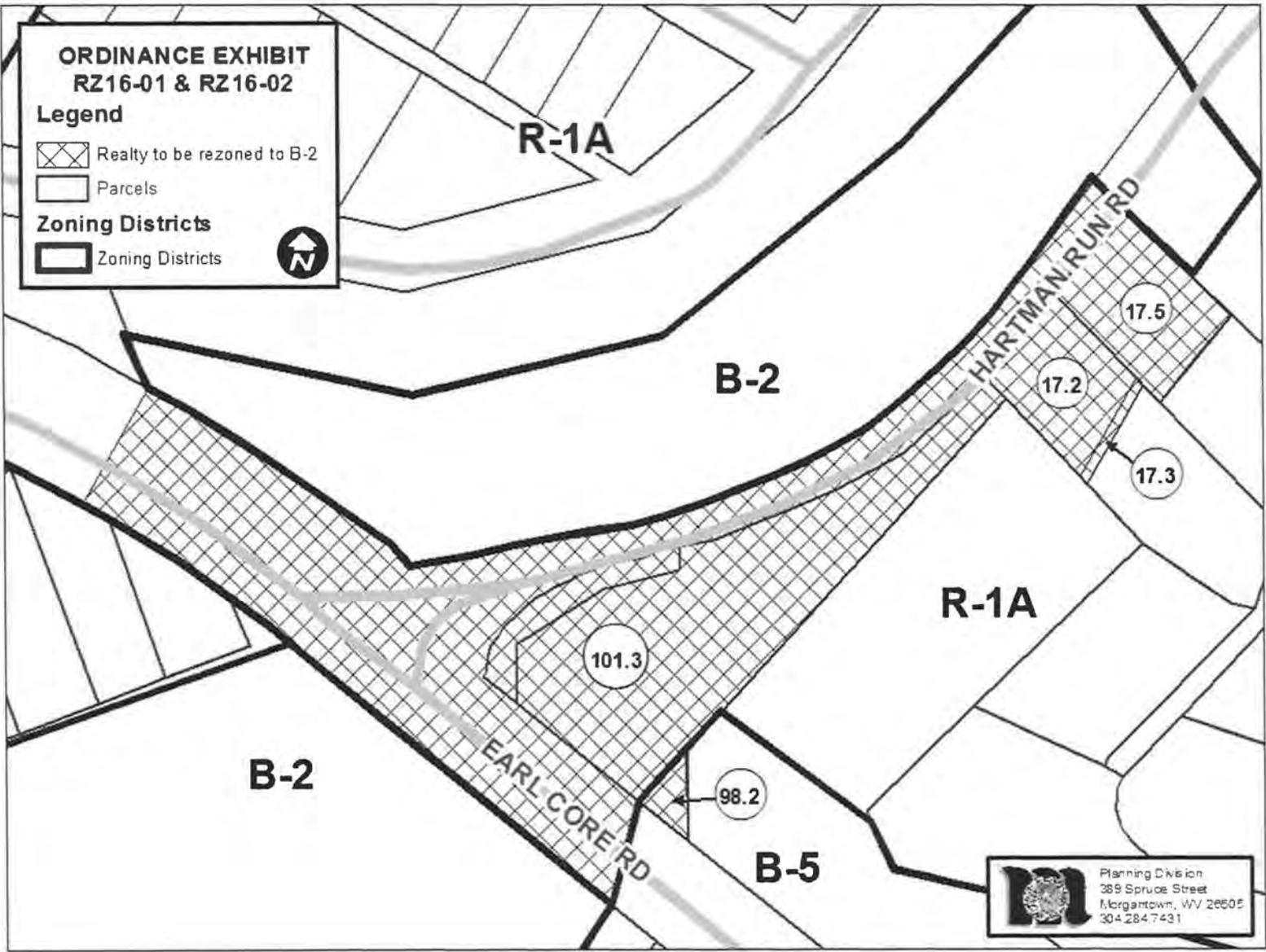
\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

RECORDED:

\_\_\_\_\_  
City Clerk





January 12, 2016

Jeff Mikorski, City Manager  
City of Morgantown  
389 Spruce Street  
Morgantown, WV 26505

Dear Jeff:

Thank you for sitting down with BOPARC Vice President Ron Justice and myself recently to further discuss the Metropolitan Theatre and BOPARC's overall preliminary budgetary outlook.

As we begin to work toward our 2016/2017 budget and overall organizational structure and mission, it appears that there is substantial support for the cooperative management agreement that I mentioned in my November 13, 2015 correspondence (copy attached). This is great news for all parties involved and will benefit the Met in many ways as well.

The purpose of this letter is to clarify per your request some of the items in the November 13<sup>th</sup> correspondence.

