

**REGULAR MEETING MAY 17, 2011:** The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Monday, May 3, 2011 at 7:30 P.M.

**PRESENT:** City Manager Terrence Moore, Mayor Bill Byrne, City Clerk Linda Little, Council Members Ron Bane, John Gaddis, Charlie Byrer, Jenny Selin, Marti Shamberger and Don Spencer.

**APPROVAL OF MINUTES:** Minutes from the Regular Meetings on April 5, 2011, April 19, 2011 and May 3, 2011 were approved as presented. The minutes from the Election Canvassing on May 2, 2011 were also approved as presented. Councilor Spencer then commended the City Clerk's Office for a job well done on the minutes.

**CORRESPONDENCE:** Mayor Byrne recognized the CTA Cheerleader and Dance Team for their participation and awards won in the US finals and presented proclamations for Cheerleading and Dance Month, Kids to Parks Day, and Rail Trail Day. Mayor Byrne then thanked resigning Airport Director Glen Kelly for his service to the City of Morgantown.

**PUBLIC HEARING - AN ORDINANCE AUTHORIZING THE CITY OF MORGANTOWN TO LEASE REALTY AT THE MORGANTOWN MUNICIPAL AIRPORT TO THE WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR PUBLIC HEALTH, OFFICE OF EMERGENCY MEDICAL SERVICES (NOROP).**

There being no appearances, Mayor Byrne then declared this Public Hearing Closed.

**PUBLIC HEARING - AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING MONONGAHELA POWER COMPANY TO UTILIZE A PORTION OF PROPERTY OWNED BY THE CITY; MORE SPECIFICALLY, THAT PARCEL APPEARING AS CLINTON DISTRICT, DISTRICT 13, MAP NO. 6, PARCEL 94 ON MONONGALIA COUNTY TAX MAPS, FOR PURPOSES OF FULFILLING A RESTORATION/MITIGATION PLAN UNDER THE CLEAN WATER ACT.**

There being no appearances, Mayor Byrne then declared this Public Hearing Closed.

**PUBLIC HEARING - AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING MONONGAHELA POWER COMPANY TO UTILIZE A PORTION OF PROPERTY OWNED BY THE CITY; MORE SPECIFICALLY, THAT PARCEL APPEARING AS MORGANTOWN CORPORATION, DISTRICT 1, MAP 48A, PARCEL 4 ON MONONGALIA COUNTY TAX MAPS, FOR PURPOSES OF FULFILLING A RESTORATION/MITIGATION PLAN UNDER THE CLEAN WATER ACT.**

There being no appearances, Mayor Byrne then declared this Public Hearing Closed.

**PUBLIC HEARING - AN ORDINANCE AMENDING SECTION 172.08 OF THE ADMINISTRATIVE CODE OF THE CITY OF MORGANTOWN, AS THE SAME PERTAINS TO PURPOSE, POWERS, AND DUTIES OF THE MORGANTOWN SISTER CITIES COMMISSION.**

There being no appearances, Mayor Byrne then declared this Public Hearing Closed.

**UNFINISHED BUSINESS:**

**AN ORDINANCE AUTHORIZING THE CITY TO LEASE REALTY AT THE MUNICIPAL AIRPORT:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE AUTHORIZING THE CITY OF MORGANTOWN TO LEASE REALTY AT THE MORGANTOWN MUNICIPAL AIRPORT TO THE WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR PUBLIC HEALTH, OFFICE OF EMERGENCY MEDICAL SERVICES (NOROP).

Motion by Shamberger, second by Gaddis to adopt the above entitled Ordinance. Motion carried 7-0.

**AN ORDINANCE AUTHORIZING MON POWER TO UTILIZE A PORTION OF CITY OWNED REALTY:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING MONONGAHELA POWER COMPANY TO UTILIZE A PORTION OF PROPERTY OWNED BY THE CITY; MORE SPECIFICALLY, THAT PARCEL APPEARING AS CLINTON DISTRICT, DISTRICT 13, MAP NO. 6, PARCEL 94 ON MONONGALIA COUNTY TAX MAPS, FOR PURPOSES OF FULFILLING A RESTORATION/MITIGATION PLAN UNDER THE CLEAN WATER ACT.

Motion by Spencer, second by Byrer to adopt the above entitled Ordinance. Motion carried 7-0.

