

COMMITTEE OF THE WHOLE MEETING May 31, 2016:

The Committee of the Whole meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Tuesday May 31, 2016 at 7:00 p.m.

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

Deputy Mayor Kawecki called the meeting to order.

PRESENTATIONS:

1. Metropolitan Theatre Management Agreement Proposal. (Exhibit A)

Ron Justice, WVU State Corporate & Local Specialist and Paul Krieder Dean of WVU College of Creative Arts introduced themselves to Council and noted they are here this evening to discuss the future management of the Met.

Mr. Justice noted that he is excited about the collaboration and the management of the MET and the future development of the Arts in Morgantown. Mr. Justice mentioned to Council that WVU's priority is maintaining the theatres community aspect, rental rates will remain low, but also the theatres current clients will continue to receive priority scheduling.

Mr. Krieder explained that Joe Kaehler will oversee the technical part of theater and the new person will take over the management of the theater. He stated that there would be two graduate assistants, student workers and undergraduates will work in the theatre. He noted that this would offer the students a hands-on environment studying creative arts. He reminded Council that this agreement is a one-year pilot program and he will meet with the City Manager, Jeff Mikorski as needed to help it survive and drive its success.

City Council noted their concerns and asked questions. City Manager, Jeff Mikorski stated that the agreement presented this evening is a draft version and once a final agreement is ready it will come back to Council for action at a Regular Meeting.

2. 2016 Morgantown Marathon:

Jamie Summerlin, Race Organizer, thanked the City for their support for last year's marathon and updated Council on this year's event. He stated that the marathon brings visitors to the community for other events happening for example Wine and Jazz Festival is the same weekend, which gives, family members staying at hotels something to do and display Morgantown. Mr. Summerlin thanked Council for letting him speak to them and presented an updated flyer for each Councilor.

City Council had no questions at this time. No action on this item.

3. Children's Discovery Museum

Julie Bryan, Director of WV Children's Discovery Museum, which name changed to

SPARK, presented a power point about their educational programs. She commented she loves designing hands-on exhibits that encourage children and adults to explore science and engineering. She is passionate about ensuring people of all socio-economic backgrounds have the opportunity to use the outstanding exhibits. She is hoping the program mission will inspire children and grown-ups to explore, discover, and grow together.

Mayor Shamberger complemented Ms. Bryan on her educational programing for children and families. She then asked her if she thought about when they would be considering being open longer hours.

Ms. Bryan stated that they are hoping to not only be open more but also have their own building soon.

No action on this item.

4. Upper Falling Run TIF District (Exhibit B)

John Marty's, Director Morgantown Housing Authority, explained that this project would be able to house to persons with a moderate income, adults only (55 and older), 242 residential units (48 assisted living units), affordable rates and amenities included.

Attorney Brian Helmick, Thomas and Battle, explained that TIF projects will capture property tax revenues gained by developing a discrete geographic area and uses that increase to assist in paying for approved TIF project Plans. He stated that TIF funding makes it possible to help fund economic development and public infrastructure projects. He commented that Upper Falling Run Project would generate approximately \$5 to \$6 million dollars.

City Council noted their concerns and asked questions. Resolution for TIF District will be on the June 7th, 2016 Agenda for Council consideration.

5. Stewart and University Avenue Greenspace (Exhibit C)

Phil Cole, Wallace Pacher Group, presented a power point on the University & Stewart Street explaining the site issues, proposed plan and design to Council.

City Council noted their concerns and asked questions. No action at this time.

PUBLIC PORTION:

Deputy Mayor Kawecki asked if there was anyone to speak during the Public Portion.

Wesley Nugent, 126 Willowdale Road, stated that he is addressing City Council tonight as a citizen, because the chair gave the indication beyond inciting controversy in permitting me to speak at the end of the meeting about pending litigation. He said that the removal petition and subsequent hearing pointed out violations of the city's charter for which removal is mandated. He commented that this controversy has damaged council's integrity and compromised city administration operations, and should not continue. He is urging Councilors Redmond and Bane to join him in resolving this issue and abide by the charter for removal action. He suggested that the issue be reviewed and be placed on the June 21, 2016

Regular Meeting or at a Special Meeting for action.

There being no other presenters, Deputy Mayor Kawecki closed the public portion.

ITEMS FOR DISCUSSION:

1. Planning and Zoning Code Text Amendment protocol:

Deputy Mayor Kawecki requested City Managers, Jeff Mikorski to explain: City Manager Jeff Mikorski explained text amendment. Council referred the Ordinance to the Regular Agenda by consensus.

