



Office of the City Clerk

The City of Morgantown

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

AGENDA
MORGANTOWN CITY COUNCIL
COMMITTEE OF THE WHOLE
May 31, 2016
7:00 p.m.

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

PRESENTATIONS:

1. Metropolitan Theatre Management Agreement Proposal
2. 2016 Morgantown Marathon
3. Children's Discovery Museum
4. Upper Falling Run TIF District
5. Stewart and University Avenue Greenspace

PUBLIC PORTION:

ITEMS FOR DISCUSSION:

1. Planning and Zoning Code Text Amendment protocol
2. Agreement with KLM Properties for space at Airport
3. Parking Authority Amendment on Membership

If you need an accommodation contact us at 284-7439

Resolution Regarding Public Hearing

RESOLUTION

WHEREAS, The City of Morgantown (the "City") is authorized by the West Virginia Tax Increment Financing Act, Chapter 7, Article 11B of the Code of West Virginia 1931, as amended (the "Act"), to create development and redevelopment districts, approve project plans, issue tax increment financing obligations and take such other actions necessary or desirable to facilitate the orderly development and economic stability of the City, all as more fully set forth in the Act;

WHEREAS, Fairmont Morgantown Housing Authority ("FMHA") has requested that the City consider the creation and establishment of a development district to be known and designated as "The City of Morgantown Development District No. 5" (the "TIF District"), and approval of a development project plan (the "Project Plan"), specifically the development of certain public infrastructure improvements within the TIF District, including, without limitation, water lines, sanitary sewer lines, stormwater drainage, road improvements and other related infrastructure and utilities improvements, all within or benefitting the proposed TIF District (the "TIF Projects"), all in order to facilitate the issuance of tax increment financing obligations or the utilization of tax increment revenues to finance the costs of planning, acquiring, constructing and equipping the TIF Projects, being necessary public infrastructure improvements within or benefitting the TIF District;

WHEREAS, FMHA has provided certain information regarding the proposed TIF District, including the proposed boundaries, and the proposed TIF Projects to the City for its review and consideration; and

WHEREAS, FMHA has requested that the City, under and pursuant to the Act, hold a public hearing at which interested parties be afforded a reasonable opportunity to express their views on the proposed creation of the TIF District, its proposed boundaries and the proposed TIF Projects.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORGANTOWN AS FOLLOWS:

1. It is hereby found and determined, subject to a public hearing and other required actions, that the City will consider for approval the Tax Increment Financing Application for the creation of the TIF District and the approval of the Project Plan (the "Application") and, if approved, submit the Application to the West Virginia Development Office for consideration and obtain all other necessary approvals.

2. The City hereby sets a public hearing regarding the Application for June 21, 2016 at 7:00 p.m., prevailing time.

3. The City hereby approves for publication, under and in accordance with the applicable provision of the Act that certain Notice of Public Hearing, substantially in the form attached hereto as **Exhibit A** and incorporated herein by reference.

4. This Resolution is effective immediately upon adoption.

[Signature Page Follows]

Adopted this 7th day of June, 2016

THE CITY OF MORGANTOWN

By: _____

Name: Marti Shamberger

Title: Mayor

8481505 (20945.4)

CERTIFICATION

The undersigned, being the duly qualified, elected and acting Clerk of The City of Morgantown (the "City"), does hereby certify that the foregoing Resolution was duly adopted by the City Council at its regular meeting duly held, pursuant to proper notice thereof, on June 7, 2016, a quorum being present and acting throughout, and which Resolution has not been modified, amended or revoked and is a true, correct and complete copy thereof as of this 7th day of June, 2016.

By: _____

Name: Linda Tucker

Title: City Clerk

Exhibit A

NOTICE OF PUBLIC HEARING

TO BE PUBLISHED IN *THE DOMINION POST*
ONCE A WEEK FOR TWO SUCCESSIVE WEEKS
ON FRIDAY, JUNE 10, 2016 AND
FRIDAY, JUNE 17, 2016

**APPLICATION REGARDING CREATION OF
THE CITY OF MORGANTOWN DEVELOPMENT DISTRICT NO. 5 AND
APPROVAL OF A PROJECT PLAN FOR
UPPER FALLING RUN PROJECT NO. 1 AND
ISSUANCE OF TAX INCREMENT FINANCING OBLIGATIONS**

A public hearing will be held at a regular meeting of the City Council of The City of Morgantown (the "City"), on June 21, 2016 at 7:00 p.m. in the City Council Chambers, located at 389 Spruce Street, Morgantown, West Virginia 26505, and at such hearing any person interested may appear and present comments, protests, suggestions and otherwise express their views respecting an application regarding the creation of a development district to be designated as "The City of Morgantown Development District No. 5" (the "TIF District") in Morgantown, Monongalia County, West Virginia, and the financing of certain projects described in a Project Plan for the TIF District to be designated as "Upper Falling Run Project No. 1" (the "Project Plan"). All comments, protests, suggestions and views shall be heard at such public hearings, and the City Council shall thereafter take such actions as it shall deem proper in the premises regarding the approval, pursuant to Chapter 7, Article 11B of the Code of West Virginia, 1931, as amended (the "Act"), respecting the application regarding the creation of the TIF District and the approval of the Project Plan. Following is a brief summary of such matters.

Creation of TIF District

The proposed TIF District is includes approximately 20 acres of contiguous real property located generally off of Liberty Street and running along Braddock Street to the west, as set forth on the map below, including the specifically delineated TIF District boundary.

Approval of Project Plan

Fairmont Morgantown Housing Authority ("FMHA") proposes a Project Plan for the TIF District to develop certain public infrastructure improvements within the TIF District, including, without limitation, water lines, gas lines, sanitary sewer lines, stormwater drainage, new road construction, and road improvements and other related infrastructure and utilities improvements, all within or benefitting the proposed TIF District (the "TIF Projects").

Tax Increment Financing Obligations

To finance the costs of the TIF Projects the City proposes to issue tax increment revenue bonds or other obligations (the "TIF Obligations") in an amount not to exceed \$10,000,000, with maturities not to exceed 30 years from the date of the creation of the TIF District. Such obligations may be issued from time to time in one or more series. Proceeds of the TIF Obligations are generally planned and expected to be used to (i) finance the costs of the TIF Projects, including architectural, engineering, legal and other professional fees and expenses; (ii) fund reserves for the TIF Obligations; (iii) fund capitalized interest on the TIF Obligations; and (iv) pay costs of issuance of the TIF Obligations, including relating to the creation of the TIF District and preparation and approval of the Project Plan and related costs. A portion of the TIF Projects may also be paid directly from tax increment revenues.

Further information regarding the proposed TIF District, the Project Plan, the TIF Projects and the TIF Obligations are on file and available for inspection at the office of the City Clerk during regular business hours, located at the City Clerk's located at 389 Spruce Street, Morgantown, West Virginia 26505.

Dated: June 7, 2016.

