

REGULAR MEETING February 16, 2016: The Regular Meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Tuesday, February 16, 2016 at 7:00 p.m.

PRESENT: City Manager Jeff Mikorski, City Clerk Linda Tucker, Mayor Marti Shamberger, City Attorney Ryan Simonton, Assistant City Manager Glen Kelly and Council Members: Ron Bane, Deputy Mayor Bill Kawecki, Wes Nugent, Jenny Selin, Jay Redmond, and Nancy Ganz.

The meeting was called to order by Mayor Shamberger.

APPROVAL OF MINUTES: The minutes of the COW Meeting on January 26, 2016 and Regular Meeting on February 2, 2016 were approved as printed.

CORRESPONDENCE: Mayor Shamberger mentioned a letter as part of the record in reference to the annulment of Wall Street. (Exhibit A) Mayor Shamberger noted that Tim Ball, MUB Director has answered Charles Sell's inquiry concerning MUB's CSO program.

PUBLIC HEARING - 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.

Mayor Shamberger declared this Public Hearing open.

Mike Callen, 1420 Western Avenue, noted that by approving this annulment and the development to move forward would add to urban blight in our neighborhoods. He requested Council to look at the housing population of the students in this community and stated that more development is not the solution.

Dave Biafora, 62 Mid-Atlantic Drive, agreed with Mr. Callen and noted that he is not against development as long as it is done properly, and rules are followed.

James Giuliani, 256 Prairie Avenue, agreed with Mr. Callen's comments. He stated that if City Council adopts this project it would compromise everyone in this community.

John Williams, Williams & Associates/Engineering Firm, Athens, Georgia, stated that the Wall Street right-of-way would have to go through the proper approval process. He noted that if anyone had questions about the project he would be glad to answer them.

There being no more appearances, Mayor Shamberger declared the Public Hearing closed.

PUBLIC HEARING – AN ORDINANCE AMENDING ARTICLE 1511 OF THE CITY CODE RELATING TO FIRE PREVENTION BOARD.

Mayor Shamberger declared this Public Hearing open.

There being no appearances, Mayor Shamberger declared the Public Hearing closed.

PUBLIC PORTION:

Mayor Shamberger declared the Public Portion open.

Hank Temple, 5th Grader from North Elementary, presented a petition with 360 signatures asking that the Arboretum not be destroyed.(Exhibit A-1)

Dave Biafora, 62 Mid-Atlantic Drive, commented that the City needs to be transparent in everything and support all developers. He commented that he will continue to help the City and suggested a workshop with the City Planning Department on density.

James Giuliani, 256 Prairie Avenue, stated he has been speaking before Council for two years and noted his concerns of why his project was denied at the BZA Meeting. He mentioned that he has 15 acres in 5th Ward that is ready for development.

John Sofranko, 445 Linden Street, thanked Street Crews for the plowing of the snow. He mentioned that instead of the City having a user fee, he suggested implementing a sales tax. He noted that the City needs to be smart about development and Council should be magnanimous toward each other.

There being no more appearances, Mayor Shamberger declared the Public Portion closed.

SPECIAL COMMITTEE REPORTS: No Special Committee Reports.

NEW BUSINESS:

AN ORDINANCE AMENDING THE FY 2015-2016 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN ON THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND:

The below entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING THE FY 2015-2016 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN ON THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.

City Manager explained, motion by Nugent, second by Ganz, to pass the above entitled ordinance to second reading. Motion carried 7-0.

CITY MANAGERS REPORT:

New Business:

1. Public Safety Building Plaza Subsidence and Improvement

For years, the Public Safety Building plaza has seen subsidence that has created drainage issues that include flooding during rainstorms and water damage in the basement of the Public Safety Building. In an effort to correct the drainage issues, this project will replace the subsurface material in the plaza, replace a structural slab vault covering of a basement room, and add additional drainage pipes to move water away from the plaza. While we have the plaza under construction, we hope to take this opportunity to make design improvements to the plaza and make it a more attractive plaza by adding textures, design

features, and lighting. Earlier this year, the City advertised for bids on the plaza project. All bids received were higher than the expected budget. After reviewing the bid documents and design, the project was bid a second time, which included six alternatives that could be added to a base project cost. Attached is a memo identifying the base bid of the project and a tabulation page for the six alternatives. The alternatives are identified as the following (Alt 5 or Alt 6 must be added to complete the plaza) (Exhibit B)

- Alt 1. Accessibility ramp on opposite side of Spruce Street tied into crosswalk markings.
- Alt 2. Replacement of a fiber optic conduit across project site
- Alt 3. Inclusion of a stair system from Surface Parking lot to Plaza
- Alt 4. New Transit Shelter
- Alt 5. Concrete Plaza Design
- Alt 6. Paver Plaza Design

City Manager Jeff Mikorski recommends that City Council approve the bid from Anderson Excavating, LLC for the base bid of \$234,451.67 and include the alternatives 2, 3, & 6 for the total cost of \$310,169.26. City Manager Jeff Mikorski recommends that Council utilize the \$220,000 identified in the amended general fund budget revision number 5 that will be transferred to the Capital Escrow Fund, and the remaining \$90,169.26 be provided by the Capital Escrow contingency. (Exhibit C)

City Manager explained the bid. After discussion, motion by Selin, second by Kawecki to approve the base bid from Anderson Excavating, LLC as stated above. Motion carried 7-0.