2. Agreement with KLM Properties for space at Airport:

Deputy Mayor Kawecki requested City Managers, Jeff Mikorski to explain: City Manager Jeff Mikorski explained text amendment. Council referred the Ordinance to the Regular Agenda by consensus.

3. Parking Authority Amendment on Membership:

Deputy Mayor Kawecki requested that City Manager, Jeff Mikorski, explain: Council referred the Ordinance to the Regular Agenda by consensus.

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

City Clerk

Mayor

A COMPREHENSIVE DVD IS AVAILABLE OF ALL COUNCIL MEETINGS ON DVD AT THE MORGANTOWN CITY LIBRARY.

THE METROPOLITAN THEATRE & AMPHITHEATRE
COLLABORATION AND MANAGEMENT AGREEMENT

THIS AGREEMENT, made on this ____ day of AprilMay, 2016, by and between the CITY OF MORGANTOWN (“CITY”), a municipal corporation organized and existing under the laws of the State of West Virginia, and West Virginia University Board of Governors on behalf of West Virginia University (“WVU”) by and through its College of Creative Arts (“CCA”), an institution of higher education and agency of the State of West Virginia.

WHEREAS, ~~Morgantown~~ the CITY is the owner of a theatre, known as the Metropolitan Theatre, and an amphitheater, known as the Amphitheatre in Hazel Ruby McQuain Riverfront Park in Morgantown (collectively referred to as the “Morgantown Theatres”);

WHEREAS, CCA offers extensive academic programs in art, music, theatre and dance;

WHEREAS, the CITY desires for CCA to manage and operate the ~~Morgantown Theatres~~ Theatre;

WHEREAS, WVU and CCA, desires to provide such services; and

THEREFORE, in furtherance of the above-referenced goals and objectives, CCA and the City agree to the following:

1. RATIONALE AND PURPOSE.

- a. By collaborating with CCA to make use of the variety of expertise among its staff and faculty the CITY is taking affirmative steps to increase the quantity and maintain the quality of productions at the ~~Morgantown Theatres~~ Theatre. Likewise, by collaborating with the CITY to manage the ~~Morgantown Theatres~~ Theatre, CCA can have access to additional local theatre opportunities for faculty, staff, and students. Further, ~~the~~ CCA in association with the CITY, can contribute to the economic and cultural development of the community and region.
- b. Notwithstanding the foregoing, CCA is first and foremost an academic entity that offers extensive academic programs in art, music, theatre and dance; therefore, in order to ensure a successful implementation of this Agreement, it is expected that the CITY in cooperation with the Metropolitan Theatre Commission will remain an active participant in funding certain aspects of the operation of the ~~Morgantown Theatres~~ Theatre.

2. EXCLUSIVE RIGHTS GRANTED.

- a. In furtherance of the rationale stated above and subject to the terms and conditions of this Agreement, the CITY grants to WVU and CCA the exclusive

right to provide the following services with respect to the ~~Morgantown Theatres~~Theatre (sometimes referred to as the “Premises”):

- (1) Promoting theater arts;
 - (2) Producing theatrical plays, improvisations and related performances arts;
 - (3) Scheduling events;
 - (4) Staffing the ~~Morgantown Theatres~~Theatre, including the box office ~~(upon its completion) with the agreed understanding that reserves the right to employ and evaluate all staff who are currently working in management and facilitation of the Premises;~~
 - (5) Conducting certain workshops and classes in theater and related performance arts.
- b. The CITY shall give CCA, its employees, agents, independent contractors, invitees, licensees, clients, patrons, students and attendees, access in and to the premises from available access ways and shall also give access to the loading dock area.
- c. Further, ~~it is expected and anticipated that CCA desires to shall~~ utilize the basement of the ~~Metropolitan~~Theatre for the following purposes:
- (1) Training of student workers and student management staff to help run the ~~Metropolitan~~Theatre;
 - (2) Conduct classes and establish “lab space” for student to explore the music industry and arts management programs; and
 - (3) Establish a recording facility for academic and professional purposes.

To the extent that the basement is currently occupied, the CITY agrees to grant CCA the possession of the basement and, provided that the parties mutually agree upon the rental terms, make it available to CCA as soon as such space is available. Further, the CITY will cooperate with and support CCA’s efforts to negotiate with the current occupants.