By: /s/ Linda Tucker
City Clerk



West Virginia Tax Increment Financing And It's Effect on County Board of Education Budgets

Introduction

Tax increment financing (TIF) captures the increase in property tax revenues gained by developing a discrete geographic area and uses that increase to assist in paying for approved TIF project plans. TIF funding makes it possible to complete projects that otherwise would not be built.

TIF can be used by all West Virginia counties and class I and II municipalities to help fund economic development and public infrastructure projects. Class III and IV municipalities must work with their local county commissions in order to utilize tax increment financing. However, no TIF district can be created without the approval of the West Virginia Development Office. The process and procedures by which TIF districts are established are set forth in W. Va. Code § 7-11B-1 *et seq.* Further discussion of the processes and procedures is beyond the scope of this paper.

When a TIF district is created, regular levy property tax dollars attributable to the increases in assessed values due to development of the TIF district may be used to fund projects on a pay-as-you-go basis or may be used to pay debt service on revenue bonds issued by the entity creating the TIF district. Property tax revenues resulting from the increase in assessed values relating solely to regular levies (and not excess or bond levies) in a TIF district are not distributed to the levying bodies until after the TIF district terminates. TIF districts may remain in existence for up to 30 years. During this time, the levying bodies will continue to receive property tax dollars attributable to the base assessed value of taxable property located in the TIF district (being the assessed value of all taxable real and personal property located within the TIF district as of the first day of July of the year preceding the calendar year in which the TIF district is created) and all tax revenues attributable to excess levies and levies for bonded indebtedness on all property in the district.

Questions have arisen regarding how TIF affects county boards of education. ***The short answer is that while county boards of education do not receive regular levy property tax collections on the increases in the assessed value of taxable properties located in the TIF district during the life of the TIF district, these valuation increases are not included in local share computation when determining the amount of state aid to education the county board of education will receive. The state aid allowance makes up any potential loss of regular levy tax revenues due to the establishment of the TIF district (i.e., the State absorbs such revenues so that the County Board of Education is made whole). County Boards of Education are therefore not adversely affected, financially, by the creation of any TIF district.***

State Aid to Education

State Aid to county boards of education is determined for each county as provided in W. Va. Code § 18-9A-1 *et seq.*

. In determining the amount of state aid to a county board of education, an important component is the amount of property tax dollars that a county board of education is expected to receive based upon the assessed value of taxable property located in the particular county. This is generally known as “local share.”

Local share is computed as provided in W. Va. Code § 18-9A-11. In general, local share is determined using the following four steps.

Step 1. By March 3rd each year, the county assessor certifies to the State Board of Education the taxable assessed value of each class of property in his or her county for that tax year. However, in computing these assessed values certain adjustments are made. For example, ***the assessed value of property included in a tax increment financing district is only the base-assessed value of the property***, as defined in W. Va. Code § 7-11B-2. *See* W. Va. Code § 18-9A-11(d).¹

Step 2. The State Department of Education then multiplies the assessed values determined in step one for each class of property (Class II, Class III and Class IV) by the applicable levies for current expenses to determine the taxes that would be produced if 100% of the taxes levied were collected.

Step 3. Next the State Department of Education subtracts 4% as an allowance for the usual losses in collections due to discounts, exonerations, delinquencies and the like. This net amount is then added to 96% of the public utility taxes computed on each class of public utility property located in the county. This total is then reduced by the amount due each county assessor’s office pursuant to W. Va. Code § 11-1C-8 (additional funding for assessor’s offices). The remaining balance is the local share of the particular county.

Step 4. The local share amount determined in step three can be further adjusted as provided in W. Va. Code § 18-9A-12 in instances where local share, as computed under Section 18-9A-11, is not reflective of local funds available, such as when the county is under a final court order, or a final decision of a board of assessment appeals to refund or credit property taxes paid in prior years.

Public School Support Program information for the fiscal year ending June 30, 2016 posted at the State Department of Education’s website shows the following information for Monongalia County:

¹ W. Va. Code § 18-9A-11(d) provides: “For the purposes of any computation made in accordance with this section, in any taxing unit in which tax increment financing is in effect pursuant to article eleven-b, chapter seven of this code, the assessed value of a related private project shall be the base-assessed value as defined in section two of said article.”

Adjusted Net Enrollment on Which State Aid Funding is Based	11,288.96
Local Share	\$26,809,392
State Aid Allowance	<u>\$37,080,571</u>
Total Basic Program Allowance	\$63,889,963

Accordingly, for the 2016 fiscal year, the County Board of Education received State funding of \$3,284.68 per pupil and provided local share funding of \$2,374.83 per pupil. As noted above, the state aid allowance makes up any potential loss of tax revenues due to establishment of the TIF District, as state law provides that local share does not include regular levy taxes on the incremental assessed value of property located in a TIF district.

The following example illustrates how tax increment financing affects property tax collections of the taxing jurisdictions in which the TIF district is located.

EXAMPLE

A housing authority is proposing to develop moderate-income housing in Morgantown, West Virginia, that for purposes of this example will be 60% owner occupied residential and 40% rental units (apartments and town houses). The housing authority is proposing that the City create a property tax increment financing district (TIF district) to help finance development of the infrastructure necessary to support the project, e.g., roads, water, sewer, etc. The City is considering financing the project by selling revenue bonds secured by the regular levy property tax dollars attributable to the increase in assessed value of the property due to the development. The bonds would mature in 30 years at which time the TIF district would be terminated.

In this example the property in the proposed TIF district is currently vacant land owned by a taxable entity and, as of July 1, 2015, had a market value of \$10 million and an assessed value of \$6 million.

The 2015 levy rates for Monongalia County will be used in this example and are as follows:

Monongalia County - 2015 Levy Rates

Levy	Class II Property	Class III Property	Class IV Property
County Current Expense	0.002400	0.004800	0.004800
School Current	0.003880	0.007760	0.007760
School Excess Levy	0.003398	0.006796	0.006796
School Bond Levy	0.000382	0.000764	0.000764
State General Revenue	0.000050	0.000100	0.000100
Morgantown	<u>0.002500</u>	NA	<u>0.005000</u>
Total	0.012610		0.025220

Base Assessed Value

Base assessed value. The base assessed value of the property included in the tax increment financing district is its assessed value as of the first day of July of the calendar year preceding the calendar year in which the TIF district is created by the Morgantown City Council. However, excluded from the base assessed value, by law, is the assessed value of any personal boats, personal campers, personal motor homes, personal ATVs and personal motorcycles located in the TIF district.

Property Taxes on Base Assessed Value

Property taxes levied on the base assessed value of property located in the TIF district will continue to be distributed to the levying bodies within whose jurisdiction the TIF district is located. In this example, the aggregate property taxes levied on the base assessed value are \$151,320.00. (Taxes for the county board of education are \$91,920.)