2. Ethics Commission Opinion on Public Meeting Agenda Notifications

As discussed at past Council meetings, the City requested clarification on the posting of public meeting agendas during times when the City employees have non-holiday half-days off. The attached opinion clarifies that the half-day of government business should be included within the three-day agenda notice period for public meetings. With this clarification, City Manager Jeff Mikorski recommends that City Council adopt the attached Open Meeting Notice Rules to clarify the City's policy on posting of agendas for all City Boards, Authorities, and Commissions in compliance with W. Va. Code 6-9A-3(d)). (Exhibit D)

City Manager explained Ethics Commission Opinion. After discussion, motion by Kawecki, second by Ganz to adopt attached Open Meeting Notice Rules as City Policy of posting of Agenda's for all Boards and Commissions. Motion carried 7-0.

3. Report from City Manager and Police Chief Regarding Official Complaint

On November 14, 2015, the City received a complaint against a City Official regarding a possible election law violation during the 2015 City election. Based on City Code 137.01 the City Manager and the Police Chief are required to investigate the complaint and report to City Council for its consideration and disposal, as in its judgement seems proper. An investigation into the use of a "laminated document" that was proposed to be handed out at polling places by election staff during the 2015 election was reported to City Council

was determined to be a color version of an official election document prepared by the City Clerk's Office which included the names, addresses, phone numbers, and email addresses of the write-in candidates. After hearing the report from the City Manager and Police Chief, City Manager Jeff Mikorski recommends City Council conclude the investigation without further action.

After discussion, motion by Kawecki, second by Ganz to conclude the investigation without further action. Motion carried 7-0.

REPORT FROM CITY CLERK: City Clerk, Linda Tucker announced that the Police Civil Service Commission would be testing for Entry Level Candidates on May 21, 2016.

REPORT FROM CITY ATTORNEY: No Report

REPORT FROM COUNCIL MEMBERS:

Councilor Bane:

Councilor Bane asked the City Manager for an update about the wall at Jack Roberts Park. City Manager Jeff Mikorski responded that the work was done through BOPARC. Council suspended the rules and Councilor Ganz BOPARC Board Member updated Council on project. Councilor Kawecki commented that Historic Landmarks Commission has studied this project for historic purposes. Bane noted his concerns about the approval of the Wall Street Annulment that Council is setting a standard and opening a door for future problems for the City.

Deputy Mayor Kawecki:

No Report.

Councilor Nugent:

Councilor Nugent mentioned the request to MUB from Chuck Sell and requested the City Manager Jeff Mikorski to get the full copy of the Administrative Law Judges Hearing and e-mail it to Council. He has had questions from Citizens about Cold Patching for the potholes. City Manager Jeff Mikorski responded that the Street Department would be out Cold Patching City Streets as needed. He then suggested by consensus that the Star City Property be placed back on COW Agenda. After discussion, consensus approved to place item on Agenda. He then requested from City Manager Jeff Mikorski that Council receive Monthly

Finance reports. He announced that the Wiles Hill Hyland Park Neighborhood Association would meet on February 17th, 2016 at p.m.

Councilor Selin:

Councilor Selin noted a flyer from the Chamber promoting Legislation on diversity and requested Council discuss this issue at the next COW. After discussion, by consensus item approved for Agenda. She commented on the ability to work together and appreciated the comments during the Public Portion. She stated she appreciates the management and transparency of the City.

Councilor Redmond:

Councilor Redmond mentioned the ongoing challenges of the Planning process at the City. He questioned the role of the new Planner and asked how Council or the City Manager wants to address this issue. City Manager, Jeff Mikorski, stated he would respond to Council on the Planning process. He commented appreciation of the civil nature of comments during the meeting.

Councilor Ganz:

Councilor Ganz commented that she appreciates that all the issues this evening were addressed civilly. She noted having a bad day on Sunday referencing an article in the Dominion Post about the "Time to challenge the gang of four". She commented on all good things this Council has accomplished; and am proud to be on City Council.

Mayor Shamberger:

Mayor Shamberger thanked Ken Martis for serving on the Planning Commission for 15 years. She attended the Chinese New Year Celebration and reminded Council of the Business after Hours at the Coliseum. She asked the City Manager to remind citizens that Republic will be behind on Garbage pick-up this week. She suggested Republic be placed on the March and May COW Meetings. Council approved by consensus item be places on March and May COW Meetings. She

complemented the Dominion Post on the full-page advertisement on what it cost to dress a Police Officer. She made the following announcements: Mon. County Meeting, March 9th; Library Events; A Celebration of Sustainability; Empty Bowls; and Gardner Winter Music Festival.

ADJOURNMENT: Motion by Ganz, second by Selin to adjourn the meeting. Motion carried by unanimous consent at 9:25 p.m.

