



Office of the City Clerk

The City of Morgantown

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AGENDA
MORGANTOWN CITY COUNCIL
REGULAR MEETING
February 16, 2016
7:00 p.m.

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **PLEDGE TO THE FLAG**
4. **APPROVAL OF MINUTES:** January 26, 2016 COW Meeting Minutes, February 2, 2016 Regular Meeting Minutes
5. **CORRESPONDENCE:**
6. **PUBLIC HEARINGS:**
 - A. **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.**
 - B. **AN ORDINANCE AMENDING ARTICLE 1511 OF THE CITY CODE RELATING TO FIRE PREVENTION BOARD.**
 - C. **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 19.4, 19.5, AND 19.7.**
7. **UNFINISHED BUSINESS:**

A. Consideration of **APPROVAL** of (**SECOND READING**) and (**ADOPTION**) of **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.** (First Reading February 2, 2016)

B. Consideration of **APPROVAL** of (**SECOND READING**) and (**ADOPTION**) of **AN ORDINANCE AMENDING ARTICLE 1511 OF THE CITY CODE RELATING TO FIRE PREVENTION BOARD.** (First Reading February 2, 2016)

C. Consideration of **APPROVAL** of (**SECOND READING**) and (**ADOPTION**) of **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 19.4, 19.5, AND 19.7.** (First Reading February 2, 2016)

D. BOARDS AND COMMISSIONS

8. **PUBLIC PORTION WHICH SHALL BE SUBJECT TO RULES ESTABLISHED BY COUNCIL AND ADOPTED BY RESOLUTION**

9. **SPECIAL COMMITTEE REPORTS:**

10. **NEW BUSINESS:**

A. Consideration of **APPROVAL** of (**FIRST READING**) of **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.**

11. **CITY MANAGER'S REPORT:**

New Business:

1. Public Safety Building Plaza Subsidence and Improvement
2. Ethics Commission on Public Meeting Agenda Notifications
3. Report from City Manager and Police Chief Regarding Official Complaint

12. REPORT FROM CITY CLERK:

13. REPORT FROM CITY ATTORNEY:

14. REPORT FROM COUNCIL MEMBERS:

15. ADJOURNMENT:

If you need an accommodation contact us at (304) 284-7439



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

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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):

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

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.

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 time 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, I would recommend 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)).

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, I recommend City Council conclude the investigation without further action.



Jeff Mikorski ICMA-CM,
Morgantown City Manager

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.

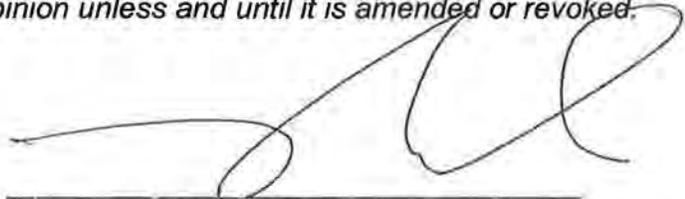
following days in applying the three business day rule: (1) Tuesday (because the day of the meeting, Wednesday, is not counted); (2) Monday; and (3) Thursday (half-day holiday).

(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.

COMMITTEE OF THE WHOLE MEETING January 26, 2016:

The Committee of the Whole meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Tuesday, January 26, 2016 at 7:00 p.m.

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

Deputy Mayor Kawecki called the meeting to order.

PRESENTATIONS:

1. 2016, “Year to go Green” A Path to a Cleaner Morgantown/Green Team Annual Report:

Joey James, Chairman of Green Team, updated Council on programs and successes of 2015. He reported existing and new sustainability efforts in Morgantown in 2015/2016.

Holly Purpura, Executive Director, Friends of Decker’s Creek, informed Council that the Green Team will have a formal launch of “Year to go Green” in February. She noted that the Green Team aims to collaborate with area green organizations to broaden the impact.

2. Annulling of Wall Street & Trail Parking Access License Presentation by Developer: (Exhibit A. attached for reference)

John Williams, Williams & Associates/Engineering Firm, representing Standard & Landmark Properties, presented a power point and explained the details of the project summary. He mentioned that the project does meet the Comprehensive Plan and will improve the appearance of the downtown area.

Mr. Williams answered questions regarding the project from Council.

PUBLIC PORTION:

Matthew Cross, President of the Suncrest Neighborhood Association, discussed the Landmark Properties project and thanked them for making the Pedestrian Board part of the process.

Chin Wah Yip, 1389 University Avenue, presented Council with information and photos. He explained to Council why he is against the Landmark Property building near his property.

James Giuliani, 256 Prairie Avenue, commented on the Landmark Property presentation and stated he is against the project.

Deputy Mayor Kawecki asked if there was anyone else to speak during the Public Portion. There being no other presenters. Deputy Mayor Kawecki closed the public portion.

ITEMS FOR DISCUSSION:

1. Annulling of Wall Street & Trail Parking Access License:

Deputy Mayor Kawecki requested that City Manager Mikorski explain the Annulment. Council discussed the annulment and referred item to Regular Agenda by consensus.

2. Ordinance amending article 1511 of the City Code relating to the Fire Prevention Board:

Deputy Mayor Kawecki requested that City Manager Mikorski explain the Fire Prevention Code amendment. Council referred the item to Regular Agenda by consensus.

3. RZ16-01 / Commercial Developers, LLC:

Deputy Mayor Kawecki requested that City Manager Mikorski explain the zoning change. Council referred the item to the Regular Agenda by consensus.

4. RZ16-02 / Wes Banco Bank, Inc.:

Deputy Mayor Kawecki requested City Manager Mikorski explain the requested zoning change. Council referred the item to Regular Agenda by consensus.

5. Met Theatre Management and Duties of Met Commission:

Deputy Mayor Kawecki requested City Manager Mikorski explain Met Theatre management & duties. The City Manager noted this item was presented for information and there is no direction needed at this time. City Council asked questions and expressed concerns about this issue. No action taken.

6. Ordinance accepting conveyance of rights, title and interest of Airpark, Inc.:

Deputy Mayor Kawecki requested City Manager Mikorski explain the ordinance. Council discussed the ordinance and referred it to Regular Agenda by consensus.

Council adjourned the Committee of the Whole meeting at 9:30 pm.

City Clerk

Mayor

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

THE S STANDARD





LANDMARK
PROPERTIES

THE STANDARD AT MORGANTOWN

BKV
GROUP

Project Team



Project Summary

- 1.95 acres
- 276 units
- 866 beds
- 8,500 SF commercial space
- Two outdoor resident amenity areas
- Bike Storage
 - 276 spaces
- Kayak/Boat Storage
- Design incorporates landing area for future pedestrian bridge over University Avenue

Reason for Request

- Assemblage incorporates all of the property on both sides of the requested right of way annulment
- Dimensions of internal parking deck will not fit on either side of right of way
- The site features physical constraints requiring design proposed
 - Topography
 - PRT extending over a large portion of the site
 - Environmental
 - Shell Gas Station
 - Former gas station adjacent to Vic's Garage
 - Current junkyard/tow storage
- Our proposed project is what is required to economically develop the project in terms of density and design.

Request – Annulment of Wall Street



Existing Site Photos



Benefits to Downtown



Core



Encouraged Growth

1. Puts density in area identified by strategic plan for increased density, mixed use redevelopment
2. Adds to population base downtown to support downtown businesses
3. Utilizes and supports existing infrastructure downtown
4. Removes use that does not benefit downtown or the Caperton Trail
5. Burial of above ground utilities and improvements to sidewalk and trail access improves pedestrian accessibility
6. Environmental remediation of junkyard, gas station, and Wall Street ROW

Concurrency with Morgantown Comprehensive Plan

OBJECTIVES AND STRATEGIES

Land Management

A. Goal

Efficient and attractive use of land resources that strengthens the quality, character, and upkeep of the built environment while balancing redevelopment and strategic expansion with open space preservation.