3. LICENSE GRANTED; NO LEASE. This Agreement is a license to the WVU and CCA to provide certain services on the terms and conditions provided herein and shall not be construed as a lease, sublease or rental agreement.
4. HOURS OF OPERATION; TICKET SALES. CCA shall establish reasonable hours of operation for the box office and for scheduling of events. For the avoidance of doubt, CCA commits to having staff present on the Premises before, during, and after each performance or scheduled use of the ~~Morgantown Theatres~~Theatre. With respect to ticket sales, the ~~Metropolitan~~Theatre box office will be open one hour prior to any event. The box office will also sell tickets for events that are scheduled at the Theatre; CCA events held at other venues, including the WVU Creative Arts Center; and other events that are

promoted by WVU Arts & Entertainment. Furthermore, all users/renters of the Morgantown Theatres Theatre may elect to sell tickets via Ticketmaster through WVU's current agreement and the WVU Box Office system; therefore, thereby making tickets available for sale online via Ticketmaster, by calling 304-293-SHOW, at the Creative Arts Center box office, and at the Mountainlair box office. Users/renters of the Theatre who choose to use the Ticketmaster and WVU Box Office, must opt in and pay the standard costs associated with the Ticketmaster system.

5. TERM. The initial term of this Agreement shall be twelve (12) months; provided that by mutual agreement of the parties the term may be extended from time to time. Either party may initiate the termination of this Agreement upon thirty (30) days written notice to the other party. Following the delivery of such notice, the CITY and CCA will meet and confer to determine the most efficient means of winding down the agreement in light of previously scheduled events and/or performances.
6. FINANCIAL CONSIDERATION. In exchange for and as consideration of the rights granted to and the services to be provided by WVU and CCA pursuant to this Agreement, CCA shall collect all rental and box office revenues and, out of such revenues, CCA shall remit all applicable municipal amusement taxes. The remaining revenues shall be used to cover CCA's costs and expenses associated with the commitments stated in this Agreement; ~~thereafter, all remaining revenues shall be reinvested back into the Morgantown Theatres.~~
7. UTILITIES; SNOW REMOVAL; CUSTODIAL SERVICES; TRASH REMOVAL. CITY shall provide CCA with all utilities (electricity, water, and gas and sewer services); ice and snow removal from sidewalks, driveways and parking areas; and trash removal services. CCA agrees to provide all custodial services at the Theatre.
8. STAFFING TO BE PROVIDED BY CITY.
 - a. Except as otherwise noted in this Agreement, during the pilot year of this Agreement, CCA may call upon the CITY to provide its existing Theatre staff to assist with technical work within the Theatre. In exchange for the use of the CITY's existing Theatre staff, CCA shall remit to the CITY \$50,000 for one (1) FTE payable to the City in two equal payments. The City shall submit separate invoices to CCA in December 2016 and again in May 2017.
 - b. The CCA will provide to the City and its staff a list of duties and expectations upon which staff will be evaluated. In the performance of such duties, staff will report directly to the CCA and work according to a schedule determined by CCA. Representatives from CCA and CITY shall meet quarterly to discuss and evaluate the performance of CITY staff and to discuss changes (if any) to protocols related to the staffing provided by CITY.

- c. As the pilot year of this Agreement ends, the CCA and the CITY shall determine whether the staffing arrangement described above is to continue or modified in future years (in the event that the Agreement is extended).

8.9. RESERVED RESPONSIBILITIES AND OBLIGATIONS OF THE CITY.

- a. The CITY agrees to retain responsibility for all major structural repairs to the Premises, once it has been given written notice by CCA of the need for the repair to be made; accordingly, the CITY shall annually allocate funding to affect necessary repairs and replacements to the facilities and its equipment. Notwithstanding the foregoing, the CITY will also be responsible to remedy unforeseen major facility issues as they occur.
- b. The CITY agrees to receive and review any deferred maintenance plan prepared by, or on behalf of, CCA pursuant to Section 9.b. below; further, the CITY agrees to take affirmative steps to fund, where possible, such plan or, in the alternatives, work with CCA to identify funding sources for such plan.
- ~~c. The CITY shall cause BOPARC to be responsible for all maintenance of the Amphitheatre in Hazel Ruby McQuain Riverfront Park.~~
- c. The CITY agrees to provide to CCA leases or reservation agreements that are currently in effect for the upcoming year(s); and any and all documentation relating to, or identifying, events that were regularly scheduled to occur within the Premises; user names, passwords, or other information necessary to login and control social media accounts that are currently associated with the Theatre. The CITY also agrees that, to the extent necessary, CCA may create new social media accounts to be associated with the Theatre.
- d. The CITY reserves for the Metropolitan Theatre Commission the right to introduce and sell concessions at the Theatre; any and all proceeds will be used to fund a deferred maintenance fund.
- ~~d.e.~~ The CITY, with assistance from CCA, agrees to prepare an inventory of all existing equipment, including sound and stage, within the Theatre.