Base assessed value	x	2015 Levy Rates	=	Tax
Class II property				
Zero				Zero
Class IV property				
\$6,000,000		0.04800 County Current Expense		\$ 28,800
\$6,000,000		0.07760 School Current Expense*		\$ 46,560
\$6,000,000		0.06796 School Excess Levy*		\$ 40,776
\$6,000,000		0.00764 School Bond Levy*		\$ 4,584
\$6,000,000		0.00100 State General		\$ 600
\$6,000,000		0.05000 Town Current Expense		<u>\$ 30,000</u>
				\$151,320

*The total school revenue is \$91,920.

During the life of the TIF district, the county board of education will receive property taxes from its regular levy on the base assessed value of property located in the district and property taxes from the board's excess levy and levy for bonded indebtedness measured by the assessed value of all taxable property located in the TIF district for so long as the excess levy and bond levy remain in effect.

Tax Increment

Tax increment assessed value. The assessed value of the tax increment is the difference between the current assessed value of the property in the TIF district and its base assessed value. If the current assessed value of the property with improvements is \$36 million and the base assessed value of the property is \$6 million, the tax increment assessed value is \$30 million.²

The proposed new homes, apartments, town houses and other capital improvements, once they are constructed, will have a market value of \$50 million and an assessed value of \$30 million. The increase in property tax collections from the current expense levy attributable to these items is \$397,350, which will be deposited in the tax increment financing fund of the TIF

² The base assessed value and the tax increment assessed value do not include the assessed value of personal boats, personal campers, personal motor homes, personal ATVs and personal motorcycles located in the TIF district.. Therefore, property taxes paid on these items will be distributed by the county sheriff in the same manner as property taxes are distributed on the base assessed value of property located in the TIF district.

district and will not be distributed to the levying bodies, i.e., the county commission, the county board of education, the city and the state. The increase in property tax collections from the school excess and school bond levy attributable to these items is \$170,100, which will be distributed to the county board of education.

	Market Value	Assessed Value	Estimated Aggregate Tax
New owner occupied homes	\$25 million	\$15 million*	\$189,150
Rental apartments and town houses	\$20 million	\$12 million**	\$302,540
Other capital improvements	<u>\$ 5 million</u>	<u>\$ 3 million**</u>	<u>\$ 75,660</u>
	\$50 million	\$30 million	\$567,350***

* Class II property is owner-occupied residential property and farmland.

** Class IV property is all other tangible property located in municipality.

*** Aggregate regular levy property tax dollars attributable to the tax increment.

Property Taxes Levied on Tax Increment

More specific information about property taxes levied on the tax increment assessed values is shown in the following table.

Tax Increment Assessed Value	x	2015 Levy Rates	=	Tax	TIF Revenue
Class II property					
\$15,000,000		0.002400 County Current Expense			\$36,000
\$15,000,000		0.003880 School Current Expense			\$58,200
\$15,000,000		0.003398 School Excess levy*		\$50,970	
\$15,000,000		0.000382 School Bond levy*		\$ 5,730	
\$15,000,000		0.000050 State General Revenue			\$ 750
\$15,000,000		0.002500 Town Current Expense			<u>\$37,500</u>
		Subtotal		<u>\$56,700</u>	\$132,450

* Schools revenues from tax increment Class II property are \$ 56,700

Class IV property					
\$15,000,000		0.004800 County Current Expense			\$ 72,000
\$15,000,000		0.007760 School Current Expense			\$116,400
\$15,000,000		0.006796 School Excess levy**		\$101,940	
\$15,000,000		0.000764 School Bond levy**		\$ 11,460	
\$15,000,000		0.000100 State General Revenue			\$ 1,500
\$15,000,000		0.005000 Town Current Expense			<u>\$ 75,000</u>
		Subtotal		<u>\$113,400</u>	\$264,900

** Schools revenues from tax increment Class IV property are \$113,400

Summary of Property Taxes on TIF District Property

The aggregate amount of property taxes levied each year on the base assessed value and on the tax increment assessed value is shown below.

Total property taxes levied on the base assessed value of property in TIF district:		\$151,320
Portion that is school regular, excess and bond levy revenue: \$91,920.		
Total property taxes levied on tax increment assessed value:		\$567,450
Class II property	\$189,150	
Class IV property	<u>\$378,300</u>	
	\$567,450	
Property taxes levied on tax increment deposited in tax increment financing fund:		\$397,350
Class II property	\$132,450	
Class IV property	<u>\$264,900</u>	
	\$397,350	
School excess levy and bond levy taxes distributed to county board of education:		\$170,100
Class II property		
Excess levy	\$ 50,970	
Bond levy	\$ 5,730	
Class IV property		
Excess levy	\$101,940	
Bond levy	<u>\$ 11,460</u>	
	\$170,100	

Summary of Tax on TIF District Property Distributed to All Levying Bodies

This table illustrates how property taxes collected each year on property located in the TIF district will be distributed.

Levy	Tax Distribution	TIF Revenue
County Current Expense		
Tax on Base Assessed Value	\$28,800	0
Tax on Tax Increment Assessed Value	0	\$108,000
School Current Expense		
Tax on Base Assessed Value	\$46,560	0
Tax on Tax Increment Assessed Value	0	\$174,600
School Excess Levy		
Tax on Based Assessed Value	\$40,776	0
Tax on Tax Increment Assessed Value	\$152,910	0
Subtotal	\$293,686	
School Bond Levy		
Tax on Base Assessed Value	\$ 4,584	0
Tax on Tax Increment Assessed Value	\$17,190	0
Subtotal	\$21,774	
State General Revenue		
Tax on Base Assessed Value	\$ 600	0
Tax on Tax Increment Assessed Value	0	\$2,250
Town Current Expense		
Tax on Base Assessed Value	\$30,000	
Tax on Tax Increment Assessed Value	0	\$112,500
	Total	\$397,350 TIF Revenue