Objective 1. Strengthen Downtown.

- LM 1.5 Create incentives for developers to build residential units downtown that will serve a broad age and socioeconomic range

Objective 5. Encourage land use patterns that support improved transportation choice and efficiency.

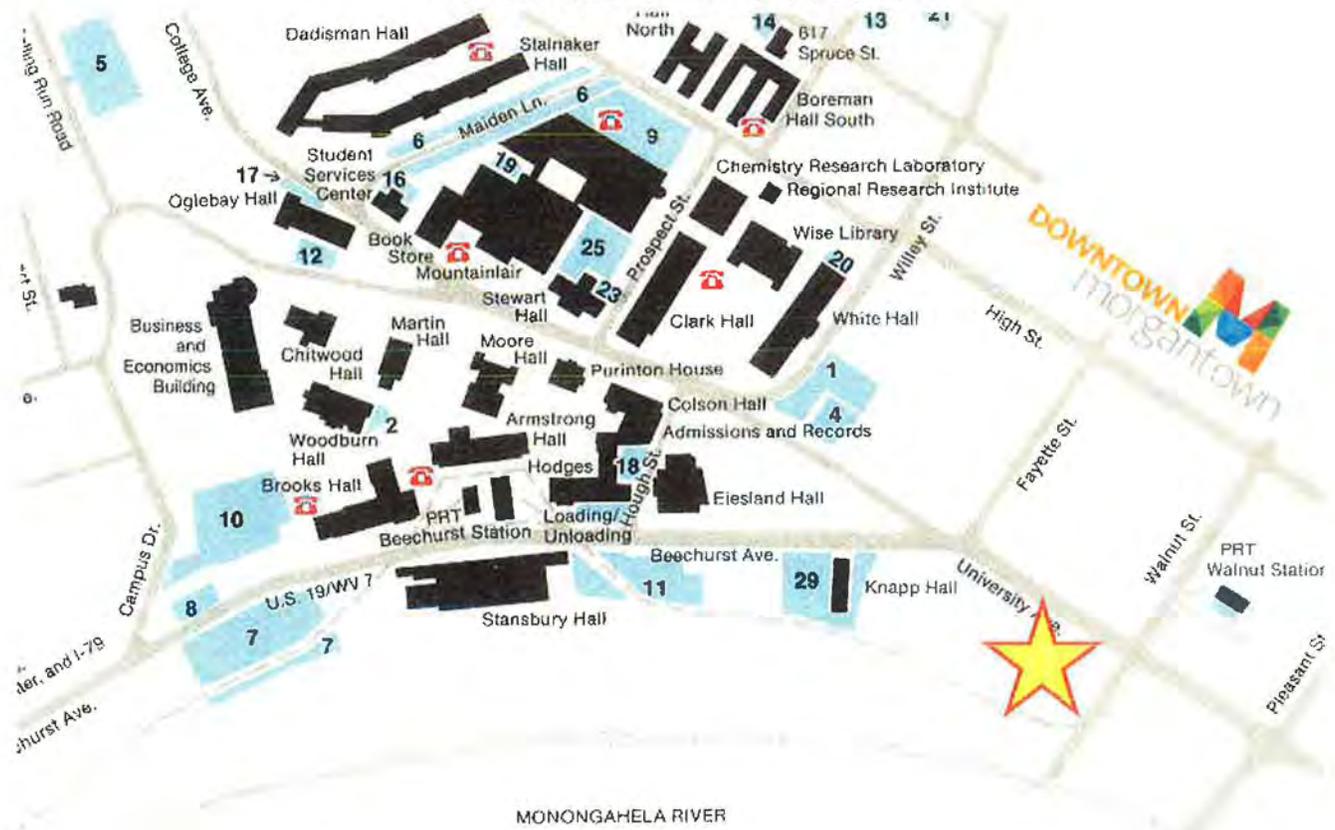
- LM 5.2 Permit higher density development in areas that are well-supported by existing or planned transportation infrastructure or transit services.

Objective 6. Improve community appearance, particularly at city gateways.

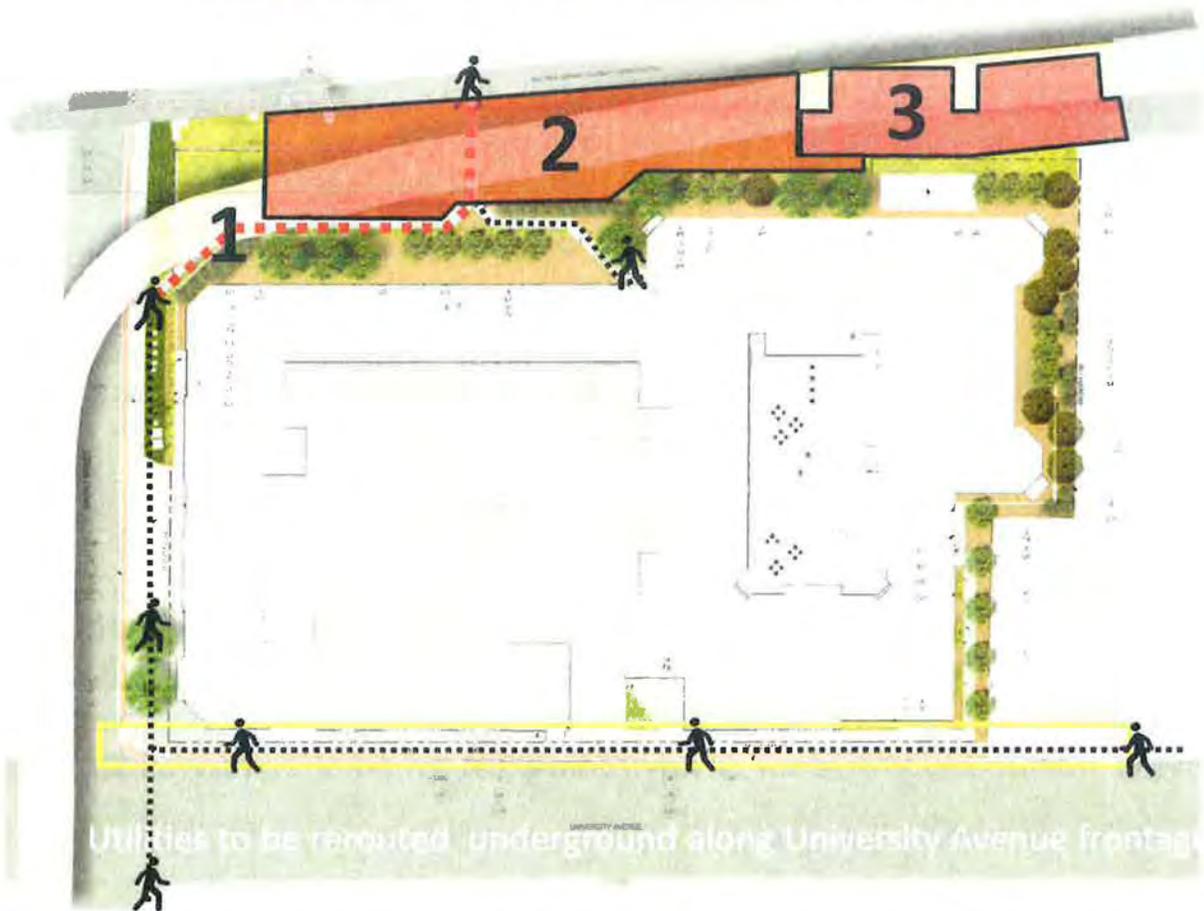
- LM 6.3 Encourage major redevelopment projects to relocate utilities from view of primary corridors, arterials, and collectors with emphasis on underground placement.