9.10. SPECIFIC ADDITIONAL RESPONSIBILITIES OF CCA.

- a. Upon execution of this Agreement, CCA will assist the City with the preparation of an inventory of all existing equipment, including sound and stage, within the Theatre.
- b. During the term of this Agreement, CCA will be responsible for repairing or holding users of the Theatre responsible for the repairs of the CITY's equipment that may become damaged or no longer in working order. Notwithstanding the

foregoing, all equipment that is currently in the Theatre or is repaired or replaced will remain the property of the CITY.

c. Within the first year of this Agreement, CCA, with cooperation from the Metropolitan Theatre Commission, will assess the Theatre and present the City with a reasonable deferred maintenance plan for the facility; thereafter, should this Agreement be extended and to the extent that the City does not provide funding for the plan, CCA will collectively work the City to identify funding sources for such plan.

a.d. CCA agrees to immediately notify the CITY in writing of any major structural repairs that must be performed on the Premises during the term of this Agreement and any extensions granted hereto. "Major structural repairs" shall include, but not be limited to: Boiler repair and or replacement; HVAC repair and or replacement; structural repairs to the buildings (including roof repair).

b. ~~Within the first year of this Agreement, CCA will assess the Metropolitan Theatre and present the City with a reasonable deferred maintenance plan for the facility; thereafter, should this Agreement be extended and to the extent that the City does not provide funding for the plan, CCA will collectively work the City to identify funding sources for such plan.~~

e.e. CCA agrees to obtain written permission from the CITY before changing or altering the premises or any part thereof. This shall include, but not be limited to painting of interior or exterior surfaces.

d.f. CCA agrees to work with the Morgantown Parking Authority in order to reserve metered spaces in front of and adjacent to the Premises.

e.g. The Premises shall at all times be open to inspection of the CITY and its agents. The Premises shall be open to the CITY and its agents to show for purchase, mortgage or lease.

f.h. CCA shall make a reasonable effort to establish a standard set of rates that apply to the price of admission for theatrical productions and the rates charged for the use of the Premises by third parties. ~~The foregoing established rates shall apply to Special Event Productions, including one-night concerts, short-term ventures of one weekend or less, parties and fund-raising events.~~ Discount performances shall be provided to senior citizens and students. The charges for fund-raising performances by non-profit organizations may be at rates decided between any such organization and CCA; provided that rates applicable to community organizations (i.e., organizations based out of Monongalia County) will be subject to review and approval by the Metropolitan Theatre Commission.

i. CCA will develop a marketing and advertising plan for the Metropolitan Theatre; such plan will include a social media campaign. When appropriate, CCA shall note the CITY's support of community based theater by using the phrase "In

cooperation with the City of Morgantown” in all of its advertising and notices concerning activities, workshops, and other functions at the Premises. Said notation shall be approved in advance by the CITY’s designee.

g.j. At least once per year, CCA will coordinate a fundraising event to benefit the Theatre.

h.k. CCA shall give reasonable advanced written notice to the CITY’s designee of all productions, shows, and other functions occurring at the Premises.

i.l. CCA shall give quarterly written evaluation reports on presented workshops, productions, classes, etc., to the CITY’s designee.

10.11. IMPLEMENTATION, COOPERATION, AND COMMUNICATIONS.

a. During the initial term of this Agreement, the existing per seat charge will remain unchanged; thereafter, should this Agreement be extended, representatives of the City and CCA will meet and agree on per seat charges that may be applied to some or all events that once collected will be allocated to specific expenses (such as necessary repairs and the replacements to the facilities and its of equipment).

b. As appropriate, the CITY and CCA will work together to create and conduct special fund-raising events to benefit the Premises Theatre each year.

c. CCA and the CITY mutually agree and acknowledge that the implementation of this Agreement will likely impact other agencies or authorities within Monongalia County. Accordingly, this Agreement will be implemented as a pilot program during which time representatives of WVU, CCA, and the CITY shall meet and confer at least biannually to evaluate the continued benefit of the Agreement and determine whether any modifications should be considered.