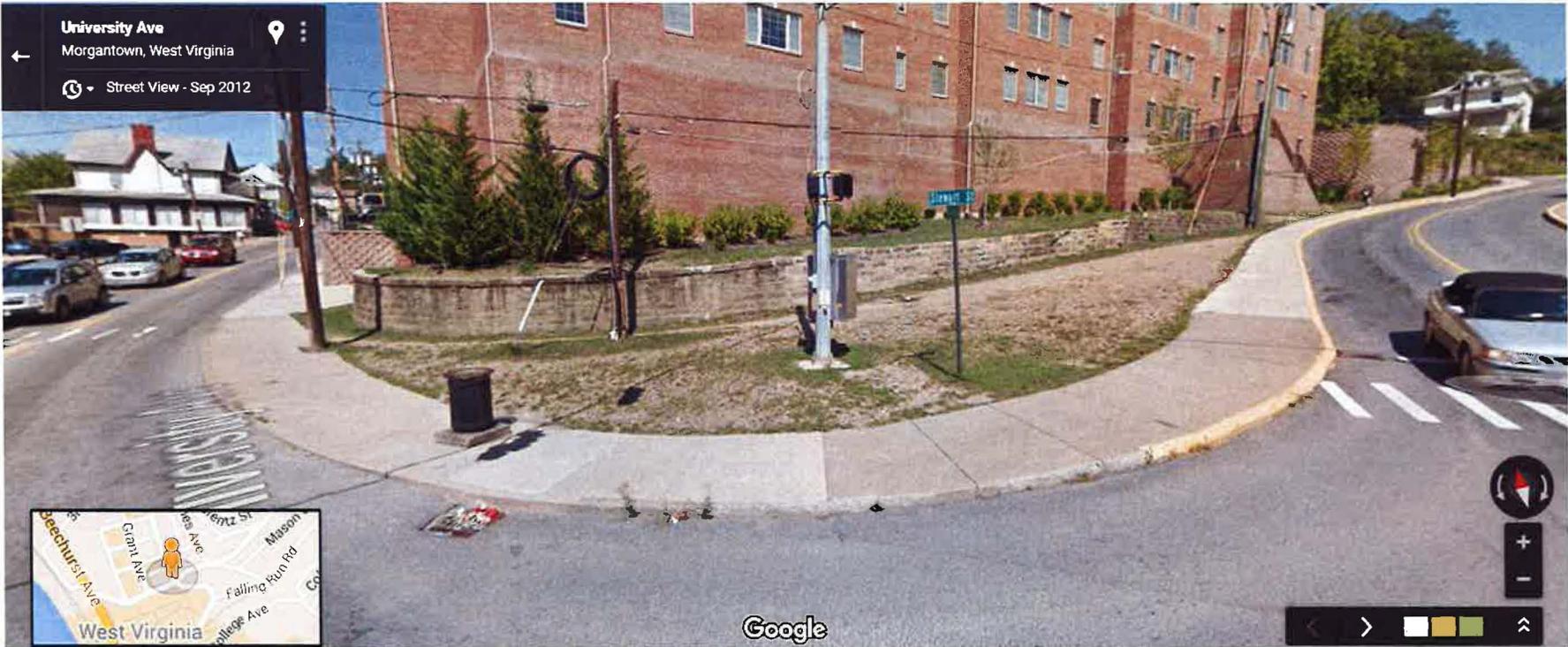
UNIVERSITY AND STEWART STREET
GREEN SPACE

Morgantown Council Meeting

5-31-16

WPG WALLACEPANCHER GROUP *engineering • environmental*

HAYS LANDSCAPE ARCHITECTURE STUDIO, LTD.



SITE ISSUES

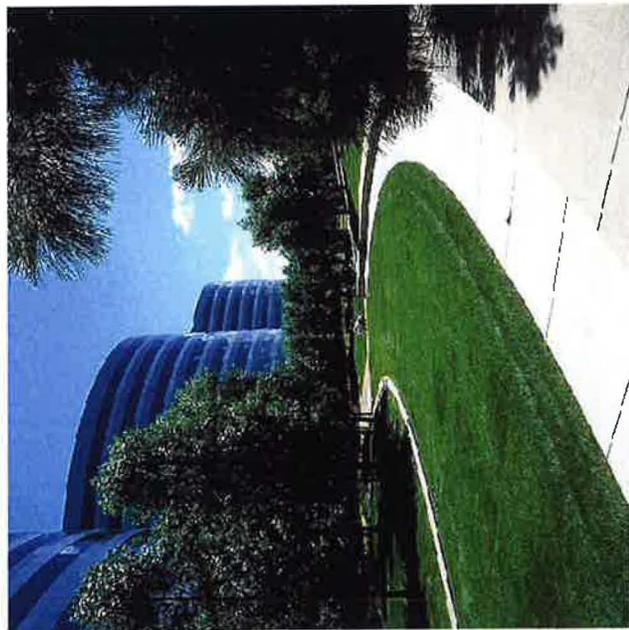
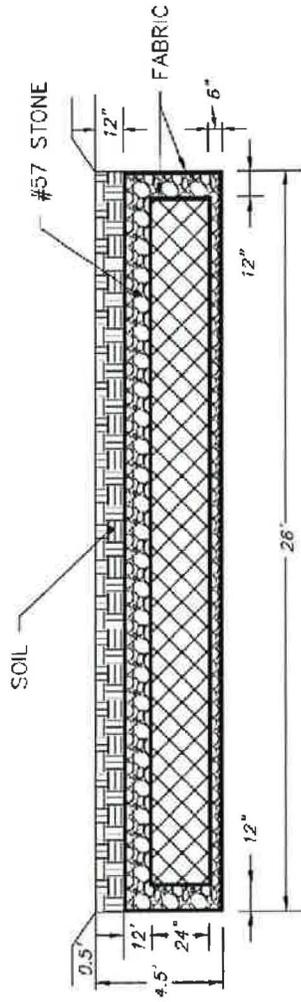
- DIRT PATHS (MUDDY)
- SAFETY
- LACK OF LIGHTING
- AESTHETIC
- STABLE AREA FOR POLICE AND MAINTENANCE VEHICLES

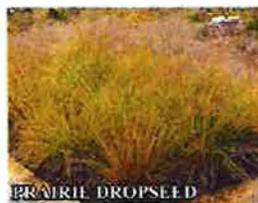
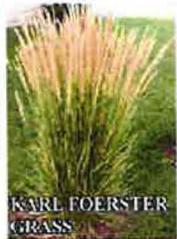
EXISTING CONDITIONS

GRASSpave 2



MUB MORGANTOWN UTILITY BOARD





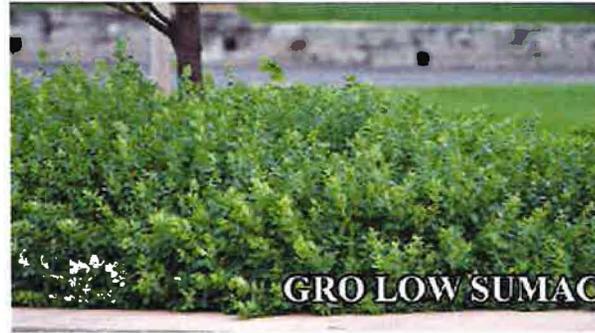
SITE CONDITIONS
 -POOR COMPACTED SOILS
 -FULL SUN
 -URBAN CONDITIONS
 -ROCK SALT
 -HEIGHT RESTRICTIONS