City Clerk

Mayor

***A FULL TRANSCRIPT OF ALL COUNCIL MEETINGS ARE AVAILABLE ON DVD AT THE MORGANTOWN CITY LIBRARY.**



Houston Harbaugh

ATTORNEYS AT LAW

WRITER'S DIRECT DIAL:

(412) 288-2263

ssimon@hh-law.com

File # 38730-1

February 15, 2016

Morgantown City Council
City Hall
389 Spruce Street
Morgantown, WV 26505

RE: Annulment of Wall Street

To the Members of the Morgantown City Council:

Houston Harbaugh, P.C. represents Mrs. Karen Giuliani and Mr. Alex Giuliani and is writing on their behalf in opposition to the proposed annulment of the Wall Street right-of-way between University Avenue and the Monongahela riverfront.

This Council has consistently required that in order for a public right-of-way to be annulled, it must be the case that it “is not useful for street purposes, is not needed for street purposes, nor for any other public uses and purposes.” The portion of Wall Street in question undoubtedly fails to meet that test. Not only is it currently used for access to the Monongahela riverfront, but the right-of-way is also used for the running of public utilities. Indeed, the requestor of the annulment—Landmark Properties—admits in the materials it submitted to the City Council that the Wall Street right-of-way is used for both vehicular access to parking and pedestrian access to Capteron Trail. That the Wall Street right-of-way is also needed and useful for street and public purposes is also demonstrated by the fact that the proposed ordinance for the annulment is expressly contingent upon the execution of an Access Agreement, which would cover both public access and utility access. If the Wall Street right-of-way were truly unnecessary for any “public uses and purposes,” then there would be no need whatsoever to ensure continued access for utilities and members of the public. Further, Mr. James Giuliani has spoken with the owners of Mode Roman, which their property directly abuts Wall Street. The Mode Roman owners have expressed to him their frustration and object to the potential annulment as it would cause them direct hardship.

Three Gateway Center • 401 Liberty Avenue 22nd Floor • Pittsburgh PA 15222-1005

Phone 412.281.5060 • Fax 412.281.4499 • www.hh-law.com

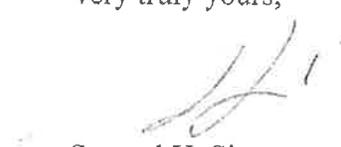
Page 2

The focus of this Council should not be whether the land in question would benefit a private developer. It is not the job of the government of Morgantown to donate land for the benefit of a private business. Rather, the sole question for this Council is whether the Wall Street right-of-way remains useful for any "public uses and purposes." The answer to that question is undoubtedly *yes*. Wall Street should not be annulled.

Finally, representatives of Landmark Properties indicated at the meeting held on February 2, 2016, that Landmark Properties would be donating land back to the City in exchange for the annulment of Wall Street. But nothing in the site plans submitted by Landmark Properties to the Planning Commission show any land being donated to the City. Neither do those plans show any surplus land that could possibly be donated to the City. To the contrary, those site plans indicate that Landmark Properties' massive "The Standard" building would occupy the entirety of the available land with less than the minimum required setbacks. The developer cannot promise to trade land when it has no spare land to trade.

On behalf of Mrs. Karen Giuliani and Mr. Alex Giuliani, I respectfully urge the City Council to reject Landmark Properties' request to annul a portion of Wall Street.

Very truly yours,



Samuel H. Simon

Dear City officials,

My name is Hank Temple. One day I heard that you decided to have the arboretum destroyed. You may think that it will help because the new bridge, but it won't. Do you know that kids at Suncrest Middle School cross country and track team have been using it for a long time? The same team that went to Charlotte, North Carolina this year. They use it for running. Another reason is people use it for scenic walks. Do you really think that a new bridge will replace that? I have other kids that agree with me and I'll prove by showing this petition signed by kids.

Thomas

Steven &

Ayah

~~Isaac~~

Taylor

Amry

Dominic

Caiden

Tommy

Ben

Yama

Rallyn

Savanna

Landon

Cara

Malak

Dean

Justin

Francisca

Ava

Juma

McKinley

Harris

Peter
Alga!

Isaac



Office of the City Manager

The City of Morgantown

City Manager
Jeff Mikorski, ICMA-CM
389 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505
(304) 284-7405 FAX: (304) 284-7430
www.morgantownwv.gov

City Manager's Report for City Council Meeting on February 16, 2016

New Business:

1. Public Safety Building Plaza Subsidence and Improvement

For years the Public Safety Building plaza has seen subsidence that has created drainage issues that include flooding during rain storms and water damage in the basement of the Public Safety Building. In an effort to correct the drainage issues, this project will replace the subsurface material in the plaza, replace a structural slab vault covering of a basement room, and add additional drainage pipes to move water away from the plaza. While we have the plaza under construction, we hope to take this opportunity to make design improvements to the plaza and make it a more attractive plaza by adding textures, design features, and lighting.

Earlier this year, the City advertised for bids on the plaza project. All bids received were higher than the expected budget. After reviewing the bid documents and design, the project was bid a second time, which included six alternatives that could be added to a base project cost. Attached is a memo identifying the base bid of the project and a tabulation page for the six alternatives. The alternatives are identified as the following (Alt 5 or Alt 6 must be added to complete the plaza):

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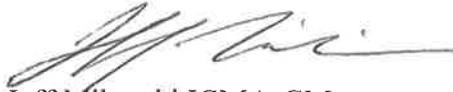
I recommend that City Council approve the bid from Anderson Excavating, LLC for the base bid of \$234,451.67 and include the alternatives 2, 3, & 6 for the total cost of \$310,169.26. I recommend that Council utilize the \$220,000 identified in the amended general fund budget revision number 5 that will be transferred to the Capital Escrow Fund, and the remaining \$90,169.26 be provided by the Capital Escrow contingency.