Proximity to Existing Public Infrastructure



Proposed Improvements to Access



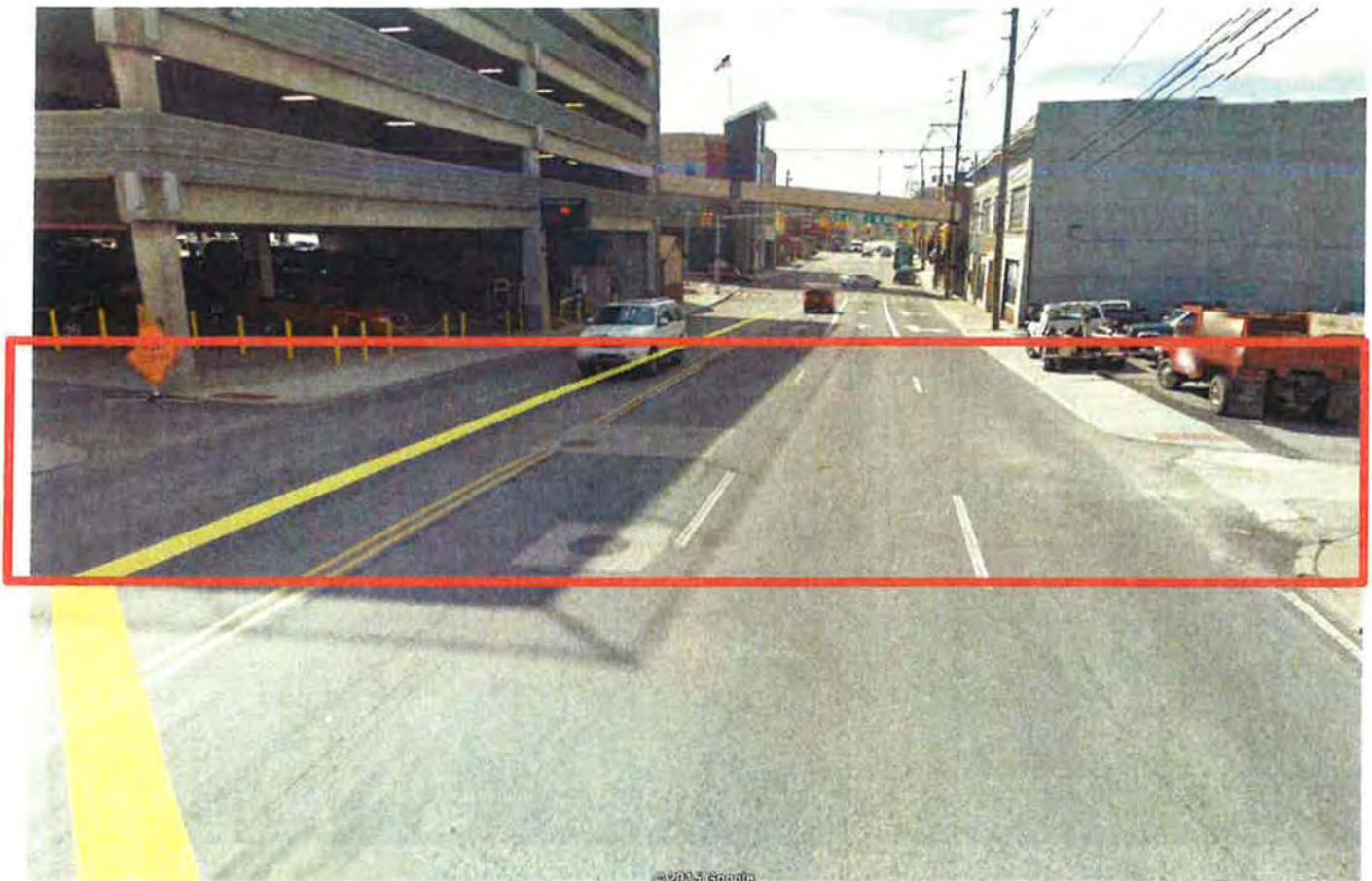
- 1. Caperton Trail Access (640 SF) 2. Landscaped Public Area (6,000 SF) 3. Public Parking (4,900 SF)**

Current vs. Proposed Public Space

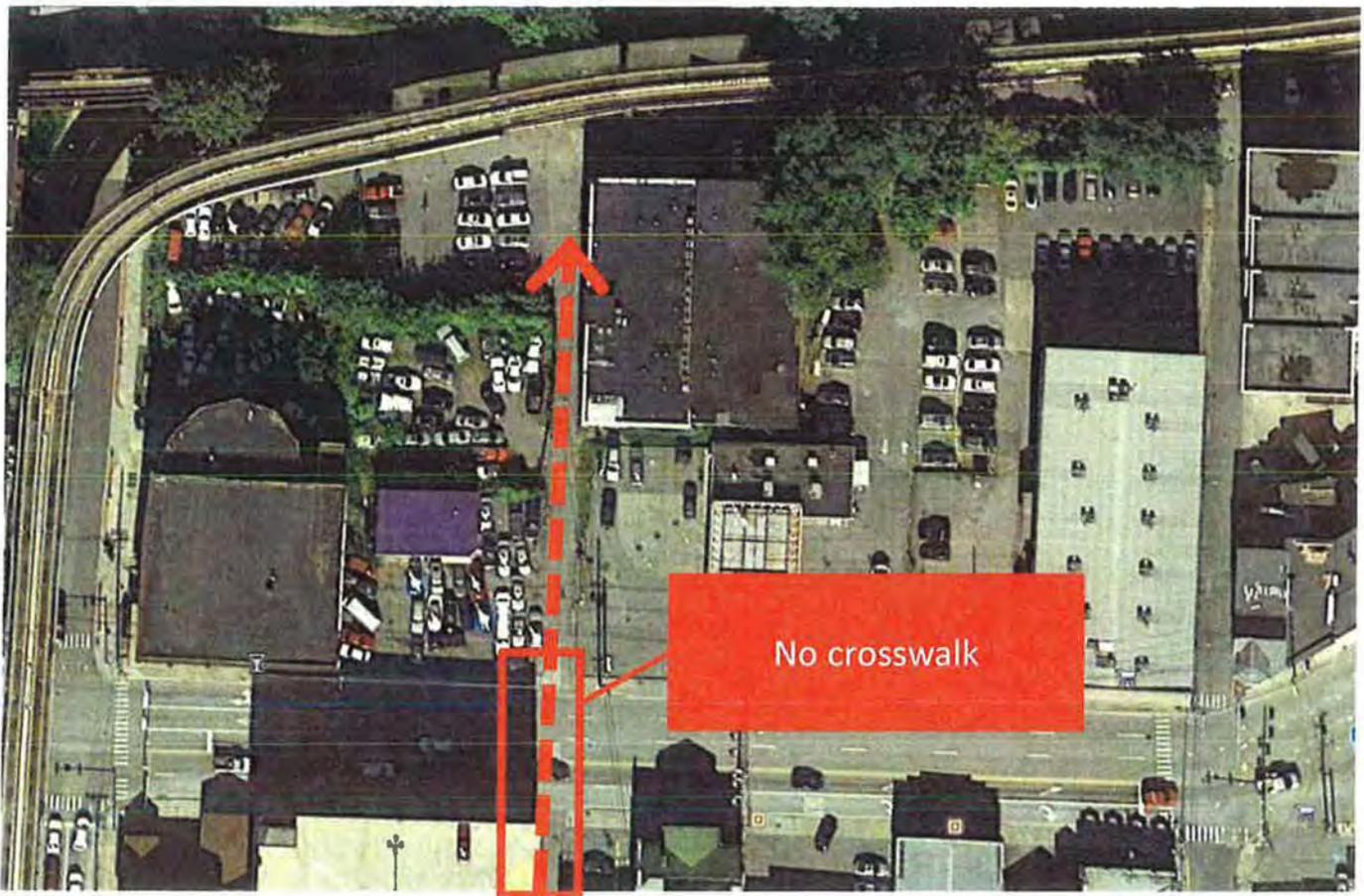
Use	Current Public Area	Proposed Public Area
Wall Street ROW	2,900 SF	n/a
Caperton Trail Access (1)	n/a	640 SF
Landscaped Public Area (2)	n/a	6,000 SF
Public Parking (3)	n/a	4,900 SF
Total	2,900 SF	11,540 SF