PROPOSED PLAN





BEARBERRY



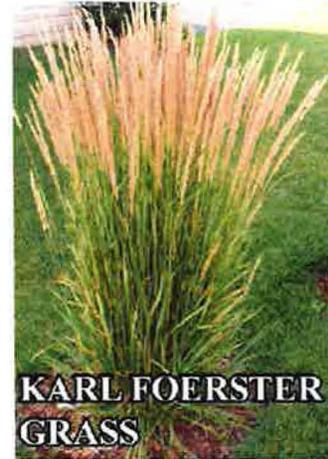
GRO LOW SUMAC



**LITTLE SPIRE
RUSSIAN SAGE**



**MOOR DENSE
JUNIPER**



**KARL FOERSTER
GRASS**



PRAIRIE DROPSEED

- SITE CONDITIONS**
- POOR COMPACTED SOILS
 - FULL SUN
 - URBAN CONDITIONS
 - ROCK SALT
 - HEIGHT RESTRICTIONS



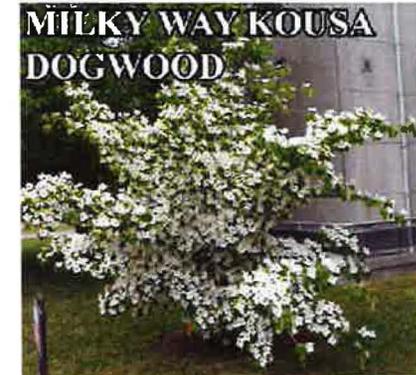
RUSSIAN ARB/ CYPRESS



CATMINT



**BLUE OAT
GRASS**



**MILKY WAY KOUSA
DOGWOOD**

**UNIVERSITY & STEWART
STREET GREENSPACE**





Development Services
389 Spruce Street
Morgantown, WV 26505
304.284.7431

MEMORANDUM

Date: 17 MAY 2016
To: Jeff Mikorski, City Manager *via email*
Linda Tucker, City Clerk..... *via email*
RE: City Council Committee of the Whole Agenda – 31 MAY 2016
TX16-02 / Administrative / Wall Signs

During its 12 MAY 2016 hearing, the Planning Commission voted unanimously to forward a recommendation to City Council to APPROVE the above referenced Zoning Text Amendment petition.

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

City Council Meetings

Committee of the Whole Tuesday, May 31, 2016
First Reading: Tuesday, June 7, 2016
Public Hearing and Second Reading: Tuesday, July 5, 2016

Please include this item on the City Council meeting agendas noted above and include this communication and attachments in the 31 MAY Committee of the Whole meeting packet. Only the ordinance should be included in the 07 JUN and 05 JUL meeting packets.

Thank you.

Digitally signed by Christopher M. Fletcher, AICP
Date: 2016.05.17 08:22:25 -04'00'

TX16-03

Staff Report



MORGANTOWN PLANNING COMMISSION

May 12, 2016
6:30 PM
City Council Chambers

President:

Peter DeMasters, 6th Ward

Vice-President:

Carol Pyles, 7th Ward

Planning Commissioners:

Sam Loretta, 1st Ward

Tim Stranko, 2nd Ward

William Blosser, 3rd Ward

Bill Petros, 4th Ward

Mike Shuman, 5th Ward

Charles McEwuen, Admin.

Bill Kawecki, City Council

STAFF REPORT

CASE NO: TX16-02 / Administrative / Wall Sign

REQUEST:

Administratively requested Zoning Text Amendments providing for wall signs on retaining walls.

BACKGROUND and ANALYSIS:

The Planning and Zoning Code provides prescriptive standards for signage located on exterior walls of buildings and awnings attached to structures without regard to the placement of wall type signs on retaining walls.

The current standards present the following deficiencies.

1. The definition of structure specifically excludes retaining walls. The definition of structure is shown below:

STRUCTURE – Anything constructed, erected, or situated by man that requires location on the ground or being attached to something having location on the ground; but not including vehicles, recreational vehicles, campers, tents less than thirty-six square feet in area, retaining walls, fences not over eight feet in height, yard and play equipment, utility lines and underground facilities. (Ord. 12-26. Passed 7-3-12.)

2. The definition of wall signs only allows for wall signage to be placed on exterior walls. The definition of wall sign is shown below:

SIGN, WALL – Any sign painted on or attached to and extending not more than six (6) inches from an exterior wall in a parallel manner.

3. An exterior wall is defined as a wall that encloses a habitable or usable space, as shown below:

WALL, EXTERIOR – A vertical, structural component of a building which encloses habitable or usable space; a parapet extending not more than twelve inches above a flat roof shall be considered part of the exterior wall for purposes of determining signage.

4. A retaining wall does not enclose any space. A retaining wall is simply a wall built into the land, over eighteen inches in height. The definition of a "Retaining Wall" is shown below:

RETAINING WALL – A wall or terraced combination of walls used to retain more than eighteen (18) vertical inches of material.

A retaining wall can serve as the primary point of visible communication for both pedestrian and vehicle passersby given a site's topography; particularly, when the residential and/or nonresidential use(s) requiring safe and effective communication of its existence is/are not located in operative proximity to passersby.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN PLANNING COMMISSION

May 12, 2016
6:30 PM
City Council Chambers

President:

Peter DeMasters, 6th Ward

Vice-President:

Carol Pyles, 7th Ward

Planning Commissioners:

Sam Loretta, 1st Ward

Tim Stranko, 2nd Ward

William Blosser, 3rd Ward

Bill Petros, 4th Ward

Mike Shuman, 5th Ward

Charles McEwuen, Admin.

Bill Kaweck, City Council

Amending the definition of "Wall Sign" in Article 1329.02 to include retaining walls will allow for signage to be placed onto retaining walls. Additionally, the provision of permitting a wall sign on a retaining wall requires further clarification in Articles 1369.07 and 1369.11.

STAFF RECOMMENDATION:

Staff respectfully advises the Planning Commission to forward a favorable recommendation to City Council to amend the Planning and Zoning Code as presented below (deleted matter struck-through; new matter underlined) based on the information and findings presented herein.

1329.02 DEFINITIONS OF TERMS.

SIGN, WALL – Any sign painted on or attached to and extending not more than six (6) inches from an exterior wall or retaining wall, in a parallel manner.

1369.07 CONDITIONS FOR PERMITTED SIGNS.

(I) Wall Sign, Nonresidential.

- (1) The total area of all wall signs on a building, or on the retaining wall(s) associated with the building, shall not exceed 0.6 square feet of wall sign area per linear foot of tenant building frontage in the B-5, B-2 and I-1 districts, and 0.4 feet in area in the B-1 and B-4 districts, for each linear foot of building frontage, and the fact that signs may be permitted on more than one wall of the building shall not increase this maximum. All wall signs shall be in accordance with the provisions in Section 1369.09.

1369.11 DESIGN AND CONSTRUCTION STANDARDS.

- (A) Construction Standards. All signs shall be designed, constructed and maintained in accordance with the following standards:
 - (3) Except for permitted banners, flags, temporary signs, and window signs conforming in all respects with the requirements of this Ordinance, all signs shall be constructed of permanent materials and shall be attached to the ground, a building, a retaining wall, or a another structure by direct attachment to a wall, frame or structure.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431

TX16-03

Ordinance

AN ORDINANCE AMENDING ARTICLES 1329.02, 1369.07, AND 1369.11 OF THE PLANNING AND ZONING CODE AS THEY RELATE TO WALL SIGNS.