11.12. MISCELLANEOUS PROVISIONS.

a. The City and WVU will maintain appropriate liability insurance and take other prudent budgetary actions to foster this Agreement and maintain the Premises. For the avoidance of doubt, each party shall be solely responsible for any and all claims and liability for loss, damage or injury or death of third parties caused by or attributable to its own employees engaged in activities in support of this Agreement.

b. The financial obligations outlined within this Agreement that are payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and or otherwise made available.

- c. WVU and CCA shall not assign this Agreement, nor lease, sublease or license the use of the Premises or any part thereof, nor make alterations therein, or use the same for any purpose but that hereinbefore authorize, without prior written permission from CITY, but will deliver up the same at the expiration or sooner termination of this Agreement in as good a condition as it is now, ordinary wear and tear expected.
- d. Any improvements or alterations to the Premises shall be considered a fixture when attached to the Premises and shall become the property of the CITY upon the termination of this Agreement unless CITY requires CCA to remove any fixture. All improvements or alterations, including but not limited to directional and advertising signs, must be approved by CITY in advance and in writing.
- e. The parties shall mutually discuss and agree upon the provision of any additional security that is above and beyond that which is currently being provided by the CITY for the Premises.

~~12.13.~~ GOVERNING LAW. This Agreement shall be construed according to the laws of the State of West Virginia.

~~13.14.~~ ENTIRE AGREEMENT AND MODIFICATION; NO WAIVER. This Agreement constitutes the entire agreement between the parties and may not be modified, altered, changed or extended unless made in writing and signed by all parties. The failure of the parties to insist upon a strict adherence to the covenants of this Agreement shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.

~~14.15.~~ SUCCESSORS. This Agreement shall be a binding obligation upon and inure to the benefit of the respective parties, their successors and assigns, trustees and legal representatives.

IN WITNESS WHEREOF, the parties have caused this document to be executed as of the date of the signatures of their duly authorized representatives.

West Virginia University Board of
Governors, on behalf of West Virginia
University by and through its College
of Creative Arts

City of Morgantown

By _____
Its:

By _____
Its:

Date

Date

Upper Falling Run Project

Project Scope

THE PROJECT

The Project has the following objectives:

Develop a Class A mixed income leased independent living / adult-only / assisted living continuum of care residential community.

Providing housing for 55-plus residents who are of:

moderate-income and work force-income independent living housing* , specifically residential property that is leased to persons at or below 150% of the area median income, who may be retired and existing West Virginia University, Board of Education, fire, police, and mid-income employees.

Upper Falling Run will offer 55 and older adults;

- ◆ Independent living apartments
- ◆ Congregate Care Services- which represents an independent living option with specific amenities such as meals, housekeeping, and laundry services;
- ◆ Assisted living Units
- ◆ Memory Care Units

Concept Details:

Upper Falling Run is planned to consist of a total of **242** residential units. Initial unit mix includes:

- ◆ **118** Independent living units which include **38** units with higher-end finishes and rents.
- ◆ **60** Adult Only (Congregate Care) units
- ◆ **48** Assisted Living units (not income restricted)
- ◆ **16** Memory Care units (not income restricted)

Rents are projected using affordable rates;

- ◆ One bedroom apartments **\$700 - \$950/month**
- ◆ Two bedroom apartments **\$950 - \$1550/month**
- ◆ Assisted living estimated **\$4000-\$5000/month**
- ◆ Memory Care estimated **\$5000 and up/month**
- ◆

Amenities may include:

- ◆ Club house (possible pool)
- ◆ Covered parking

- ◆ Craft and recreational facilities
- ◆ Dining Facilities
- ◆ Barber/Hair dresser
- ◆ Convenience shops
- ◆ Health club
- ◆ Social activities
- ◆ Coordination with community and WVU health care, continuing education, and cultural programming/services.

*Independent living will adhere to the intended 150% median income restriction while assisted and memory care unit types were considered market rate. 150% median income equates to \$77,725 for a two wage earner family.