- Public access will be provided by permanent access agreement between the development and the City of Morgantown
- Developer will construct and maintain areas governed by the access agreement
- Developer will be responsible for all environmental remediation of Wall Street ROW

Current Gap in Wall St. Pedestrian & Bike Access



Current Use



1. Vehicular access to private parking
2. Pedestrian access to Caperton Trail

Public Benefits



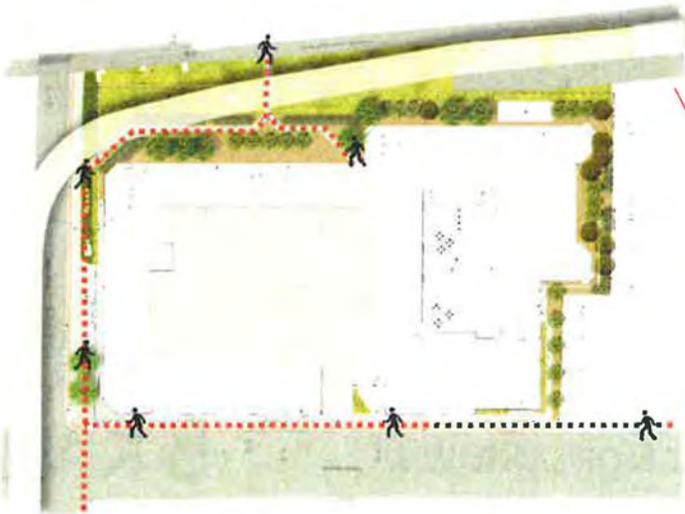
1. Promotes safe enjoyment of Caperton Trail by removing junkyard/vacant gas station, installing lights and security cameras along University, Walnut, and the trail
2. Improves University Avenue sidewalk
 1. Burying utilities
 2. Expanding and improving sidewalk
 3. Active retail use along University Avenue
 4. Takes four full access vehicular entrances and combines into one "right in right out" entrance
3. Improving Caperton Trail access with ADA accessible, developer maintained pathway
4. Removal of car storage on CSX leased property, assumption of lease by developer and improvement area for use as public parking and landscaping for Caperton Trail for a net public gain of 8,640 SF of public area
5. Environmental remediation
6. Removing existing use which is an eye-sore



Existing



Proposed





LANDMARK
PROPERTIES

THE STANDARD AT MORGANTOWN

BKV
GROUP

REGULAR MEETING February 2, 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 2, 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 Regular Meetings of December 15, 2016, January 5, 2016, January 19, 2016 and the Special Meeting of January 5, 2016 were approved as printed.

CORRESPONDENCE: Mayor Shamberger presented the following Proclamations: Lyle Matthews Retirement, Parent Leadership Month, and Combat Hunger Month. Mayor Shamberger handed out a Certificate of Recognition to Aubrey Moskal for her accomplishment on qualifying for the 2016 Olympic Trials. Councilor Ganz referenced a letter (**Exhibit A**) from Matthew Cross, President of the Suncrest Neighborhood Association suggesting that the City and the Community support City Services to those that have healthcare issues during a State of Emergency. Councilor Bane mentioned an email from George Pappandreas that was requested to be read during correspondence. After discussion, motion by Nugent, second by Bane, to accept correspondence into the record. Motion failed 4-3. (Councilor Redmond, Nugent, and Bane voting yes) Mayor Shamberger read a letter from the Green Team on their recommendations regarding the Morgantown Lock and Dam Hydropower Proposal. (**Exhibit B**) Council suspended the rules to continue discussion about the Hydro Power Plant Proposal. After discussion, Council directed the City Manager to work closely with this initiative by either emails, letters, or conversation and report back to Council as needed. Council also requested a workshop with all interested stakeholders be scheduled. Mayor Shamberger announced community activities: Black History Month, Conversation with the Cops, February 4th at the Mountainlair, Music Showcase, February 10th at Gluck Theatre, The annual Black History Month Program, February 15th at the Mountainlair Ballroom, February 23rd & 24th in the Mountainlair Ballroom, "Colored Museum" by George C. Wolfe. She then noted the activities of the WVU Community Human Rights Film Festival from February 2nd to March 8th, WVU Creative Arts Center, The Musical Once will be showing February 15th at 7:30 p.m., support Health Right purchase gifts at the Old Stone House Gift Shop from February 2nd to February 13th, Library, "Chill out and read story Time" on February 3rd, "Take your child to the Library, February 6th and Adult Coloring Day, February 8th, February 27th, Empty Bowl Soup and Bread luncheon on February 27th from 11:00 a.m. to 2:30 p.m. at Mylan Park.

City Manager, Jeff Mikorski requested consensus to remove item H from Public Hearing and Unfinished Business for the information attached is not complete. Motion by Nugent, second by Bane, to accept removal of items. Motion accepted by acclamation.

PUBLIC HEARING - AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE SANITARY SEWER PORTION OF THE EXISTING COMBINED UTILITY SYSTEM OF THE CITY OF MORGANTOWN AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$100,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2016 A (TAX EXEMPT); PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS

RELATING TO THE BONDS; AND ENACTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS.

Mayor Shamberger declared this Public Hearing open.

Charles Sell, 470 Ohio Avenue, Westover, indicated that he has two reports from judges and feels that MUB needs to provide the transcript from page 50 to Council and the Community to clarify questions. Mr. Sell then asked if the Mayor would respond to him, the Mayor stated that his questions would be answered later in the meeting.

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

PUBLIC HEARING - AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE SANITARY SEWER PORTION OF THE EXISTING COMBINED UTILITY SYSTEM OF THE CITY OF MORGANTOWN AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$30,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2016 B (TAX) EXEMPT-EXTRAORDINARY OPTIONAL CALL); PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS RELATING TO THE BONDS; AND ENACTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS.

Mayor Shamberger declared this Public Hearing open.

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

PUBLIC HEARING - AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE SANITARY SEWER PORTION OF THE EXISTING COMBINED UTILITY SYSTEM OF THE CITY OF MORGANTOWN AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$10,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2016 C (WEST VIRGINIA SRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A BOND PURCHASE AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

Mayor Shamberger declared this Public Hearing open.

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

PUBLIC HEARING - AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE POTABLE WATER PORTION OF THE EXISTING COMBINED UTILITY SYSTEM OF

THE CITY OF MORGANTOWN AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$40,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2016 D (TAX EXEMPT); PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS RELATING TO THE BONDS; AND ENACTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS.

Mayor Shamberger declared this Public Hearing open.

Susan Elkin, 408 Cobun Creek Road, stated that she was expecting information from MUB and was upset because she just received it prior to the meeting and not two weeks prior, as promised. She stated that the people living at Cobun Creek feel pressured and bullied by this project.

Rebecca Singleton, 225 Lebanon Street, commented that most people get packets the day before a meeting. She stated that she thinks this is a lack of not caring, misunderstanding, and feels it is sad that Council plans to adopt the Ordinance this evening.

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

PUBLIC HEARING - AN ORDINANCE SETTING FORTH THE RATES, FEES, AND CHARGES FOR SERVICE TO CUSTOMERS OF THE WATERWORKS SYSTEM OF THE CITY OF MORGANTOWN.

Mayor Shamberger declared this Public Hearing open.

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

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

Mayor Shamberger declared this Public Hearing open.

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

PUBLIC HEARING - AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATER AND SEWER PORTIONS OF THE EXISTING COMBINED UTILITY SYSTEM OF THE CITY OF MORGANTOWN INCLUDING BUT NOT LIMITED TO WASTEWATER TREATMENT PLANT IMPROVEMENTS AND A WATER RESERVOIR.