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3. Report from City Manager and Police Chief Regarding Official Complaint

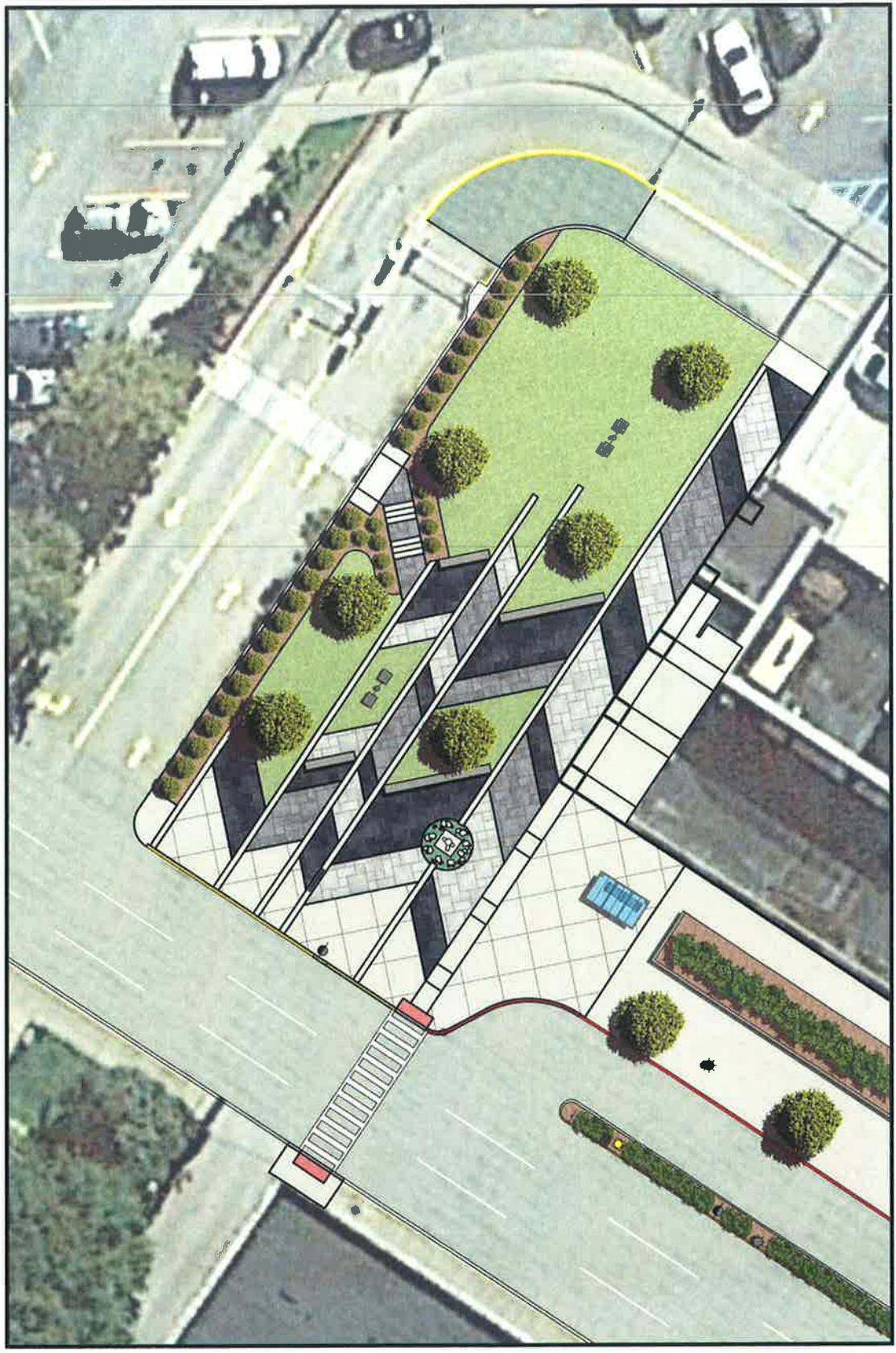
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Jeff Mikorski ICMA-CM,
Morgantown City Manager

Exhibit B

REVISED SITE RENDERING



**PUBLIC
SAFETY
BUILDING**

**COURTYARD
IMPROVEMENTS**

**300 SPRUCE ST.
MORGANTOWN, WV**



Larson Design Group







Exhibit C

Memo

City of Morgantown

Public Works Department

To: Jeff Mikorski, City Manager

From: Damien Davis, Public Works Director and City Engineer *JDD*

Subject: Public Safety Building Plaza Landscape Project – Bid Call 2016-03

Date: January 28, 2016

Bids were opened at 10:00am on January 27, 2016. The base bid results are as follows:

<u>Contractor</u>	<u>Cost</u>
1. Green River Group	\$297,020.00
2. Baiano Construction Inc.	\$331,720.00
3. Anderson Excavating, LLC	\$234,451.67

Attached are different cost scenarios with the 6 options in the bid package. Anderson Excavating has performed work for the City on a number of projects ranging from the demolition of dilapidated structures to grading work at Jack Roberts Park. Anderson Excavating has performed all work per their contract with no issues. Engineering recommends award of the contract to Anderson Excavating.