**AN ORDINANCE AUTHORIZING MON POWER TO UTILIZE A PORTION OF CITY OWNED REALTY:**

The below entitled Ordinance was presented for second reading:

AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING MONONGAHELA POWER COMPANY TO UTILIZE A PORTION OF PROPERTY OWNED BY THE CITY; MORE SPECIFICALLY, THAT PARCEL APPEARING AS MORGANTOWN CORPORATION, DISTRICT 1, MAP 48A, PARCEL 4 ON MONONGALIA COUNTY TAX MAPS, FOR PURPOSES OF FULFILLING A RESTORATION/MITIGATION PLAN UNDER THE CLEAN WATER ACT.

Motion by Bane, second by Selin to adopt the above entitled Ordinance. Motion carried 7-0.

**AN ORDINANCE AMENDING SECTIONS OF THE ADMINISTRATIVE CODE:**

The below entitled Ordinance was presented for second reading:

AN ORDINANCE AMENDING SECTION 172.08 OF THE ADMINISTRATIVE CODE OF THE CITY OF MORGANTOWN, AS THE SAME PERTAINS TO PURPOSE, POWERS, AND DUTIES OF THE MORGANTOWN SISTER CITIES COMMISSION.

Motion by Gaddis, second by Selin to adopt the above entitled Ordinance. Motion carried 7-0.

**PUBLIC PORTION:**

Before the beginning of the Public Portion, Mayor Byrne asked that the rules be suspended to allow commentary from MUB Director Tim Ball regarding recent discussions and activities on Marcellus shale drilling.

Tim Ball, MUB Director, outlined MUB's concerns and the discussions regarding the safeguards including spill prevention, additional containment structures and appropriate disposing of all waste off site. He added that he plans to speak with the DEP to ensure that these safeguards are added to the permit process to assist in enforcement.

Then there was a question and answer session with Council and Mr. Ball.

Sandra Fallon, 39 Buckhannon Avenue, relayed her concerns over the Marcellus shale issues, that the process is moving too fast and asked Council to put a stop to the process, and preserve the safety of our drinking water.

Scott Fred, 1<sup>st</sup> Ward, reported that he can see drilling outside his bedroom window and stated concerns that the water supply will be affected and Council should watch the company "like a hawk".

Gary Tannabaum, Owner, Blue Moose Café, is scared for the safety of his drinking water and thanked Council for their Resolution they recently passed. He asked Council to assure safeguards are put in place.

Katherine Madison, 825 Madison, reported that she called the DEP because her house is close to drilling. They told her she would "not sleep for weeks" and she is tired of receiving conflicting information. She went to the site and took pictures and there is a lot of water run-off going everywhere. She suggested that Council refer to the state code 8-12-19 and pattern an Ordinance like Wellsburg, WV to handle the problem.

Brice Clagett, 550 Brockway Avenue, has thoroughly researched the topic and concurs with all the speakers and that the fracking should end.

Emily Brown, 309 Green Street, stated that the Marcellus shale drilling will promote water pollution, and road

degradation.

Renee Hernandez, 224 Overdale Street, is concerned over the whole process, fracking ,pollution, noise etc. She feels the whole issue occurred overnight. She then stated that the truck traffic on Rt. 7 should be re-routed.

John Burkhart, 116 Kingwood Street, stated that the Marcellus shale drilling is dangerous to the citizens and there is no benefit, only negatives. He opposes all drilling near Morgantown.

Nicholas Zegre, 352 Oakland Street, noted the Proclamation for Mon River Trails and health, and the current conversation on drilling. He cited a study that claims methane is a by-product of drilling and concurred with the other speakers that the drilling needs to stop.

Mike Levy, City resident, urged Council to follow Wellsburg's lead and make similar Ordinances. He reported that there have been numerous blow-outs near here.

Brett Bailey, 909 Fairfax Drive, stated that he is turned upside down about the drilling issue, and stated it could cause a blight on water. He asked Council what is more important water or gas?

Louis McDonald, 911 Fairfax Drive, President of Evansdale Neighborhood Association, said Council should take legal actions to fight drilling and follow related state codes 8-12-19.

Sarah Jansen Zagre, 325 Oakland Street, noted the irony of the proclamations and the current discussion on drilling and all the related pollution and health issues. She stated that Mr. Ball's efforts are part of a rush job to cover up the damage that will be done. The safeguards are not there, and in PA there was a gas well blow up and the dangers are real. She stated that citizens do not want contaminated drinking water or inappropriate fracking.

Mark Glass, 69 W. Jefferson Street, Environmental Consultant, stated that the EPA and the Dept. of Energy have not done their part and we need to know more about the new drilling process before we continue to allow this.