Mayor Shamberger declared this Public Hearing open.

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

PUBLIC HEARING - AN ORDINANCE AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT WITH MONONGALIA COUNTY DEVELOPMENT AUTHORITY FOR MINERAL INTERESTS IN 122.34 ACRES, MORE OR LESS, NEAR THE MORGANTOWN MUNICIPAL AIRPORT.

By acclamation, Council approved the above Public Hearing be removed from the Agenda.

UNFINISHED BUSINESS:

AN ORDINANCE ISSUING \$100,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS: The below entitled Ordinance was presented for third reading.

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE SANITARY SEWER PORTION OF THE EXISTING COMBINED UTILITY SYSTEM OF THE CITY OF MORGANTOWN AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$100,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2016 A (TAX EXEMPT); PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS RELATING TO THE BONDS; AND ENACTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS.

Motion by Selin, second by Kaweck, to approve the above entitled Ordinance. Council suspended the rules to have Tim Ball, MUB Director, answer questions. Mr. Ball informed Council that Mr. Sell's report will be clarified and all questions answered. After discussion. Motion carried 7-0.

AN ORDINANCE ISSUING \$30,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS: The below entitled Ordinance was presented for third reading.

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE SANITARY SEWER PORTION OF THE EXISTING COMBINED UTILITY SYSTEM OF THE CITY OF MORGANTOWN AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$30,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2016 B (TAX EXEMPT-EXTRAORDINARY OPTIONAL CALL); PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS RELATING TO THE BONDS; AND ENACTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS.

After discussion, motion by Kaweck, second by Ganz, to approve the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE ISSUING \$10,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS: The below entitled Ordinance was presented for third reading.

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE SANITARY SEWER PORTION OF THE EXISTING COMBINED UTILITY SYSTEM OF THE CITY OF MORGANTOWN AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$10,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2016 C (WEST VIRGINIA SRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A BOND PURCHASE AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

Motion by Ganz, second by Kawecki, to approve the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE ISSUING \$40,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS: The below entitled Ordinance was presented for third reading.

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE POTABLE WATER PORTION OF THE EXISTING COMBINED UTILITY SYSTEM OF THE CITY OF MORGANTOWN AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$40,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2016 D (TAX EXEMPT); PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS RELATING TO THE BONDS; AND ENACTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS.

After discussion, motion by Kawecki, second by Ganz, to approve the above entitled Ordinance. Motion carried 6-1. (Nugent voting no)

AN ORDINANCE SETTING FORTH THE RATES, FEES, AND CHARGES FOR SERVICES: The below entitled Ordinance was presented for second reading.

AN ORDINANCE SETTING FORTH THE RATES, FEES, AND CHARGES FOR SERVICE TO CUSTOMERS OF THE WATERWORKS SYSTEM OF THE CITY OF MORGANTOWN.

After discussion, motion by Selin, second by Ganz, to adopt the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE AMENDING SECTION 925.03: The below entitled Ordinance was presented for second reading.

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

OF MORGANTOWN.

After discussion, motion by Ganz, second by Selin, to adopt the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE AUTHORIZING BETTERMENTS AND IMPROVEMENTS TO THE WATER AND SEWER PORTIONS OF THE EXISTING COMBINED UTILITY SYSTEM: The below entitled Ordinance was presented for second reading.

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATER AND SEWER PORTIONS OF THE EXISTING COMBINED UTILITY SYSTEM OF THE CITY OF MORGANTOWN INCLUDING BUT NOT LIMITED TO WASTEWATER TREATMENT PLANT IMPROVEMENTS AND A WATER RESERVOIR.

Motion by Ganz, second by Kawecki, to adopt the above entitled Ordinance. Motion carried 6-1. (Nugent voting no)

AN ORDINANCE AUTHORIZING A LEASE AGREEMENT: The below entitled Ordinance was pulled by the City Manager Jeff Mikorski, and approved by acclamation and City Council.

AN ORDINANCE AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT WITH MONONGALIA COUNTY DEVELOPMENT AUTHORITY FOR MINERAL INTERESTS IN 122.34 ACRES, MORE OR LESS, NEAR THE MORGANTOWN MUNICIPAL AIRPORT.

BOARDS AND COMMISSIONS: City Clerk Linda Tucker updated Council on available Boards & Commissions vacancies. She asked Deputy Mayor Kawecki if there was an appointment for the Historic Landmark Commission, he noted a report would be done at the next meeting.

PUBLIC PORTION:

Mayor Shamberger declared the Public Portion open.

Dave Biafora, 62 Mid-Atlantic Drive, questioned the proposed annulment on Wall Street and its legalities.

David Kelly, 100 7th Street, is against giving away developed City property to private developers.

Jamie Summerlin, 98 Whipkey Lane Canyon Road, updated Council on the Marathon and the preparation that will take place in September.

John Williams, Williams & Associates and representing Landmark Properties, stated that with their project they would be increasing the public area, public parking, and access to Caperton Trail. He commented that he is here this evening to answer any other questions Council has about the project.

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

SPECIAL COMMITTEE REPORTS: Mayor Shamberger reported that Safe Communities of America will be visiting the City of Morgantown on March 9th and 10th and that the City will be hosting the meeting on the 9th.

NEW BUSINESS:

AN ORDINANCE ANNULING A PORTION OF A 13' WIDE RIGHT-OF-WAY ON WALL STREET: The below entitled Ordinance was presented for first reading.

AN ORDINANCE VACATING, ABANDONING AND ANNULING 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

After discussion, motion by Selin, second by Ganz, to pass the above entitled ordinance to second reading. Motion carried 4-3. (Councilor Bane, Nugent, and Redmond voting no)

AN ORDINANCE AMENDING ARTICLE 1511: The below entitled Ordinance was presented for first reading.

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

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

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF FIVE (5) PARCELS OF REAL ESTATE IN THE SIXTH WARD: The below entitled Ordinance was presented for first reading.

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.

Motion by Ganz, second by Selin, to pass the above entitled Ordinance to second reading. Motion carried 7-0.

AN ORDINANCE ACCEPTING CONVEYANCE OF ALL OF THE RIGHT, TITLE, AND INTEREST OF AIRPARK: The below entitled Ordinance was presented for first reading.

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 19.4, 19.5, AND 19.7.

City Manager explained, motion by Bane, second by Kawecki, to pass the above entitled Ordinance to second reading. Motion carried 7-0.

A RESOLUTION AUTHORIZING AN AGREEMENT WITH WEST VIRGINIA UNIVERSITY PROVIDING FOR BICYCLE EDUCATION CLASSES: The below entitled Resolution was presented for first reading.

A RESOLUTION AUTHORIZING AN AGREEMENT WITH WEST VIRGINIA UNIVERSITY PROVIDING FOR BICYCLE EDUCATION CLASSES.

City Manager explained, motion by Nugent, second by Kawecki, to pass the above entitled Resolution. Council suspended the rules to have Frank Gemindl answer questions of Council. After questions and answers were taken, Council voted. Motion carried 7-0.

CITY MANAGERS REPORT:

Information:

1. Reduction in Street and Dumpster Fires in 2015

As seen in the attached Fire Marshal's report, there has been a drastic reduction in Street and Dumpster fires during 2015, compared to the past few years. The City of Morgantown and West Virginia University have made changes to address the dangerous behavior. Under Home Rule authority, the City was able to pass laws that eliminated upholstered furniture from porches and yards; and granted the City's fire marshal's and deputy fire marshal's arrest authority at fire scenes and for certain violations of the Fire Prevention Code. At the same time, the University has encouraged a change in culture and responsibility for its students. By continuing to work with the Fire Department and WVU, to find ways to reduce this activity in the City in 2016 and beyond.

REPORT FROM CITY CLERK:

No Report

REPORT FROM CITY ATTORNEY:

No Report

REPORT FROM COUNCIL MEMBERS:

Councilor Bane:

Councilor Bane thanked the City Manager for answering several calls during the snowstorm and commended the City Workers for their efforts and noted the good Samaritans that helped neighbors by shoveling snow. City Manager reminded everyone that for emergencies to call 911.