PROJECT NAME: REBID PUBLIC SAFETY BUILDING LANDSCAPE ENHANCEMENTS, MORGANTOWN, WV

BID OPENING DATE: 1/27/16
 PROJECT NO.: 8814-001
 PREPARED BY: SMB



Larson Design Group

Your Vision...Made Real!
Architects Engineers Surveyors
 An employee owned company

2502 Cranberry Square, Morgantown, WV 26508
 304.777.2940

BASE BID AND ALTERNATE OPTIONS

ITEM NO.	DESCRIPTION	UNIT	NO. OF UNITS	Green River Group		Baiano Construction		Anderson Excavating	
				UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
Option 1 Scenario	Base Bid				\$ 297,020.00		\$ 331,720.00		\$ 234,451.67
	Alt. 5 - Additional Concrete Sidewalk	SY	250	\$ 86.00	\$ 21,500.00	\$ 125.00	\$ 31,250.00	\$ 99.19	\$ 24,797.50
	Option 1 Scenario Total				\$318,520.00		\$362,970.00		\$259,249.17
Option 2 Scenario	Base Bid				\$ 297,020.00		\$ 331,720.00		\$ 234,451.67
	Alt. 6 - Concrete Paver Sidewalk	SY	250	\$ 240.00	\$ 60,000.00	\$ 269.00	\$ 67,250.00	\$ 218.67	\$ 54,667.50
	Option 2 Scenario Total				\$357,020.00		\$398,970.00		\$289,119.17
Option 3 Scenario	Base Bid				\$ 297,020.00		\$ 331,720.00		\$ 234,451.67
	Alt. 2 - Fiber Optic Conduit Replacement	LS	1		\$ 12,000.00		\$ 1,930.00		\$ 6,362.80
	Alt. 3 - Concrete Stair System	LS	1		\$ 15,000.00		\$ 9,660.00		\$ 14,687.29
	Alt. 5 - Additional Concrete Sidewalk	SY	250	\$ 86.00	\$ 21,500.00	\$ 125.00	\$ 31,250.00	\$ 99.19	\$ 24,797.50
	Option 3 Scenario Total				\$345,520.00		\$374,560.00		\$280,299.26
Option 4 Scenario	Base Bid				\$ 297,020.00		\$ 331,720.00		\$ 234,451.67
	Alt. 2 - Fiber Optic Conduit Replacement	LS	1		\$ 12,000.00		\$ 1,930.00		\$ 6,362.80
	Alt. 3 - Concrete Stair System	LS	1		\$ 15,000.00		\$ 9,660.00		\$ 14,687.29
	Alt. 6 - Concrete Paver Sidewalk	SY	250	\$ 240.00	\$ 60,000.00	\$ 269.00	\$ 67,250.00	\$ 218.67	\$ 54,667.50
	Option 4 Scenario Total				\$384,020.00		\$410,560.00		\$310,169.26
Option 5 Scenario	Base Bid				\$ 297,020.00		\$ 331,720.00		\$ 234,451.67
	Alt. 1 - Spruce Street Paver Curb Ramp	LS	1		\$ 3,500.00		\$ 4,080.00		\$ 3,160.04
	Alt. 2 - Fiber Optic Conduit Replacement	LS	1		\$ 12,000.00		\$ 1,930.00		\$ 6,362.80
	Alt. 3 - Concrete Stair System	LS	1		\$ 15,000.00		\$ 9,660.00		\$ 14,687.29
	Alt. 5 - Additional Concrete Sidewalk	SY	250	\$ 86.00	\$ 21,500.00	\$ 125.00	\$ 31,250.00	\$ 99.19	\$ 24,797.50
	Option 5 Scenario Total				\$349,020.00		\$378,640.00		\$283,459.30
Option 6 Scenario	Base Bid				\$ 297,020.00		\$ 331,720.00		\$ 234,451.67
	Alt. 1 - Spruce Street Paver Curb Ramp	LS	1		\$ 3,500.00		\$ 4,080.00		\$ 3,160.04
	Alt. 2 - Fiber Optic Conduit Replacement	LS	1		\$ 12,000.00		\$ 1,930.00		\$ 6,362.80
	Alt. 3 - Concrete Stair System	LS	1		\$ 15,000.00		\$ 9,660.00		\$ 14,687.29
	Alt. 6 - Concrete Paver Sidewalk	SY	250	\$ 240.00	\$ 60,000.00	\$ 269.00	\$ 67,250.00	\$ 218.67	\$ 54,667.50
	Option 6 Scenario Total				\$387,520.00		\$414,640.00		\$313,329.30
Alt. 1	Spruce Street Paver Curb Ramp	LS	1	\$ 3,500.00	\$ 3,500.00	\$ 4,080.00	\$ 4,080.00	\$ 3,160.04	\$ 3,160.04
Alt. 2	Fiber Optic Conduit Replacement	LS	1	\$ 12,000.00	\$ 12,000.00	\$ 1,930.00	\$ 1,930.00	\$ 6,362.80	\$ 6,362.80
Alt. 3	Concrete Stair System	LS	1	\$ 15,000.00	\$ 15,000.00	\$ 9,660.00	\$ 9,660.00	\$ 14,687.29	\$ 14,687.29
Alt. 4	Transit Shelter	LS	1	\$ 32,000.00	\$ 32,000.00	\$ 34,370.00	\$ 34,370.00	\$ 31,709.48	\$ 31,709.48
Alt. 5	Additional Concrete Sidewalk	SY	250	\$ 86.00	\$ 21,500.00	\$ 125.00	\$ 31,250.00	\$ 99.19	\$ 24,797.50
Alt. 6	Concrete Paver Sidewalk	SY	250	\$ 240.00	\$ 60,000.00	\$ 269.00	\$ 67,250.00	\$ 218.67	\$ 54,667.50
					\$144,000.00		\$148,540.00		\$135,384.61