To that end, I will not be including the Metropolitan Theatre in BOPARC's proposed 2016/2017 budget. As I stated in November, we have taken great pride in the opportunity to manage the facility for over a decade and it has been a valuable experience for our organization. At this time, due to our own organizational situation, we must shift our focus and efforts to the municipal parks that we manage and the facilities contained within them. This will mean that my recommendation to my Board will be that as of July 1<sup>st</sup>, BOPARC will no longer be involved in the management, staffing and/or maintenance of the Metropolitan Theatre.

Again, as the partnership and vision meetings regarding the Met continue, BOPARC would be glad to provide any information needed to make the transition as smooth as possible. Thank you for your continued support of the parks and recreational opportunities in our community.

*Melissa Burch*

Melissa Burch, Executive Director

Cc: BOPARC Board



Board of Park and  
Recreation Commissioners

P.O. Box 590  
Morgantown, WV  
26507-0590

Telephone:  
**(304) 296-8356**

Fax:  
(304) 296-5842

[www.boparc.org](http://www.boparc.org)

November 13, 2015

Jeff Mikorski, City Manager  
City of Morgantown  
389 Spruce Street  
Morgantown, WV 26505

Dear Jeff:

Thank you for sitting down with Bob Clonch, Ron Justice, Jenny Selin and myself recently to discuss several matters, including BOPARC's current management of the Metropolitan Theatre and our overall organizational outlook.

It is my understanding from that meeting, from speaking to WVU representatives, and from reviewing the Met Theatre Commission's meeting information that the City is discussing with WVU and/or other entities a cooperative management agreement in which the Met Theatre Commission would be directly involved. This would require BOPARC to hand the management function of the theatre over to other parties. I would just like to reiterate BOPARC's desire for this to come to fruition and our support of such an agreement.

BOPARC has taken great pride in managing the facility for many years. At this time however, there appears to be a community need for the involvement of more specialized entities. These entities will greatly benefit from all the theatre has to offer. BOPARC is supportive of this possibility as it is also an opportunity for the theatre to benefit from this specialization.

As these partnership and vision meetings continue, BOPARC would be glad to provide any information needed to make a transition as smooth as possible.

Again, thank you for meeting with us and for your continued support.

Melissa Burch, Executive Director

**AN ORDINANCE CREATING A NEW ARTICLE 156 WITHIN THE ADMINISTRATIVE CODE OF THE CITY OF MORGANTOWN; ESTABLISHING A METROPOLITAN THEATRE COMMISSION AND SETTING FORTH THE COMMISSION'S AUTHORITY AND DUTIES.**

The City of Morgantown hereby ordains that a new Article 156 is hereby adopted as part of the Administrative Code of the City, establishing a Metropolitan Theatre Commission, which reads as follows:

**ARTICLE 156  
METROPOLITAN THEATRE COMMISSION**

**156.01 ESTABLISHED**

There is hereby established a Metropolitan Theatre Commission for the City.

**156.02 PURPOSE**

The function of the Metropolitan Theatre Commission is to over watch and advise the City Manager and City Council regarding present and future development of the theater, programming, financing of theater projects, and operations of the theater as a whole.

**156.03 MEMBERSHIP**

The Metropolitan Theatre Commission shall consist of nine members. Seven of the members shall be residents of the City who shall be appointed by City Council from those members comprising the Commission of the Metropolitan Theatre Preservation Foundation at the date of adoption of this ordinance. Each

of the seven members shall serve a term of four years. Upon the conclusion of that four year period, subsequent reappointments or new appointments will be for terms as follows:

Two members for a one year term

and

Two members for a two year term

and

Three members for a three year term.

City Council shall determine at the conclusion of the initial four year term which members of the Commission shall be assigned to the terms indicated above.

Upon the expiration of the terms specified above, all subsequent appointments shall be for a term of three years each.

An eighth member of the Commission shall be a member of the governing body of the City, and shall be elected by City Council. The term of the City Council member shall be coextensive with the term of office to which he or she has been elected or appointed.

A ninth member of the Commission shall be a member of the Monongalia County Commission, and shall be appointed thereto by the County Commission. The term of the County Commission member shall be at the will and pleasure of the Monongalia County Commission

All members shall serve without compensation.

156.04 VACANCIES

Vacancies shall be filled in the same manner as for appointments to the Commission, but for the unexpired term only. The office of a member of the Metropolitan Theatre Commission shall become vacant upon his/her death, resignation, removal from office or failure to attend three consecutive regular meetings of the Commission without being excused by the Commission either before or after such absence.

156.05 OFFICERS

The Metropolitan Theatre Commission shall select from its own membership a chairperson, vice-chairperson and secretary.

156.06 MEETINGS

The Metropolitan Theatre Commission shall meet as often as it may deem necessary, upon call of the chairperson. All meetings will be subject to the West Virginia Open Governmental Proceedings Act.