Use of TIF Funds:

Upper Falling Run will be a full taxable Class II development with a development value of between \$50 and \$55 million dollars. This project will generate approximately \$5 to \$6 million in TIF funds. **TIF funds are necessary to make the project feasible** due to the substantial infrastructure demands. The following uses of the TIF funds are planned;

- Construction of the entry road from WV Route 705 to the project site. The existing roads around the project site are grossly inadequate and in very poor condition to be considered as the proper entry and egress for the development nature and size. A right of way has been established through the adjoining WVU farm to WV Route 705 for access. The construction of this road will be approximately \$2.5 million dollars.
- Infrastructure extensions and improvements. It is estimated that infrastructure improvements for the project will be approximately \$1.5 million dollars.
- Improvements to existing surrounding roads. To assist providing and alternative emergency point of egress existing Liberty Street will be improved to Van Guilder at an estimated cost of \$1.5 million dollars.

Project site and Proposed Access route to WV Route 705.



Proposed Project Rendering

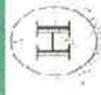




UNIVERSITY AND STEWART STREET
GREEN SPACE

Morgantown Council Meeting

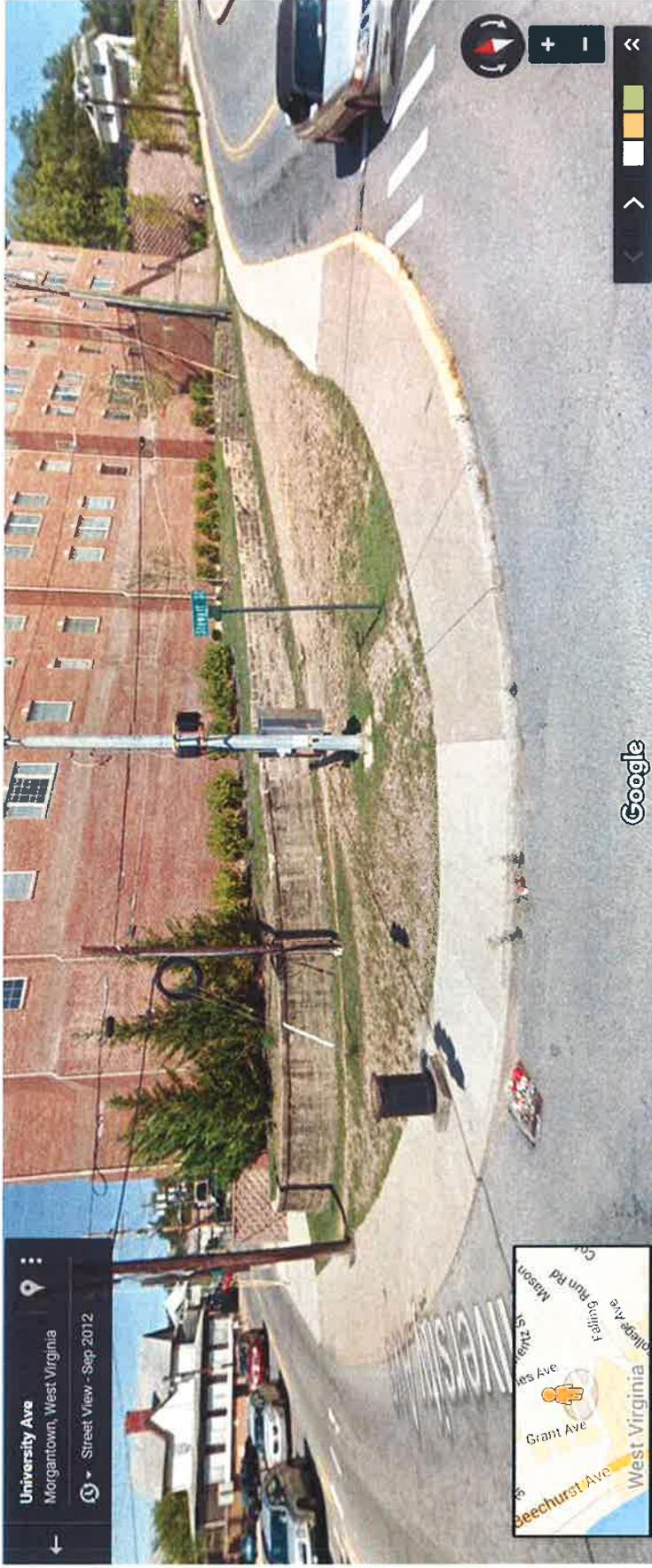
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HAYS