Deputy Mayor Kawecki:

Deputy Mayor Kawecki thanked City Employees and WVU Students for the snow removal and reminded everyone of the meeting at the County about the Library, Transit and Recreation Levy at 6:30 pm tomorrow.

Councilor Nugent:

Councilor Nugent thanked those that helped with snow removal and reminded citizens to clear sidewalks. He then thanked Deputy Mayor Kawecki for

reminder of the County meeting on the Levy. He noted his concerns on Beverly and Third to the City Manager. City Manager responded on how the modifications will be addressed. He expressed his disappointment on correspondence by George Papandreas being screened, and hopes that FOIA request will be produced in a timely fashion.

Councilor Selin:

Councilor Selin complimented those taking calls and plowing during and after the snowstorm. She noted that one of the complaints from her neighborhood is that when the City shovels snow it gets packed up on the sidewalks and driveways which inhibits people from not being able to get out. She requested the City work with the DOH in the next year for the removal of snow on the sidewalks and bridges. She mentioned that Council should be receiving an invitation for an event for "Year of the Green" around the third week of February. She thanked the City Manager for working with the folks regarding the Hydro Dam issue. She asked those requesting to be part of the record to keep their comments short and to the point.

Councilor Redmond:

Councilor Redmond commented kudos to all departments on snow removal. He noted that street fire numbers are encouraging. He congratulated the Assistant City Manager for the work at the Airport, commented that he will be returning to City Hall, and suggested the City Manager utilize his strengths. He stated his concerns of the Beverly intersection on the testing of the fire equipment. He referenced the email from the City Clerk requesting a full time secretary and supports such request.

Councilor Ganz:

Councilor Ganz commented about the positive nature that the City showed during the snowstorm. She noted that the FOIA request has become very onerous since the beginning of the Lawsuit. She

stated there are many challenges facing us, which are frivolous accusations. She commented that there is a State Law going through the Legislature to stop this type of harassment. The City needs to get back to synergy to work together for the good of Morgantown. She requested the residents of Morgantown to exercise Democracy and thanked City Manager, City Attorney, and staff.

Mayor Shamberger:

Mayor Shamberger thanked City Employees for snow removal before and after. She mentioned how the Home Rule has made a difference in the upholstered furniture on porches. She stated that with this ruling the fires have diminished and reminded students to be cautious and safe at all times. She reported a meeting with Holly Purpura in reference to the "Year to go Green" and County meeting at the Sheriff's building reference the Levies.

EXECUTIVE SESSION: Motion by Ganz, second by Selin, to go into an Executive Session to discuss a complaint on the election process per State Code WV 6-9A-4 (2) (B). Present at this session were: City Manager Jeff Mikorski, City Council, City Attorney, Ryan Simonton, and Police Chief, Ed Preston. Motion carried by unanimous consent at 10:00 p.m.

ADJOURNMENT: There being no further business the meeting adjourned. Motion carried by unanimous consent at 10:55 p.m.

City Clerk

Mayor

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

Untitled

February 1, 2016

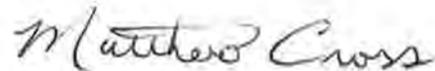
To the Morgantown City Council,

The snowstorm accumulation of over 20 inches last month revealed some problems with residents needing vehicle access on secondary streets. Even though it was an extraordinary event some measures can be taken to provide city services to those who have a critical dependency upon timely health care and hospital routes.

I understand that the new MECCA software used by the city may offer an opportunity to provide a medical priority locator plan whereby residents can request priority road clearance after weather events. The means of coordination may come with requirements to justify special accommodations for citizens but I would hope our community would understand and support such a system.

As good neighbors we try to be attentive and available to help each other in times of need. Implementing this system may provide an added degree of comfort for those who require access to health care facilities and first responders.

Matthew Cross
President
Suncrest Neighborhood Association



Recommendations of the Morgantown Green Team regarding the Morgantown Lock and Dam Hydropower Proposal.

The Morgantown Green Team discussed the proposed hydropower facility at length at the regular meeting of Feb. 1, 2016. Based on our review of the records, the City Manager submitted extensive comments to FERC in January, 2014. The developer, Free Flow Power, has since transitioned the project to Rye Development, and an application has been submitted to FERC.

In a meeting on July 20, 2015, Rye Development proposed an alternative that addressed many of the concerns outlined in the City's 2014 letter, however staffing changes at Rye Development and FERC have occurred and parts of the application as filed contradict statements made at earlier meetings.

Comments on the application will be accepted by FERC until Feb. 15 2016. **We recommend that the City of Morgantown intervene in the FERC proceeding, and again submit comments on this new proposal. The 2014 comment letter should be attached to assure that those original comments stay with the record of the Rye Development application.**

In particular, while the power house has been moved entirely into the river to avoid impacts to the Rail Trail, the maps continue to show an extensive access road and parking areas that is either adjacent to, or overlaps, the Rail Trail.

A comprehensive recreation use study has been requested, however it appears that there are still no direct user count data nor adequate surveys of recreation organizations in the recreation study filed.

Other issues to watch include:

- Maintaining existing commercial and recreational boat operation
- The facility should be operated as a "run of river" operation to minimize adverse impacts to aquatic species
- The facility should be developed to avoid fish entrainment.
- Fishing access facilities should be provided to mitigate the existing areas lost.
- Plans should be implemented to avoid the aesthetic impacts from debris collecting behind the dam.
- Avoidance of aesthetic impacts from transmission lines, night time lighting, fencing, and other obstructions.

We are inclined to support renewable power generation, however the City should not support this project unless the siting impacts can be resolved. We also recognize that a formal intervention in a FERC case will require staff and attorney time and resources. However, any appeal of a FERC decision is based on the record developed by intervenors, so this may be the best chance to preserve the City's rights in this case. The City has too much invested in the Rail Trail development and needs to remain involved to assure that investment is protected.

Boards & Commissions Available Positions

<u>Board/Commission</u>	<u>Vacancy(s)</u>	<u>Name of Applicants</u>	<u>Res./Non Res.</u>	<u>Ward</u>	<u>Code Sec.</u>	<u>Other</u>
Historic Landmarks	1		Resident		167	Advertise
Morgantown Housing	1		Res/Real Estate		160.03	Advertise
Sister Cities	1		Resident		172.02	Advertise
Traffic Commission	1		Resident	5	151	Advertise
Tree Board	1		Resident		917.03	Advertise
Urban Landscape will be updated 1st of the year, per Marchetta Maupin. (Code Sec.163)						

Historic Landmarks Commission will be updated by the Deputy Mayor

Planning Commission will have a vacancy and the City Manager will provide name to fill position.(Code 145)

**Council decided on 3-21-06 by unanimous consent that if there is only one candidate for Boards & Commissions, that they will not interview; the City Clerk will check with Council before scheduling a Special Meeting.
 BZA and Planning Commission term expirations are advertised in October and interviews must be completed by December per State Law.

2/8/2015

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 interests 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 13, 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; and
- (iii) occurrence of all conditions to annulment stated in the correspondence from utility companies included with the Annulment Application attached as Exhibit 1.

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 Pettit, 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 Pettit
Notary Public

[Signatures continue on the following page]

Gary Solomon
GARY SOLOMON

STATE OF WEST VIRGINIA COUNTY OF MONONGALIA, to wit:

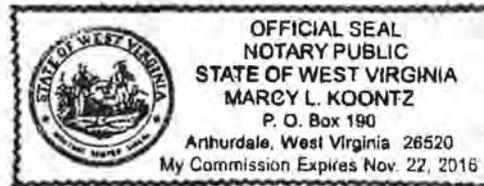
I, Marcy L. Koontz, a Notary Public in and for the County and State aforesaid do certify that Gary Solomon who signed the foregoing writing bearing date the 23rd day of September, 2015, has this day in my said County before me acknowledged the said writing to be his act and deed.