156.07 WRITTEN REPORTS

The Commission shall submit annual reports to the City Manager and Council summarizing its past year's activities and recommendations for the ensuing year.

156.08

As a Board of the City, the Metropolitan Theatre Commission shall be subject to the West Virginia Freedom of Information Act.

This ordinance shall be effective upon date of adoption.

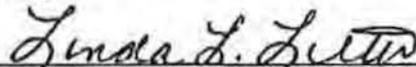
First Reading: March 4, 2003

Adopted: March 18, 2003

Filed: March 19, 2003

Recorded: March 19, 2003

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
City Clerk

**AN ORDINANCE ACCEPTING CONVEYANCE OF ALL OF THE RIGHT, TITLE, AND INTEREST OF AIRPARK, LLC IN AND TO THE COAL WITHIN THREE PARCELS OF REAL ESTATE IDENTIFIED AS MORGAN DISTRICT, TAX MAP 7, PARCELS 19.5, 19.5, AND 19.7.**

The City of Morgantown hereby ordains that the deed attached to this Ordinance and incorporated herein by reference is accepted.

This ordinance shall be effective upon the date of adoption.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

\_\_\_\_\_  
CITY CLERK

RECORDED:

THIS QUIT CLAIM DEED, made and entered into this 2nd day of January, 2016, by and between **AIRPARK, LLC**, a West Virginia limited liability company, party of the first part, Grantor; and the **CITY OF MORGANTOWN**, a municipal corporation and political subdivision of the State of West Virginia, party of the second part, Grantee.

WITNESSETH: That for and in consideration of the sum of \$10.00, cash in hand paid and other good and valuable consideration, the receipt of all of which is hereby acknowledged, the party of the first part, **AIRPARK, LLC**, a West Virginia limited liability company, does hereby **GRANT, CONVEY, RELEASE, REMISE and FOREVER QUIT CLAIM**, unto the party of the second part, the **CITY OF MORGANTOWN**, a municipal corporation and political subdivision of the State of West Virginia, all of its right, title and interest in and to all of the coal, in and under, and that may be extracted from the following described land, together with any and all mining rights and privileges appurtenant thereto, situate in Morgan District, Monongalia County, West Virginia, more particularly bounded and described as follows, to-wit:

PARCEL ONE: 2.93 ACRES:

Beginning at an iron rod an original corner between land now or formerly of Kramer Turner and Millard Mayhew, and in a line of land now or formerly of Darrell J. Hoskins, thence with original Turner line, N. 6° W. 300 feet to an iron rod; thence leaving original line, N. 68° 10' E. 386 feet to a point in a private road (iron rod set 25 feet west of corner); thence with center of said private road, S. 24° 15' E. 300 feet to a point in said road (iron rod set 30 feet west of corner); thence leaving said road, S. 69° 30' W. 480.61 feet to the beginning, containing 2.93 acres, being the same, more or less, as more fully shown on a plat dated March 11, 1976, prepared by Paul W. Guseman, LLS, a copy of which is recorded in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 772, at page 418.

PARCEL TWO: 10.16 ACRES:

BEGINNING at a point on the Eastern side of the road, at a post in the fence line; thence S. 69° 43' W. 404.70 feet to an iron pin; thence along the dividing line with the City of Morgantown, N. 4° 38' W. 1162.26 feet to a point; thence S. 79° 38' E. 471.96 feet, along the dividing line with the City of Morgantown, to a point; thence S. 0° 34' E. 933.29 feet to the point and place of beginning, as more fully set forth on a plat of said property hereby conveyed, which plat is recorded in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 806, at page 98.

PARCEL THREE: 13.56 ACRES:

Beginning at an iron pin on the east side of a private road leading approximately 1/3 mile to West Virginia County Route No. 62/2, said iron pin being the point of beginning from deed from Kramer Edward Turner and Hazel Turner, his wife, to Pineview Realty, Inc., dated May 22, 1978, recorded in the office of the Clerk of the County Court of Monongalia County, West Virginia, in Deed Book No. 806, at page 96; thence along the dividing line with said tract and residue of Hazel Turner, N. 0° 34' W. 933.29 feet to a point from which a 38 inch black oak bears S. 0° 34' E. 11.00 feet; thence along the dividing line with the City of Morgantown, DBV 365/92, S. 79° 38' E. 713.60 feet to a point at the end of a stone fence; thence along the dividing line with the City of Morgantown, DBV 368/392, S. 26° 50' E. 79.49 feet to a corner fence post; thence along the dividing line with James L. and Beverly A. Laurita DBV 778/344, S. 5° 20' 10" W. 622.16 feet to a 34 inch white oak; thence through land of Hazel Turner, passing an iron pin line reference at 69.64 feet and other iron pin line reference at 672.96 feet and the centerline of aforesaid private road at 682.96 feet, a total of S. 75° 26' 50" W. 688.52 feet to a point in the west side of road; thence along the diving line with Pineview Realty, Inc. DBV 797/103, N. 22° 42' W. 56.47 feet to a point in line of Pineview Realty, Inc. DBV 806/96; thence re-crossing road and along the diving line with said Pineview Realty, Inc., N. 69° 43' E. 18.70 feet to the place of beginning, containing 13.56 acres, more or less, as shown on a plat of survey prepared by Blaine E. Miller, LLS, recorded in Deed Book 900, at page 431.