LANDSCAPE ARCHITECTURE STUDIO, TD

Handwritten signature: (i) Hays + C



SITE ISSUES

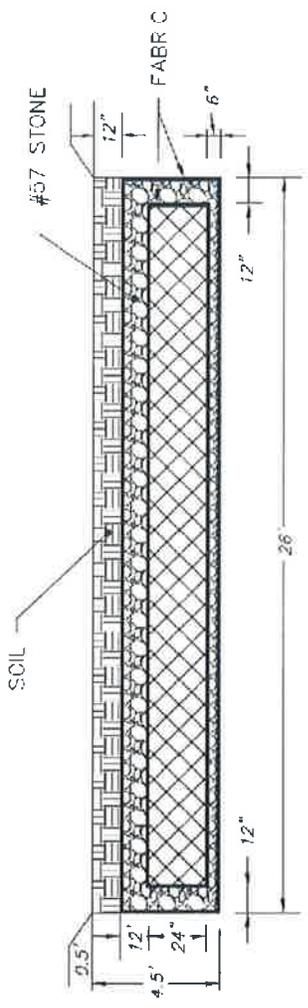
- DIRT PATHS (MUDDY)
- SAFETY
- LACK OF LIGHTING
- AESTHETIC
- STABLE AREA FOR POLICE AND MAINTENANCE VEHICLES