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 25th 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 25th 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 25th 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 25th day of September, 2015.

My commission expires July 5, 2020



Jo Marie Bowers
Notary Public

Signatures continue on the following page(s)

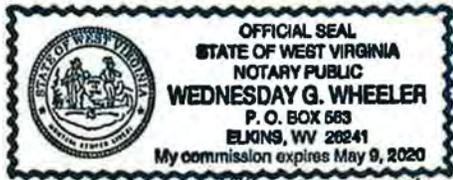
WOODFORD OIL COMPANY, a West Virginia corporation

By: [Signature]
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 12th 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 12th day of August, 2015



[Signature]
Notary Public

[Signatures continue on the following page]

THE CITY OF MORGANTOWN, WEST VIRGINIA, a municipal corporation

By: _____
City Manager

ATTEST:

City Clerk

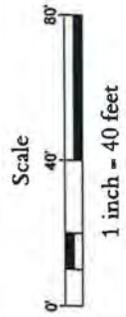
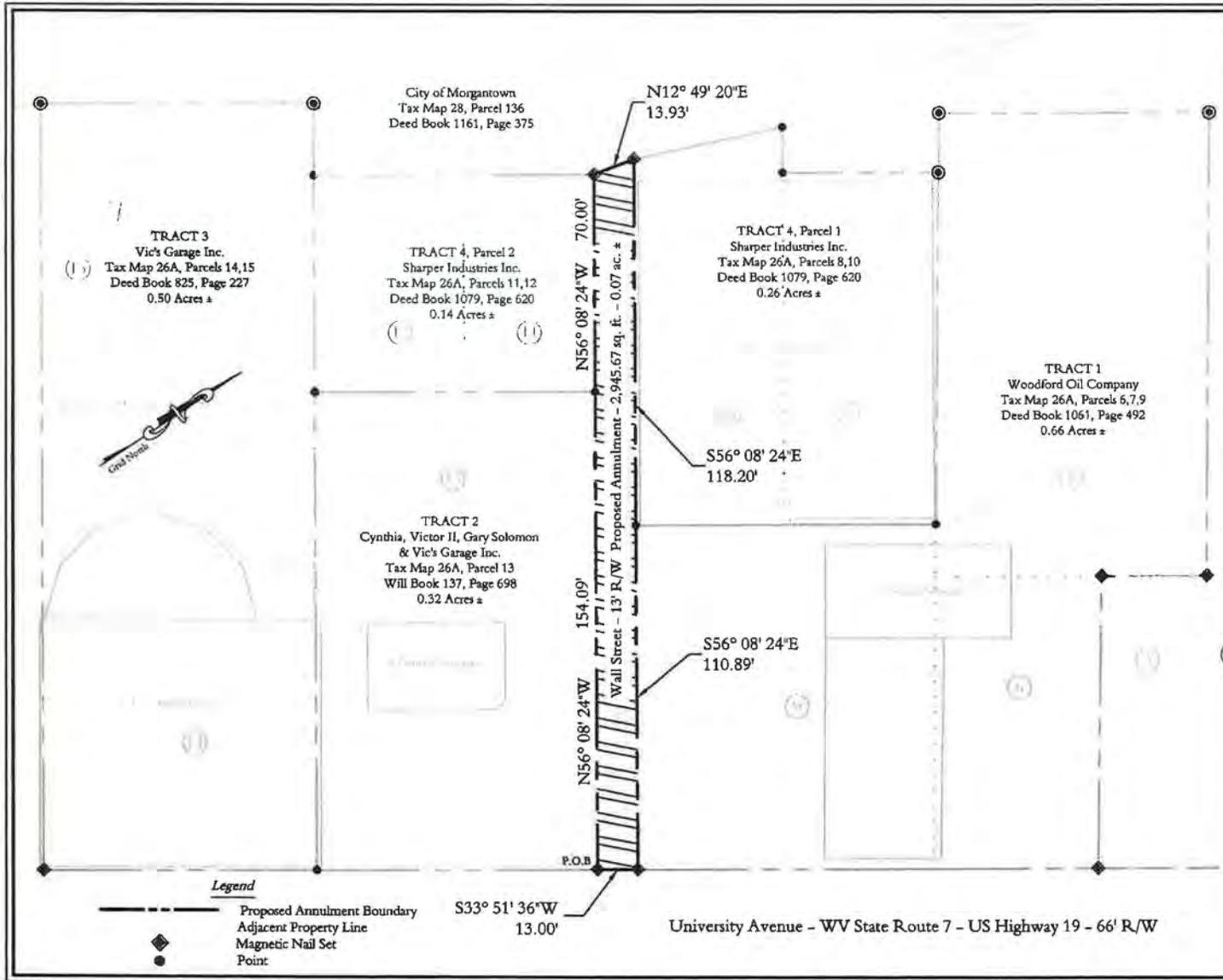
STATE OF WEST VIRGINIA COUNTY OF MONONGALIA, to wit:

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 Chaplin Hill Road
Martinsburg, WV 25151
Phone: 304/292-1135
Fax: 304/298-9302
510 C Street
Charleston, WV 25303
Phone: 304/746-1140
Fax: 304/746-1143
CIVIL & SITE PLANNING • SURVEYING & MAPPING
• ENVIRONMENTAL • MINING • GEOTECHNICAL •
TESTING & CONSTRUCTION OBSERVATION •
LABORATORY

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



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
BY: *Boyle*
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

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

MonPower
A FirstEnergy Company
5001 NASA Blvd
Fairmont, WV 26554

City of Morgantown
389 Spruce St
Morgantown, WV 26505

1/22/2016

Re: Letter of Availability

Dear City of Morgantown,

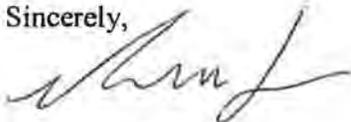
This letter confirms that Mon Power will provide electric service to the property commonly referred to as the Standard at Morgantown, located at the northwest corner of University Ave and Walnut St, encompassing the western portion of Wall St pursuant to its tariffs and rules and regulations.

We will process your request for service as promptly as possible after your application has been received and all financial and contractual arrangements have been satisfied. All work performed by Mon Power will be completed according to the rules and regulations filed with the Public Service Commission of West Virginia (PSC).

In addition Mon Power will remove its existing unused electric facilities as needed on this property pending receiving payment for the costs of such removals per existing company policy and regulations filed with the Public Service Commission of West Virginia (PSC). Upon completion of the removal of existing facilities, Mon Power has no current need for the right of way and releases its rights to the right of way along the portion of Wall St between University Ave and the Rail Trail where the facilities were removed.

If I can be of further assistance or if you require additional information, please contact me at 304-612-4305

Sincerely,



Ryan M. Zaph
Customer Support
Mon Power



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

Re: Proposed Annulment - Wall Street

Dear Mr. Davis:

Your recent email on November 17th 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

A handwritten signature in black ink, appearing to read "D. Smith", is written over the typed name of Douglas Smith.

Douglas Smith, PE
Assistant General Manager /
Chief Engineer



Damien Davis, PE, CFM

City of Morgantown

389 Spruce St

Morgantown, WV.

Comcast Cable
15 Summers School Road
Morgantown, WV 26508

RE: Wall Street Annulment

Mr. Davis,

Comcast has active cabling to 75 Wall St. upon termination of those services we will gladly remove our cabling and release all rights to this ROW.

Thank You,

Chris Mckahan

Construction Supervisor

Comcast Cable Corp.