And being all of the coal underlying the same real estate which was conveyed to Airpark, LLC, a West Virginia limited liability company, from East Park, LLC, a West Virginia limited liability company, by deed dated December 3, 2008, and recorded in the

office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1377, at page 298.

This conveyance of the coal rights is made subject to any rights now existing to any lessee or assigns under any valid and subsisting coal lease heretofore executed and now of legal record; it being understood and agreed that said Grantee shall have, receive and enjoy the herein granted undivided interest in and to all bonuses, rents, royalties and other benefits that may accrue thereunder from and after the date hereof, precisely as if the Grantee herein had been at the date of the making of any such lease the owner of a similar undivided interest in and to the lands above described.

Grantor agrees to execute such further assurances as may be requisite for the full and complete enjoyment of the rights herein granted and likewise agrees that Grantee herein shall have the right at any time to redeem for said Grantor by payment and mortgage, taxes, or other liens on the above described land, upon default in payment by Grantor, and can be subrogated to the rights of the holder hereof.

In addition to the foregoing, Grantor does hereby transfer, assign, and set over unto Grantee all of the Grantor's interest in and to all monies, proceeds, income, and all other personal properties now on hand or in the possession of any third party, bank, trustee, or company, which have heretofore accrued to the coal and/or royalty interest of Grantor in said coal that has been herein conveyed to Grantee.

TO HAVE AND TO HOLD the above described coal interests with all rights, privileges and appurtenances thereunder or in any way belonging to the said Grantee herein, its successors, and assigns forever, however the Grantor does not warrant the ownership of said coal.

The surface of the above-described real estate is assessed upon the Land Books of Monongalia County for the year 2015 in Morgan District as the following:

Airpark, LLC  
Map 7 Parcel 19.4  
2.93 Ac & R/W Deckers Creek

&  
Airpark, LLC  
Map 7 Parcel 19.5  
10.16 Ac Sur

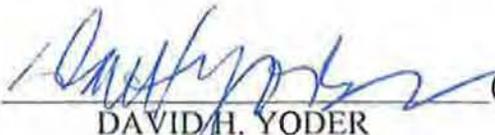
&  
Airpark, LLC  
Map 7 Parcel 19.7  
13.56 Ac Sur

DECLARATION OF CONSIDERATION OR VALUE AND RESIDENCY:

Under penalties of fine and imprisonment as provided by law, the undersigned declare that the consideration paid for the property transferred by the document to which this declaration is appended is less than \$100.00.

WITNESS the following signatures and seals:

AIRPARK, LLC,  
a West Virginia limited liability company

By:  (SEAL)  
DAVID H. YODER  
Its: Manager

STATE OF WEST VIRGINIA,  
COUNTY OF MONONGALIA, TO-WIT:

The foregoing instrument was acknowledged before me this 15 day of January, 2016, by David H. Yoder, Manager of AIRPARK, LLC, a West Virginia limited liability company, for and on behalf of said limited liability company by authority duly given.

My commission expires: December 4, 2020



  
Notary Public in and for  
said State and County

This instrument was prepared by:

Christopher A. Barnum, Esquire  
**Gianola, Barnum, Bechtel & Jecklin, L.C.**  
1714 Mileground  
Morgantown, West Virginia

THIS INSTRUMENT WAS PREPARED AT THE DIRECTION OF THE GRANTOR, WITHOUT THE BENEFIT OF A TITLE EXAMINATION, TITLE REPORT, TITLE CERTIFICATE, OR TITLE INSURANCE COMMITMENT AND NEITHER THE PREPARER NOR GIANOLA, BARNUM, BECHTEL & JECKLIN, L.C. BY THE PREPARATION OF THIS INSTRUMENT MAKE ANY EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, OR AFFIRMATIONS OF ANY KIND, NATURE, OR CHARACTER, INCLUDING, WITHOUT LIMITATION, WARRANTIES, REPRESENTATIONS, OR AFFIRMATIONS RELATING TO THE QUALITY OF TITLE, THE NATURE OF TITLE, POSSESSION, QUIET ENJOYMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, THE CONDITION OF THE PROPERTY, ACCESS TO THE PROPERTY, OR THE CAPACITY OF ANY OF THE GRANTORS TO GRANT OR CONVEY TITLE.