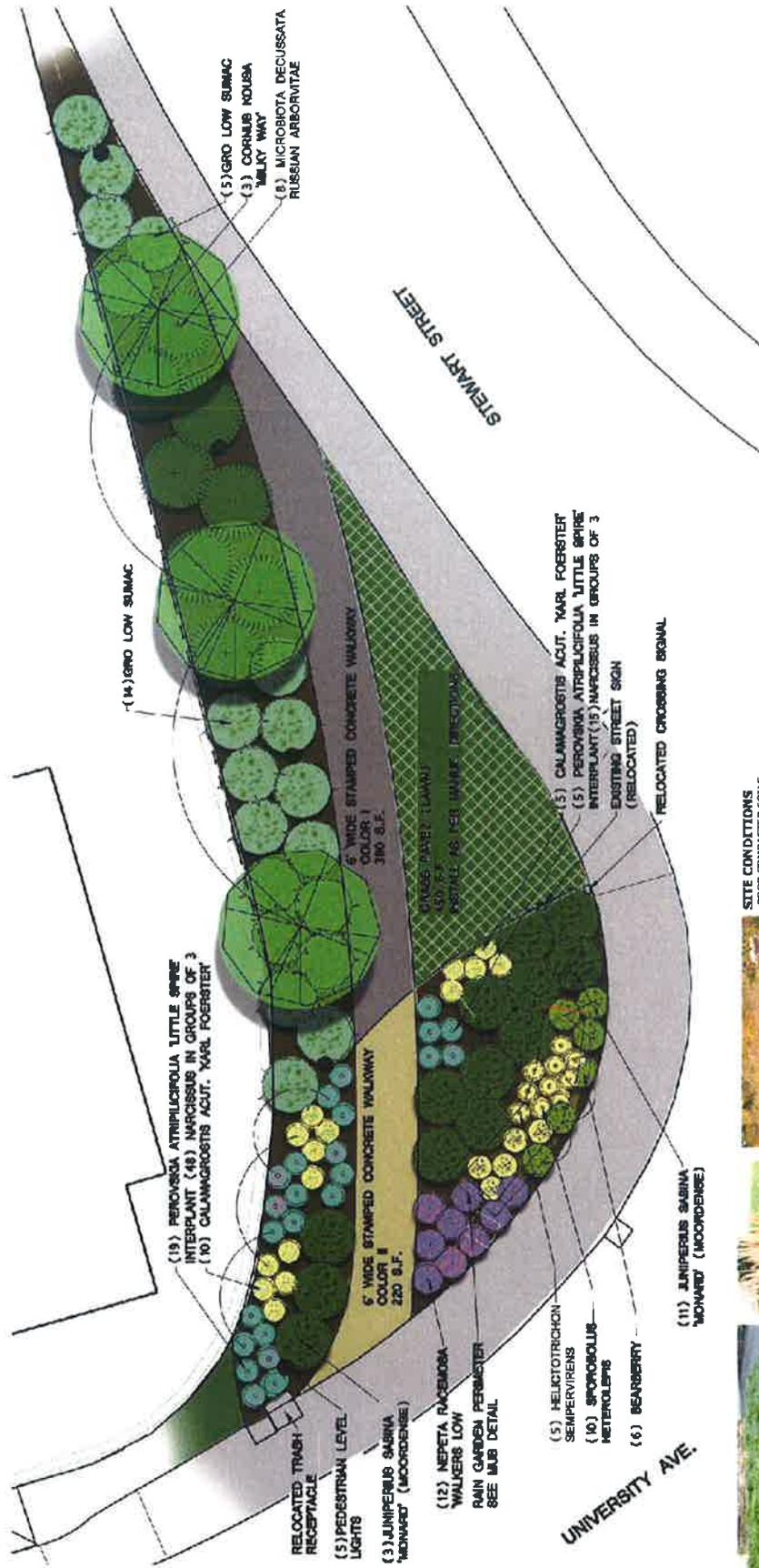


EXISTING CONDITIONS

GRASSPAVE²

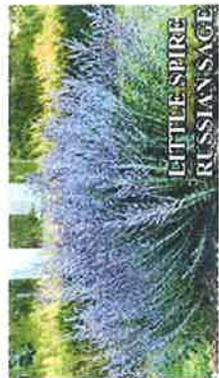
MUB MORGANTOWN UTILITY BOARD

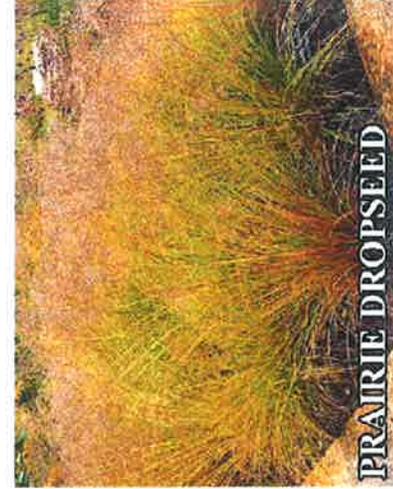
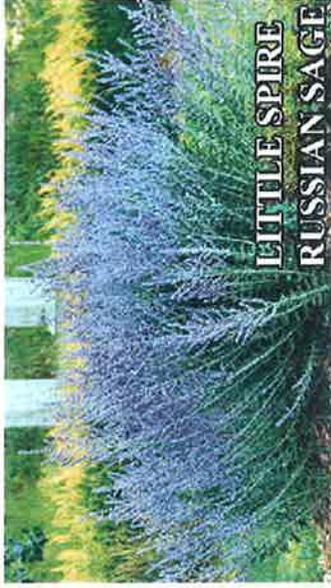
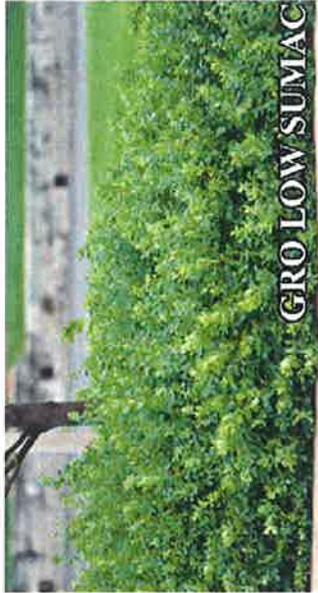
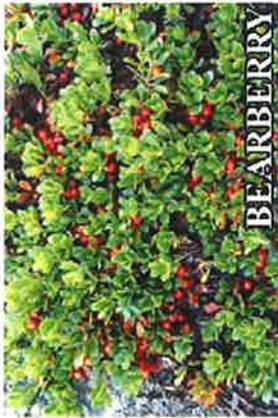




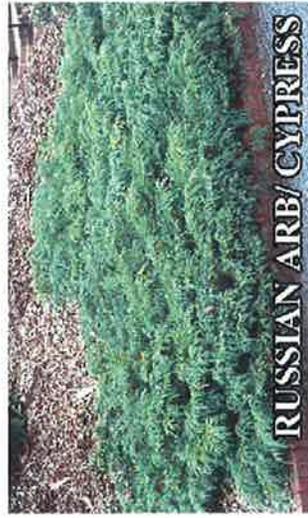
PROPOSED PLAN

SITE CONDITIONS
 -PURE COMPACTED SOILS
 -POOR DRAINAGE
 -URBAN CONDITIONS
 -ROCK SALT
 -HEIGHT RESTRICTIONS





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



**UNIVERSITY & STEWART
STREET GREENSPACE**