The Morgantown City Council hereby ordains that Articles 1329.02, 1369.07, and 1369.11 of the City's Planning and Zoning Code are amended as follows (new matter underlined):

1329.02 DEFINITIONS OF TERMS.

SIGN, WALL – Any sign painted on or attached to and extending not more than six (6) inches from an exterior wall or retaining wall, in a parallel manner.

1369.07 CONDITIONS FOR PERMITTED SIGNS.

(I) Wall Sign, Nonresidential.

- (1) The total area of all wall signs on a building, or on the retaining wall(s) associated with the building, shall not exceed 0.6 square feet of wall sign area per linear foot of tenant building frontage in the B-5, B-2 and I-1 districts, and 0.4 feet in area in the B-1 and B-4 districts, for each linear foot of building frontage, and the fact that signs may be permitted on more than one wall of the building shall not increase this maximum. All wall signs shall be in accordance with the provisions in Section 1369.09.

1369.11 DESIGN AND CONSTRUCTION STANDARDS.

- (A) Construction Standards. All signs shall be designed, constructed and maintained in accordance with the following standards:
- (1) All signs shall comply with applicable provisions of the West Virginia State Building Code and local floodplain management ordinance.
 - (2) Electric signs that have internal wiring or lighting equipment, and external lighting equipment that directs light on signs, shall not be erected or installed until an electrical permit has been obtained from the Code Enforcement Department. All such signs and equipment shall bear the seal of approval of an electrical testing laboratory that is nationally recognized as having the facilities for testing and requires proper installation in accordance with the National Electrical Code. All wiring to electric signs or to freestanding equipment that lights a sign shall be installed underground.
 - (3) Except for permitted banners, flags, temporary signs and window signs conforming in all respects with the requirements of this Ordinance, all signs shall be constructed of permanent materials and shall be attached to the ground, a building, a retaining wall, or another structure by direct attachment to a wall, frame or structure.

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk

**AN ORDINANCE AUTHORIZING AN AGREEMENT WITH KLM PROPERTIES, INC.
TO LIST RENTAL SPACE AT THE MORGANTOWN MUNICIPAL AIRPORT**

The City of Morgantown hereby ordains that the City Manager is authorized to execute the attached agreement, which is incorporated in this Ordinance by reference, to provide listing of rental space at the Morgantown Municipal Airport by KLM Properties, Inc.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

**LISTING FOR RENT CONTRACT
EXCLUSIVE RIGHT TO RENT REAL PROPERTY**

BROKER (Company): KLM Properties., Inc.

LICENSEE (S): Kathy L. Martin & Randy W. Neal

OWNER: City of Morgantown, c/o Jeff Mikorski

Does Owner have a Listing Contract with another Broker? Yes No

If yes, explain: N/A

1. PROPERTY

Address: 100 Hart Field Road, Suite #247 (+/- 300 sf of 2nd level space)

Municipality (city, borough and township): Morgantown, WV 26505

County: Monongalia School District: Morgantown Corporation

Zoning and Present Use: Industrial/Airport Vacant Space

Identification Number (For example, tax identification number, parcel number, deed book, page, recording date):
Morgantown Corporation, Tax Map 32A, p/o Parcels 1-9, 10-12, 13 & 14-24

2. MONTHLY RENTAL \$900 SECURITY DEPOSIT \$ First Month Rent

3. STARTING & ENDING DATES OF THIS CONTRACT (also called "Term")

A. No Association of REALTORS has set or recommended the term of this contract. Owner and Broker have discussed and agreed upon the length of term of this contract.

B. **Starting Date:** This contract starts when signed by Owner and Broker, unless otherwise stated here: N/A

C. **Ending Date:** This contract ends on May 10, 2017

4. BROKER'S FEE

A. No Association of Realtors has set or recommended the Broker's Fee. Owner and Broker have negotiated the fee that Owner will pay Broker.

B. The Broker's Fee for finding tenant and contract negotiation is 6% of aggregate lease amount

Owner agrees to pay the same fee to Broker for renewals, extensions or additional leases where the original resulted from Broker's services or any other Broker's services during the term of this contract.

C. The Broker's Sales Fee if Tenant buys Property is 8% off/from the sale price and paid by Owner.

5. BROKER'S DUTY

Owner is hiring a Broker to find a Tenant for the Property. Owner allows Broker to use print and/or electronic advertising.

Broker is acting as Owner's Agent. Broker's rental agents, salespeople, employees, officers or partners are acting as agents only and will not be legally responsible for damages or repairs to the Property or for a tenant's failure to meet the terms of a lease.

X Owner Initials: _____

Page 1 of 4

Broker/Licensee Initials: RWN

6. COOPERATION WITH OTHER BROKERS

Licensee has explained Broker's company policies about cooperating with other brokers. Broker and Owner agree that Broker will pay from Broker's Fee a fee to another Broker who procures the buyer/tenant, and is a member of a Multiple Listing Service, and who:

A. Represents a buyer/tenant (BUYER'S AGENT). A Buyer's Agent, even if compensated by Broker or Owner, will represent the interests of the buyer/tenant.

No Yes

B. Does not represent either the Owner or a buyer/tenant (TRANSACTION LICENSEE).

No Yes If yes, amount: TBD

7. PAYMENT OF BROKER'S FEE

A. Owner will pay Broker's Fee if Property, or any ownership interest in it, is rented, sold or exchanged during the term of this Contract by Broker, Broker's agents, Owner, or by any other person or broker at a price acceptable to Owner.

B. Owner will pay Broker's Fee if negotiations that are pending at the Ending Date of this contract result in a sale, lease or other tenancy.

C. Owner will pay Broker's Fee after Ending Date of this contract IF:

(1) Property is rented or sold within 90 days of the Ending of this Contract, or the Ending Date of the lease (or any renewals or extensions). AND

(2) The buyer/tenant was shown, made an offer on or negotiated to rent or buy the Property during the term of this contract.

8. DUAL AGENCY

Owner agrees that Broker may also represent the buyer/tenant(s) of the Property. Broker is DUAL AGENT when representing both Owner and buyer/tenant in the lease or purchase of a property.

9. OTHER PROPERTIES

Owner agrees that Broker may list other properties for rent and that Broker may show other properties to prospective tenants.

10. CONFLICT OF INTEREST

A conflict of interest is when Broker has a financial or personal interest where Broker cannot put Owner's interest before any other. If Broker, or any of Broker's salespeople, has a conflict of interest, Broker will notify Owner in a timely manner.