OPEN MEETINGS ADVISORY OPINION NO. 2016-01

Issued on February 4, 2016, by

**THE WEST VIRGINIA ETHICS COMMISSION
COMMITTEE ON OPEN GOVERNMENTAL MEETINGS**

OPINION SOUGHT

The **City Manager for the City of Morgantown** asks:

- (1) In computing periods of time for purposes of the Open Meetings Act, what is the effect of a half-day holiday?
- (2) If a half-day is counted as a day for purposes of complying with the Open Meetings Act notice requirements, must the agenda or notice be posted before the close of business on that day?
- (3) If an agenda is posted 72 hours prior to a meeting, does that satisfy the requirement that a meeting agenda must be posted three business days prior to a meeting?

FACTS RELIED UPON BY THE COMMITTEE

Public employees, including municipal employees, on occasion are given a half-day off on Christmas Eve or New Year's Eve or both.¹ When state or local government employees work a half-day, normally the public office building in which they work will close at or around noon.

During the 2015 holiday season, public employees were given several half-day holidays. The City of Morgantown states that questions arose in regard to whether a half-day counts for purposes of calculating periods of time under the Open Meetings Act. The City seeks clear guidance on this issue for purposes of clarifying its rules and procedures to ensure compliance with the Open Meetings Act.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W.Va. Code § 6-9A-3 reads in relevant part:

(a) Except as expressly and specifically otherwise provided by law, whether heretofore or hereinafter enacted, and except as provided in section four of this article, all meetings of any governing body shall be open to the public.

...

(d) Each governing body shall promulgate rules by which the date, time, place and agenda of all regularly scheduled meetings and the date, time, place and

¹ There may also be other holidays or instances where that occurs.

purpose of all special meetings are made available, in advance, to the public and news media.

(e) Each governing body of the executive branch of the state shall electronically file a notice of each meeting with the Secretary of State for publication on the Secretary of State's website.

(1) Each notice shall state the date, time, place and purpose of the meeting.

(2) Each notice of a special meeting or a regular meeting shall be filed in a manner to allow each notice to appear on the Secretary of State's website at least five business days prior to the date of the meeting.

(3) When calculating the days, the day of the meeting is not to be counted. If a meeting notice is filed anytime other than during the Secretary of State's regular business hours, the date of filing will be considered the next business day.

ADVISORY OPINION

(1) Whether a half-day holiday is included in computing periods of time under the Open Meetings Act.

The Open Meetings Act requires public agencies to inform the public of: (1) the time, date, place and purpose of their meetings, and (2) what will be dealt with at the meetings. W.Va. Code § 6-9A-3. To comply with the Act, governing bodies of public agencies must timely post a meeting notice which notifies the public when and where the meeting will be held. They must also post an agenda which notifies the public of the items of business which will be addressed at the meeting.

The notice requirements for state agencies are expressly set forth in the Act, which requires agencies to "electronically file a notice of each meeting with the Secretary of State for publication on the Secretary of State's website ... at least five business days prior to the date of the meeting." W.Va. Code § 6-9A-3(e) and § 6-9A-3(e)(2).

In regard to local governing bodies, *e.g.*, city councils, county commissions or parks and recreation boards, the Act does not specifically establish when meeting notices or meeting agendas must be made available to the public. As the Act does not provide specific guidance for local governing bodies, in accordance with its authority to interpret the Open Meetings Act, this Committee has established required time frames in which local governing bodies must post their meeting notices and agendas. See W.Va. Code § 6-9A-10 and § 6-9A-11, which authorize this Committee to interpret the Open Meetings Act.

For a governing body which meets on a regular basis, the Committee has established the following notice requirements:

A governing body which meets in accordance with a fixed schedule...may comply with the meeting notice requirement by posting notice of its meeting schedule annually, and keeping this notice posted throughout the year. The

schedule should be posted in a public place which is accessible to the public during normal business hours, such as the Town Hall.