412-491-3798

Christopher_mckahan@cable.comcast.com

01/25/2016

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

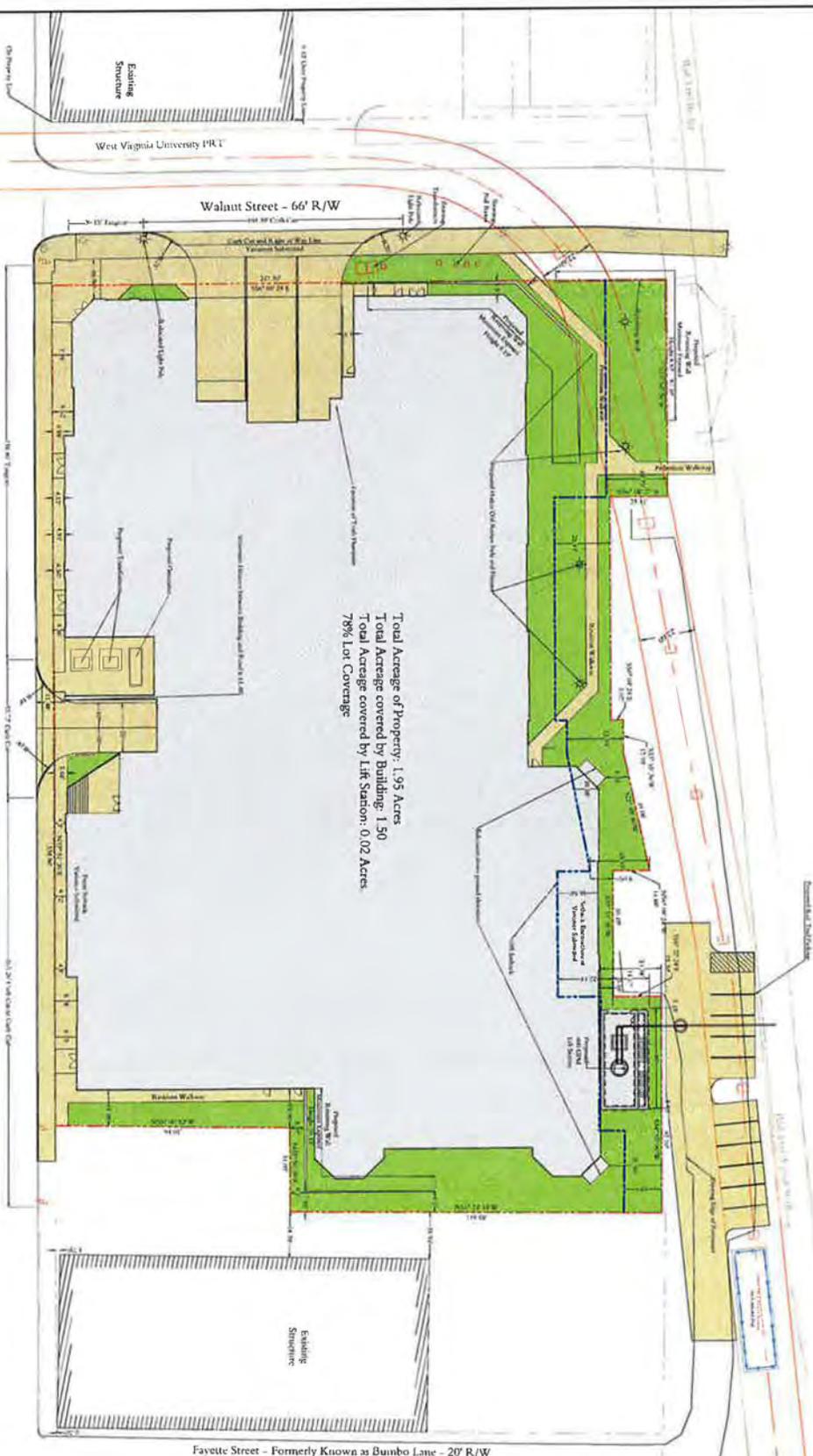
1061, Page 492); thence with the line of said Woodford Oil Company, S. 55° 22' 24" E. 113.57 feet to a point; thence S. 33° 51' 36" W. 96.97 feet to the beginning, containing 0.26 acres, more or less.

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



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

University Avenue - WV State Route 7 - U.S. Highway 19 - 66' R/W

Walnut Street - 66' R/W

Fayette Street - Formerly Known as Bumbo Lane - 20' R/W

Not for Construction

Scale
 1 inch = 20 feet

LEGEND

- Subject Property Line
- Adjacent Property Line
- Right-of-Way Line
- Easement
- Utility
- Parking
- Landscaping
- Building
- Existing Structure
- Proposed Structure
- Proposed Parking
- Proposed Landscaping
- Proposed Utility
- Proposed Easement
- Proposed Right-of-Way

REVISIONS	
Date	Description
10/21/2014	Final Design



The Standard at Morgantown
 Lmdark College Development, LLC
 455 Eppa Dodge Park Dr, Bldg 100, Suite 201, Athens, GA, 30606

Site Plan

This Plan, City of Morgantown, Monongalia County, West Virginia

CTU Engineering of
 West Virginia, Inc.

1000 S. Capitol Blvd., Suite 200, Charleston, WV 25301
 Phone: 304.762.1234 Fax: 304.762.1235
 Cell: 304.762.1236 Email: info@ctu-wv.com



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.

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 19.4, 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: *David H. Yoder* (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



Michelle L. Bechtel
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.

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 City of Morgantown hereby ordains:

That the FY 2015-2016 Annual Budget of the General Fund of the City of Morgantown is amended as shown on the revised budget (Revision 05) attached hereto and made a part of this ordinance.

First Reading:

MAYOR

Adopted:

Filed:

CITY CLERK

Recorded:

City of Morgantown

Finance Department

389 Spruce Street

Morgantown, WV 26505

Phone (304) 284-7407/Fax 7418

jgoff@morgantownwv.gov

MEMO

DATE: February 10, 2016

TO: Jeff Mikorski, ICMA-CM, City Manager

FROM: James Goff, CPA, Finance Director 

RE: General Fund Budget Revision 5

Included herewith you will find the proposed ordinance and "Request for Revision to Approved Budget" for the FY2016 General Fund Budget. An explanation of the proposed changes follows:

The adjustment to revenue reflects an increase from the projected Business & Occupation Tax – Construction based on the revenues received through the first seven months of the 2016 fiscal year.

The adjustments to expenditures include an increase in contributions to the Capital Escrow Fund for capital needs.

Ora Ash, Deputy State Auditor
 West Virginia State Auditor's Office
 200 West Main Street
 Clarksburg, WV 26301
 Phone: 627-2415 ext. 5114
 Fax: 627-2417

REQUEST FOR REVISION TO APPROVED BUDGET

Subject to approval of the state auditor, the governing body requests that the budget be revised prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists. (§ 11-8-26a)

CONTROL NUMBER
 FY: **2015-2016**
 Fund: **General**
 Rev. No. **5**
 Pg. of No. **1 of 1**

City of Morgantown
 GOVERNMENT ENTITY

389 Spruce Street
 STREET OR PO BOX

Person To Contact Regarding Request:
 Name: **James Goff**
 Phone: **304-284-7407**
 Fax: **304-284-7418**

Morgantown 26505
 CITY ZIP CODE

Municipality
 Government Type

REVENUES: (net each acct.)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
305	Business and Occupation Tax	14,046,000	220,000		14,266,000
	#N/A				

NET INCREASE/(DECREASE) Revenues (ALL PAGES) 220,000

Explanation for Account # 378, Municipal Specific:
Explanation for Account # 369, Contributions from Other Funds:

EXPENDITURES: (net each account category)

(WV CODE 7-1-9)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
444	Contributions / Transfers to Other Funds	2,343,300	220,000		2,563,300
	#N/A				

NET INCREASE/(DECREASE) Expenditures 220,000

APPROVED BY THE STATE AUDITOR
 BY: _____
 Deputy State Auditor, Local Government Services Division Date

[Signature]
 AUTHORIZED SIGNATURE OF ENTITY
 2/10/16
 APPROVAL DATE