Resident, 241 Kingwood Avenue, spoke in opposition to the Marcellus drilling and thinks that the process is moving forward too fast. This could be done safely but, asked Council to put a stop to this.

Janis Gunel, 1409 Dogwood Avenue, spoke on behalf of the League of Women Voters and told Council they are requesting the City pursue an injunction to stop drilling on the drilling sites until all issues and concerns have been addressed.

Dwayne Nichols, Spokesperson for Mon Valley Clean Air Coalition, stated that the organization calls for an immediate cessation of all drilling activities at all sites until fully adequate regulation is put into place.

Ann M. Ours, 225 Euclid Avenue, asked Council's support on a bill that is in the House of Representatives to repeal provisions and revive the separation between commercial banking and securities business. Ms. Ours asked Council to read the bill in the House "H.R. 1489" and also forward to information to State Delegation for their review and consideration.

There being no other appearances, Mayor Byrne declared this Public Portion closed.

**SPECIAL COMMITTEE REPORTS:** None.

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**NEW BUSINESS:**

**AN ORDINANCE AMENDING THE ANNUAL BUDGET:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE AMENDING THE FY 2010-2011 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.

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

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**AN ORDINANCE AMENDING THE STREETS, UTILITIES AND PUBLIC SERVICES CODE:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING ARTICLE 923 OF ITS STREETS, UTILITIES AND PUBLIC SERVICES CODE IN ITS ENTIRETY AND ADDING NEW SECTIONS ADDRESSING PRETREATMENT FACILITIES, HAULED WASTEWATER, INDIVIDUAL WASTEWATER DISCHARGE PERMIT REVOCATION, INDIVIDUAL WASTEWATER DISCHARGE PERMIT REISSUANCE, REGULATION OF WASTE RECEIVED FROM OTHER JURISDICTIONS, PUBLICATION OF USERS IN SIGNIFICANT NONCOMPLIANCE, AND AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS.

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

**CITY MANAGERS REPORT:** No Report.

**CITY CLERK:** City Clerk, Linda Little updated Council on various Boards and Commission appointments. After discussion, motion by acclamation to reappoint Jim Pompili & Barry Dickson to Building Code Appeals Board; Dan Hursh appointed to the Fire Civil Service Commission and Jamie Lewis appointed to the Traffic Commission.

**CITY ATTORNEY'S REPORT:** No Report.

**REPORT FROM COUNCIL MEMBERS:**

Councilor Bane: Councilor Bane reported that the MHS Lacrosse team will play UHS in the State Championship game in Bridgeport. He asked that anyone interested show their support for the students. Secondly, he commended all those who spoke on the Marcellus shale drilling issues and reminded everyone that the wells are not inside the City Limits. He thanked Tim Ball of MUB for all of his hard work and research concerning this issue. He stated that if the drillers request water of the City, we can work together to help them to comply with our standards for safety. He noted that the State Code is very ambiguous regarding extension of powers outside of City Limits and he is interested to see how well something of this nature, as attempted in Wellsburg, would hold up in court. He feels there is a more effective way of conveying our concerns, and getting results.

Councilor Gaddis: Councilor Gaddis thanked citizens for coming out and sharing their views of the situation. He thanked Mr. Ball for his part in situation as well. He expressed concerns that we should keep lines of communication open to protect our water supply. He noted that he is keeping an eye on the Hog Back Turn issue. He asked Mr. Moore to provide a status update.

City Manager, Terrence Moore replied that via his recent Information Letter Report, a meeting will be hosted on Monday June 6<sup>th</sup> to discuss issues with all stakeholders and he hopes that an amicable solution can be reached. Councilor Gaddis called attention to the corner of Spruce and Walnut streets and then announced the Greenmont neighborhood association plant event and a neighborhood photo contest.

Councilor Byrer: Councilor Byrer announced the upcoming neighborhood association meetings and also encouraged everyone to participate in the neighborhood photo contest. He commented on the remarks of those who spoke about the drilling and added that MUB should seek a stop work order or injunction if they are uncomfortable with anything that the drillers are doing. He discussed that he has seen fish, animals and other aquatic life be sucked into the fracking liquid intake and we should be watching to make sure there is not a decrease in river wildlife.

Councilor Selin: Councilor Selin commented that something doesn't sit right with the drilling being right next to the public water supply. She urged Council to seriously consider filing an injunction against the drillers if they proceed without accommodating concerns over public safety. She stated we should talk to legal counsel and it appears that there is no means of protection for the municipality and we should come up with them ourselves. She stated that the situation puts everyone at risk and we should take the appropriate steps to protect public safety and heed the

concerns of the citizens. She then announced the BOPARC junior leadership program and urged all who are interested to participate.