Open Meetings Advisory Opinions 2004-13 and 2006-15. For agendas, the Committee has held that for regular meetings they must be made available at least three business days before each regularly scheduled meeting by “posting the agenda in an appropriate public space, such as the Town Hall, in addition to having copies of the agenda available to be picked up in that same building during normal business hours.” *Id.* There is an exception for local governing bodies which meet once a week. These bodies must post their agendas two business days before the meeting. See Open Meetings Advisory Opinion 2007-09.²

In counting business days, the day of the meeting, Saturdays, Sundays and **legal** (emphasis supplied) holidays are excluded. See Open Meetings Act Advisory Opinions 2006-15 and 2012-01. For example, in the absence of an intervening legal holiday, a governing body may issue notice of a regular meeting to be held on Tuesday no later than the close of business on the preceding Thursday. *Id.*

The Requester seeks guidance on the application of these rules when a local government entity is only open for a half-day due to a scheduled holiday. This Committee must determine whether a half-day holiday is a “legal holiday” for purposes of computing periods of time under the Open Meetings Act. If it is a legal holiday, it must be excluded in computing the time period in advance of a meeting for posting a notice or agenda.

The West Virginia Code designates various days as legal holidays. These days include, but are not limited to, Memorial Day, West Virginia Day, New Year’s Day and Christmas Day. W.Va. Code § 2-2-1(a). The West Virginia Code does not designate New Year’s Eve or Christmas Eve as legal holidays. This section of the Code also provides “[a]ny day proclaimed or ordered by the Governor or the President of the United States as a day of special observance or Thanksgiving, or a day for the general cessation of business, is a holiday.” W.Va. Code § 2-2-1(a)(15). It further provides:

Any day or part thereof designated by the Governor as time off, without charge against accrued annual leave, for state employees statewide may also be time off for county employees if the county commission elects to designate the day or part thereof as time off, without charge against accrued annual leave for county employees. Any entire or part statewide day off designated by the Governor may, for all courts, be treated as if it were a legal holiday.

W.Va. Code § 2-2-1(c).

The State of West Virginia gives state employees time off with pay for various official holidays, including Christmas Day and New Year’s Day. State employees in recent years have also been given a half-day off on Christmas and/or New Year’s Eve. The West Virginia Division of Personnel’s Legislative Rule provides “[w]hen Christmas or New Year’s Day occurs on Tuesday, Wednesday, Thursday, or Friday, the last half of the scheduled workday

² A different rule of law applies for special meetings. A local governing body will comply with the Open Meetings Act if it posts notice of a special meeting at least two business days in advance of the meeting date.

immediately preceding the holiday will be given as time off not to exceed four hours.” W.Va. C.S.R. § 143-1-14.1.b. Oftentimes local government entities give their employees the same days off, including the half-days. On those days, the government entity is open for official business for one-half of the day.

This Committee finds that a half-day holiday is not a legal holiday for purposes of calculating periods of time under the Open Meetings Act. The Committee bases its conclusion upon the fact that business is conducted on these half-days. Further, the Committee bases its opinion on the plain language in W.Va. Code § 2-2-1.

This Code section lists specific legal holidays, e.g., Christmas Day and New Year’s Day. It then qualifies that a day may be treated as if it were a legal holiday. The Code reads in relevant part “[a]ny entire or part statewide day off designated by the Governor may, for all courts, be treated as it were a legal holiday.” W.Va. Code § 2-2-1(c).

The half-day holidays about which the Requester seeks guidance are not days designated as “time-off” by the Governor. Instead, these half-days are given as paid time off to state employees by the Legislature through its approval of the West Virginia Division of Personnel’s Legislative Rule, W.Va. C.S.R. § 143-1-14.1.b.³ As the half-days off are given by the Legislature, not by the Governor, they are not legal holidays for purposes of W.Va. Code § 2-2-1 or for purposes of computing periods of time pursuant to the Open Meetings Act. See also *Pullano v. City of Bluefield*, 342 S.E.2d 164, 176 W.Va. 198 (1986).

In conclusion, for purposes of the Open Meetings Act a half-day holiday may be included when a governing body is calculating periods of time under the Open Meetings Act, i.e., a half-day counts towards the three-day posting requirement. An example of the application of this ruling is provided in the next section.

(2) Whether a governing body which is open for a half-day must post its meeting agenda or notice before close of business on that day.

For purposes of calculating time under the Open Meetings Act, this Committee has held that the deadline for posting a notice or agenda is the **close of business** (emphasis added). Open Meetings Advisory Opinions 2004-13 and 2006-15. This rule of law is consistent with the provisions in the Open Meetings Act governing the meeting notice requirements for state agencies which must file their notices during “the Secretary of State’s regular business hours.” W.Va. Code § 6-9A-3(e)(2). If a state agency fails to electronically file during regular business hours, “the date of filing will be considered the next business day.” *Id.*

This Committee holds that when there is a half-day holiday, the posting deadline is the close of business on the half-day. An example of the application of this ruling is as follows: If Christmas Day is on a Friday, and a local governing body is open until noon on Christmas Eve (Thursday), and if its regular meeting is the following Wednesday, then it complies with the agenda requirements for a regular meeting by posting its agenda by noon on the prior Thursday. Under this scenario, for its Wednesday meeting, a governing body includes the

³ Legislative Rules are approved by the Legislature in accordance with W.Va. Code §§ 29A-1-2 through 29A-1-4.