11. COPYRIGHT

In consideration of Broker's efforts to market Owner's Property as stated in this Contract, Owner grants Broker a non-exclusive, worldwide license (the "License") to use any potentially copyrightable materials (the "Materials") which are related to the Property and provided by Owner to Broker or Broker's representative(s). The Materials may include, but are not limited to: photographs, images, video recordings, virtual tours, drawings, written descriptions, remarks, and pricing information related to Owner's Property. This License permits Broker to submit the Materials to one or more multiple listing services, to include the Materials in compilations of listings, and to otherwise distribute, publicly display, reproduce, publish and produce derivative works from the Materials for the purpose of marketing the Property during the Contract term. The License may not be revoked by Owner except for violation of the terms of this License and shall survive the ending of the Contract for a period of six (6) months. Owner also grants Broker the right to sublicense to others any of these rights granted to Broker by Owner. Owner represents and warrants to Broker that the License granted to Broker for the Material does not violate or infringe upon the rights, including any copyrights, of any person or entity. Owner understands that the terms of the License do not grant Owner any legal right to any works that Broker may produce using the Materials.

X Owner Initials: _____

Broker/Licensee Initials: RWN

12. BROKER AUTHORIZATIONS

A. Owner (check one) does does not authorize Broker to contract for any repairs, at Owner's expense, that believes are necessary to Property. Broker is not required to do this, and this does not create a property management agreement between Owner and Broker.

B. Sign and Keys: Owner allows, where permitted

- | | | |
|---|--|---------------|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | For Rent Sign |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | Key in Office |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | Lock Box |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | _____ |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | _____ |

13. TRANSFER OF THIS CONTRACT

A. Broker will notify Owner immediately in writing if Broker transfer this Contract to another broker when:

1. Broker stops doing business, OR
2. Broker forms a new real estate business, OR
3. Broker joins business with another.

Owner agrees that Broker may transfer this Contract to another broker upon the written consent of Owner, which shall not be unreasonably withheld. Broker will notify Owner immediately in writing when a transfer occurs or Broker will lose the right to transfer this Contract. Owner will follow all requirements of this Contract with the new broker.

B. Should Owner transfer the Property, or an ownership interest in it, to anyone, or should ownership change during the term of this contract, all succeeding owners must follow the requirements of this Contract.

14. NOTICE TO PERSONS OFFERING TO SELL OR RENT HOUSING IN WEST VIRGINIA

Federal and state laws make it illegal for Owner, Broker, or anyone to use RACE, COLOR, RELIGION or RELIGIOUS CREED, SEX, DISABILITY (physical or mental), FAMILIAL STATUS (children under 18 years old age), AGE (40 or older), NATIONAL ORIGIN, USE OR HANDLING/TRAINING OF SUPPORT OR GUIDE ANIMALS, or the FACT OR RELATIONSHIP OR ASSOCIATION TO AN INDIVIDUAL KNOWN TO HAVE A DISABILITY as reasons for refusing to sell, show, or rent properties, loan money, or set deposits, or as reasons for any decision relating to the sale of property.

15. IF PROPERTY WAS BUILT BEFORE 1978

The Lead-Based Paint Hazard Reduction Act says that any Landlord of property built before 1978 must give the Tenant an EPA pamphlet titled *Protect Your Family from Lead in Your Home*. The Landlord also must tell the Tenant and the Broker what the Landlord knows about lead-based paint and lead-based paint hazards that are in or on the property being rented. Landlord must tell the Tenant how the Landlord knows that lead-based paint and lead-based paint hazards are on the property, where the lead-based paint and lead-based paint hazards are, the conditions of the painted surfaces, and any other information Landlord knows about lead-based paint and lead-based paint hazards on the property. Any Landlord of a pre-1978 structure must also give the Tenant any records and reports that the Landlord has or can get about lead-based paint or lead-based paint hazards in or around the property being rented, the common areas, or other dwellings in multi-family housing. The Act does not require the Landlord to inspect for lead paint hazards or to correct lead paint hazards on the property. The Act does not apply to housing built in 1978 or later.

16. NO OTHER CONTRACTS

During the length or term of the Contract, Owner will not hire any other Broker to rent or sell the property. Owner will not enter into another listing agreement with another broker that begins before the Ending Date of the Contract. Owner will refer all offers and inquiries to Broker.

X Owner Initials: _____

Broker/Licensee Initials: RWN

17. ENTIRE CONTRACT

This Contract is the entire agreement between Broker and Owner. Any verbal or written agreements that were made before are not a part of this Contract.

18. CHANGES TO THIS CONTRACT

All changes to this contract must be in writing and signed by Broker and Owner.

Return to by facsimile (Fax) constitutes acceptance of this Contract. Owner gives permission for Broker to send information about this transaction to the fax number(s) and/or e-mail address(s) listed below. Owner has read the entire Contract before signing. All Owners must sign this Contract.

NOTICE BEFORE SIGNING: IF OWNERS HAS LEGAL QUESTIONS, OWNER IS ADVISED TO CONSULT AN ATTORNEY.

OWNER'S MAILING ADDRESS: _____

PHONE: _____ FAX: _____ E-MAIL: _____

X OWNER: _____ DATE _____

OWNER: _____ DATE _____

OWNER: _____ DATE _____

BROKER (Company Name) KLM Properties, Inc.

ACCEPTED BY [Signature] DATE 5-10-16

NOTICE OF AGENCY RELATIONSHIP

When working with a real estate agent in buying or selling real estate West Virginia Law requires that you be informed of whom the agent is representing in the transaction.

The agent may represent the Lessor, the Lessee, or both. The party represented by the agent is known as the agent's principal and as such, the agent owes the principal the duty of utmost care, integrity, honesty and loyalty.

Regardless of whom they represent, the agent has the following duties to both the Lessee and the Lessor in any transaction:

- * Diligent exercise of reasonable skill and care in the performance of the agent's duties.
- * A duty of honest and fair dealing and good faith.
- * Must offer all property without regard to race, color, religion, sex, ancestry, physical or mental handicap, national origin or familial status.
- * Must promptly present all written offers to the owner.
- * Provide a true legible copy of every contract to each person signing the contract.

The agent is not obligated to reveal to either party any confidential information obtained from the other party which does not involve the affirmative duties set forth above.

Should you desire to have a real estate agent represent you as your agent, you should enter into a written contract that clearly establishes the obligations of both parties. If you have any questions about the roles and responsibilities of a real estate agent, they can provide information upon your request.

In compliance with the West Virginia Real Estate License Act, all parties are hereby notified that:

(printed name of agent) Kathy L. Martin & Randy W. Neal, affiliated with

(firm name) KLM Properties, Inc., is acting as agent of:

Yes The Lessor, as listing agent or subagent.

No The Lessee, as the lessee's agent.

No Both the Lessor and Lessee, with the full knowledge and consent of both parties.

CERTIFICATION

By signing below, the parties certify that they have read and understand the information contained in this disclosure and have been provided with signed copies prior to signing any contract.

Lessor	Date	Lessee	Date
Lessor	Date	Lessee	Date
Lessor	Date	Lessee	Date

I hereby certify that I have provided the above named individuals with a copy of this form prior to signing any contract.