Councilor Shamberger:

Councilor Shamberger announced an upcoming ride/walk in her ward to tour student and residential neighborhoods. She thanked MUB for their quick response to some recent flooding in neighborhoods. She concurs with Councilor Selin's comments about an injunction and commended Tim Ball for his work in the situation.

Councilor Spencer:

Councilor Spencer thanked all the citizens and groups who spoke out about the drilling tonight and praised them for their organized efforts. He also thanked Tim Ball and MUB for their involvement in the situation as well. He mentioned Wellsburg and their gamble to pass laws against drilling, stating that they have property to protect and that their situation is more serious than ours. He also mentioned that the Cities of Pittsburgh and New York have taken similar steps to protect their watersheds and public water supplies from drilling. He added that in New York there is a statewide concern over hydro fracking and in other states and areas as well. He announced that he will be offering two Resolutions to help the City take action in these drilling issues and they will be up for discussion at the Committee of the Whole meeting. He explained what the Resolutions say and hope to achieve. He continued to explain the seriousness of these issues and that environmental issues are a major concern in our area and everywhere. Next he applauded the Suncrest Lake cleanup event and thanked everyone who participated. He then added that the Secretary of State's Office had done a lot of work in helping to facilitate the Vote By Mail efforts and that there was a misunderstandings concerning what the Office could have provided. He thanked Dave Nichols for all his help and hard work on Vote By Mail. He then announced an event about the Affordable Health Care Act.

Mayor Byrne:

Mayor Byrne suggested actions that Council can take regarding the drilling concerns, and reminded everyone that the drillers in our area have a valid permit to work at the aforementioned site. He informed everyone that getting an injunction would cause the City of Morgantown to have to post a bond in court and that by the time the paperwork was submitted, drilling would be well under way and the City would have to pay approximately \$30,000-\$40,000 per day that the company has to halt their drilling work. It is just not financially possible for the City to seek an injunction. He suggests that the Council urge Tim Ball as Director of MUB to enforce his emergency powers to cause a Stop Work Order if the water safety precedents are not included in the permit process for shale drillers. He urged that a letter be written expressing the City's needs for water protection in the permitting process.

Councilor Selin interjected that supervision at key points should be included in the language of the letter. Discussion continued on what specific wording the letter should say. City Manager Moore commented that this approach is supportive of other efforts and he stated that he feels comfortable proceeding in this matter of authorizing a letter on behalf of the City and Council. Councilor Gaddis added that we urge the County do likewise with a similar letter. Mayor Byrne thanked Councilor Bane for his work in putting materials together. He stated that Councilor Spencer's Resolutions will be reviewed at the Committee of the Whole meeting. He asked that the City Attorney review applicable State Code to determine an appropriate course in the matter. City Attorney Steve Fanok answered that it would be more proper to discuss the matter in Executive Session.

Councilor Selin then added that she would like to have a transcription of the public comments regarding this matter for public use. City Clerk Linda Little answered that the audio and video of the meeting is available on DVD. City Manager Terrence Moore assured her that the minutes would suffice as a record of the public's comments. City Attorney Steve Fanok added that a transcription of that detail would take the work of a professional court reporter and that those services would cost the City thousands of dollars. Finally, everyone agreed that a transcription of the public comments would be too complicated and costly to produce.

Mayor Byrne stated that some citizens have challenged him to contact the Governor and he

agreed that he would call and relay all the concerns of the people of Morgantown over the hydro fracking. He again reminded everyone that the State has issued this company a valid permit and that they are currently operating under their legal rights. He also reminded that MUB Director, Tim Ball has the emergency authority to stop this if necessary and that an injunction would be too costly and is not an appropriate solution at this time.

Councilor Selin again interjected that the letter previously discussed should also be forwarded to all PDS's and others purchasing water from MUB. Councilor Bane suggested that we engage the President of WVU, Councilor Selin continued naming other stakeholders who would be interested in making letters too. Lastly, Mayor Byrne announced the upcoming City Manager evaluation and asked all Council members to fill out their evaluations and return them to him as soon as possible. Councilor Gaddis then asked for his in electronic form. Mayor Byrne stated that the reviews will be discussed at June 21<sup>st</sup>. He then announced the upcoming Mon River Festival.

**ADJOURNMENT:** There being no further business, the meeting adjourned by unanimous consent at 10:35 p.m.

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City Clerk

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Mayor