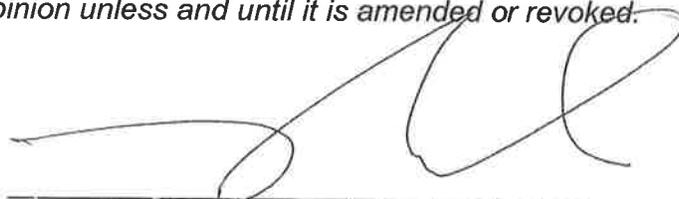
following days in applying the three business day rule: (1) Tuesday (because the day of the meeting, Wednesday, is not counted); (2) Monday; and (3) Thursday (half-day holiday).

(3) Whether 72 hours equals three business days for purposes of calculating time pursuant to the Open Meetings Act.

This Committee finds 72 hours does not equal three business days for purposes of calculating periods of time pursuant to the Open Meetings Act. Black's Law Dictionary defines the term "business day" as "a day that most institutions are open for business ..." BLACK'S LAW DICTIONARY 454 (9th Ed. 2009). For purposes of defining this term for computing time under the Open Meetings Act, the Committee relies upon the commonly accepted meaning of the term "business day," the Black's Law definition of this term, and its prior holding that "[i]n counting business days, the day of the meeting, Saturdays, Sundays and legal holidays are excluded." Open Meetings Advisory Opinions 2007-09 and 2012-01.

In conclusion, the Committee on Open Governmental Meetings holds: (1) Half-day holidays may be included for purposes of calculating business days under the Open Meetings Act; (2) If a government office has a scheduled half-day holiday, and the notice deadline falls on that day, then the posting deadline for the agenda or notice is the close of business on the half-day, e.g., noon, and (3) In calculating days for purposes of the Open Meetings Act, governing bodies may not include weekend days or legal holidays.

This Advisory Opinion is limited to questions arising under the Open Governmental Proceedings Act, W. Va. Code §§ 6-9A-1 through 6-9A-12, and does not purport to interpret other laws or rules. Pursuant to W. Va. Code § 6-9A-11, a governing body or member thereof that acts in good faith reliance on this Advisory Opinion has an absolute defense to any civil suit or criminal prosecution for any action taken based upon this Opinion as long as the underlying facts and circumstances surrounding the action are the same or substantially the same as those being addressed in this Opinion unless and until it is amended or revoked.



Lawrence J. Tweel, Chairperson
Open Governmental Meetings Committee
West Virginia Ethics Commission

City of Morgantown Public Meeting Notice Rules

In compliance with W. Va. Code 6-9A-3(d)), the following rules will direct all Boards, Commissions, and Authorities in the posting of public meeting notices.

1. Schedule of Meetings: Prior to the 1st day of January of each calendar year, the City Clerk shall prepare and publish a schedule of the regular City Council meetings to be held in the forthcoming year.
2. Notice of Regular Meetings: The date, time, place, and agenda for each regular meeting of Council and any commission, board, or other body of the City of Morgantown subject to the Open Governmental Proceedings Act shall be published three (3) business days prior to the date of the meeting. The agenda will give reasonable notice to the public of all matters that require official council action and will be discussed at the meeting.
3. Notice of Special Meetings: The date, time, place, and agenda for each special meeting of Council and any commission, board, or other body of the City of Morgantown subject to the Open Governmental Proceedings Act shall be published two (2) business days prior to the date of the meeting. The agenda will give reasonable notice to the public of all matters that require official council action and will be discussed at the meeting. The agenda for each special meeting will state the purpose of the special meeting.
4. Notice of Emergency Meetings: Emergency meetings will be held only when permitted by law. The date, time, place, and agenda for each emergency meeting of Council and any commission, board, or other body of the City of Morgantown subject to the Open Governmental Proceedings Act shall be published as soon as reasonably possible prior to the date of the meeting. The notice will set forth the reason for, and purpose of, the emergency meeting.
5. Amendment: A meeting agenda may be amended no later than two business days before the meeting. If an agenda is amended, it will be published in the same manner as the original agenda. A public body may amend an agenda during a meeting only if a true emergency arises.
6. Computation of Time: In computing any period of time prescribed or allowed by these rules, do not count the day of the meeting, weekend days or legal holidays. For purposes of these rules, the following days constitute all of the legal holidays –
 - New Year's Day (January 1)
 - Martin Luther King Day (Third Monday in January)
 - President's Day (Third Monday in February; designated "Washington's Birthday" by United States Government)
 - Memorial Day (Last Monday in May)
 - West Virginia Day (June 20; or as observed by declaration of the State of West Virginia)
 - Independence Day (July 4)
 - Labor Day (First Monday in September)
 - Columbus Day (Second Monday in October)
 - Veterans Day (November 11)
 - Thanksgiving (Fourth Thursday in November)
 - Day After Thanksgiving (Fourth Friday in November)
 - Christmas Day (December 25)
7. Publication: Publication permitted or required by these rules shall be made by posting notice in a public place at the central office of the public body posting the notice and by having copies of the notice available there during regular business hours. In addition, publication may – but is not required to - include distributing notice by e-mail and posting on the governing body's internet website or media accounts.