Agent's Signature Randy W. Neal

Date 5-10-10

WV Real Estate Commission
300 Capitol Street, Suite 400
Charleston, WV 25301
304.558.3555
<www.wvrec.org>



Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Property Address: 100 Hart Field Road, Suite 247, Morgantown, WV 26505

Lead Warning Statement

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Lessor's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

(ii) Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the lessor (check (i) or (ii) below):

(i) Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

(ii) Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Lessee's Acknowledgment (initial)

(c) _____ Lessee has received copies of all information listed above.

(d) _____ Lessee has received the pamphlet *Protect Your Family from Lead in Your Home*.

Agent's Acknowledgment (initial)

(e) RWW Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Lessor Date

Lessee Date

Lessor Date

Lessee Date

RWW
Agent Date

Agent Date

5-10-16



LIMITED DUAL AGENCY DISCLOSURE

In reference to the [] PURCHASE AGREEMENT, [X] LEASE, covering the real property commonly known as 100 Hart Field Road, Suite 247, Morgantown, WV and owned by City of Morgantown (c/o Jeff Mikorski) hereinafter referred to as Seller, and, hereinafter referred to as Buyer, the undersigned parties hereby agree as follows:

The Broker in this transaction, KLM Properties, Inc., together with associated salesperson, hereinafter collectively referred to as Broker, is hereby authorized by Seller and Buyer to assist both of them in this transaction in limited dual agency capacity, as set forth below.

Seller and Buyer understand that this limited dual agency relationship may create certain conflicts of interest, and that Broker will act as facilitator or intermediary and will endeavor to be impartial between Seller and Buyer. Except as expressly provided below, Broker in their capacity as a limited dual agent, shall disclose to both Seller and Buyer all known latent defects in the property, any matter that must be disclosed by law, and information which Broker believes may be material or might affect Seller's or Buyer's decisions with respect to this transaction.

The parties acknowledge that Broker has not disclosed and Broker agrees not to disclose:

- A. To Buyer, information about what price or terms Seller will accept other than the listed price or terms, without the express written permission of the Seller.
B. To Seller, information about what price or terms Buyer will offer other than those offered in writing by Buyer, without the express written permission of the Buyer.
C. Any information of a confidential nature which could harm one party's bargaining position or benefit the other's.

Both parties understand and agree that Broker has the right to receive commission as compensation, agreed upon in the Exclusive Right to Sell Agreement between Seller and Broker, and that Broker shall not receive any compensation from Buyer unless this is disclosed and consented to by Seller. In view of Broker's limited dual agency relationship, the parties understand they have the responsibility of making their own decisions with respect to the terms to be included in their agreement. The parties understand the implication of Broker's limited dual agency role as facilitator or intermediary, rather than that of advocate and exclusive representative, and have determined the benefits of entering into this transaction with Broker acting as a limited dual agent outweigh said implications.

Therefore, Seller and Buyer both, each of them individually, consent to Broker's limited dual agency capacity and hereby waive any claims now and hereafter arising out of any conflicts of interest, or for breach of fiduciary duty arising from said agency role.

Seller and Buyer understand this document does not replace prior agreements entered into with Broker, such as a Buyer/Broker Representation Agreement or Exclusive Right to Sell Listing Agreement. However, in any areas where this document contradicts or conflicts with those documents, this LIMITED DUAL AGENCY DISCLOSURE shall supersede.

The undersigned parties acknowledge that they have thoroughly read and approved this document and acknowledge receipt of a copy hereof.

X

Seller Date
Seller Date
Agent Date
[Handwritten signatures and date 5-10-16]

Buyer Date
Buyer Date
Agent Date



PRIVACY POLICY OF KLM PROPERTIES, INC.

What this Privacy Policy Covers

This Privacy Policy covers KLM Properties, Inc., its Owners, Broker, Independent Contractors and Staff, our treatment of nonpublic personally identifiable information that we collect when you, the "customer/client" use our services. This policy also covers our treatment of any nonpublic personally identifiable information that business associates share with us or that you provide to us.

This policy does not apply to the practices of non-affiliates of KLM Properties, Inc..

Information Collection and Use

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates, or others; and
- Information we receive from a consumer reporting agency.

Information Sharing and Disclosure

We do not disclose any nonpublic personal information about our customers/clients or former customers/clients to anyone, except as permitted by law.

Confidentiality and Security

We restrict access to nonpublic personal information about you to those employees, independent contractors and lending institutions who need to know that information to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal standards to guard your nonpublic personal information.

By signing below, I acknowledge that KLM Properties, Inc., provided me with a copy of its Privacy Policy.

Acknowledge my signature as:

X _____	_____	_____	_____
SELLER	DATE	BUYER	DATE
_____	_____	_____	_____
SELLER	DATE	BUYER	DATE

**AN ORDINANCE AMENDING CITY CODE SECTION 155.03 PROVIDING FOR THE
COMPOSITION AND MEMBERSHIP OF THE PARKING AUTHORITY**

WHEREAS, West Virginia Code Chapter 8, Article 16 provides for the establishment of public works including motor vehicle parking facilities and provides for the operation of such facilities by a board established by the governing body of the City; and

WHEREAS, West Virginia Code section 8-16-4 provides that the board shall be composed of all or a portion of the governing body and otherwise permits the governing body to define the number of members and their manner of selection and appointment by ordinance; and

WHEREAS, the City of Morgantown has established the Morgantown Parking Authority in Article 155 of the City Code and intends to revise the membership of the Parking Authority;

NOW, THEREFORE, the City of Morgantown hereby ordains that City Code section 155.03 is amended as follows:

155.03 COMPOSITION AND MEMBERSHIP; VACANCIES.

The Parking Authority shall consist of five persons, each of whom shall be a resident of the City. ~~Two~~ One members of such authority shall also be a members of the governing body of the City, ~~one of which is to be appointed by the Mayor, and one of which is to~~ shall be elected by Council. The term of these ~~two~~ members of the governing body shall be coextensive with the term of office to which ~~he~~ the member has been elected or appointed. The remaining members of the Commission shall be appointed by Council for a term of three years, such terms to begin on the first day of July of any year; provided, however, that the three members of the Parking Authority heretofore appointed and in office when this article becomes effective shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified. In the event of a vacancy in the membership of the Parking Authority a successor shall be appointed by Council for the unexpired term only. Members other than those appointed from the governing body shall serve until their successors have been appointed and qualified.

Any member of the Parking Authority not also a member of the governing body of the City shall be eligible for reappointment upon expiration of his term, and any member who is also a member of the governing body shall be eligible for reappointment; provided, that he is continuing as a member of the governing body. Members of the Parking Authority shall receive no compensation or salary for their services but shall be reimbursed out of the funds of such Authority for any expenses incurred in their duties as such. Any member of the Parking Authority shall be removed for just cause by Council upon written charges and by the vote of a majority thereof after a public hearing thereon.

This ordinance shall be effective upon the date of adoption.

FIRST READING:

ADOPTED:

Mayor

FILED:

RECORDED:

City Clerk