

REGULAR MEETING May 5, 2015: The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Tuesday, May 5, 2015 at 7:00 p.m.

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

The meeting was called to order by Mayor Selin.

APPROVAL OF MINUTES: Due to the length of the meeting minutes for April 21st, 2015 minutes will be provided as soon as possible.

CORRESPONDENCE: MTC Theater Group presented “Seussical” to Council and invited them to attend the show on May 15, 16 and 17th. Mayor Selin presented a proclamation for “Law Enforcement Memorial Day” urging all citizens to honor Morgantown Police Officers on May 15, 2015. Mayor Selin read a proclamation for “Municipal Clerks Week” from May 3 to May 9th honoring the Clerk for her dedication. Mayor Selin noted a proclamation for Building Safety Month and American Disability Act. Councilor Ganz read a copy of the response letter from Prosecuting Attorney Marcia Ashdown regarding George Papandreas complaint regarding Ward/Boundary Commission/Morgantown City Council. Councilor Ganz noted that Prosecutor Ashdown could not find that the complaint supported a charge of malfeasance, and concluded that this as a political matter that her office would not involve itself. **Exhibit A.** Councilor Nugent read a Resolution from the Wiles Hill-Highland Park Neighborhood Association concerning the rezoning of the 18 parcels by Scott Properties and requesting Council maintain the present zoning. **Exhibit B.** Councilor Nugent presented an e-mail from AnSusan Inskeep that noted that he agrees with the Neighborhood Association and is in opposition of allowing 80 ft. tall buildings in this area. **Exhibit C.**

PUBLIC HEARING - AN ORDINANCE AUTHORIZING THE PURCHASE OF REAL ESTATE AT 2183 UNIVERSITY AVENUE AND DECLARING THE REAL ESTATE PURCHASE AGREEMENT HERETO ATTACHED AS A PART THEREOF.

Mayor Selin declared this Public Hearing open.

John Duarte, 460 Grove Street, commented “what are the intentions for this property” noted that he opposes this Ordinance and requests Council not to pass.

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

PUBLIC HEARING - AN ORDINANCE AUTHORIZING EXECUTION OF A CONTRACT FOR HISTORIC PRESERVATION FEDERAL GRANT BY AND BETWEEN THE WEST VIRGINIA DIVISION OF FINANCE AND ADMINISTRATION FOR AND ON BEHALF OF THE DIVISION OF CULTURE AND HISTORY AND THE CITY OF MORGANTOWN FOR THE CITY OF MORGANTOWN HISTORIC LANDMARKS COMMISSION.

Mayor Selin declared this Public Hearing open.

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

PUBLIC HEARING - AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF EIGHTEEN (18) PARCELS OF REAL ESTATE IN THE THIRD

WARD OF THE CITY OF MORGANTOWN FROM R-2, SINGLE- AND TWO-FAMILY RESIDENTIAL DISTRICT TO R-3, MULTI- FAMILY RESIDENTIAL DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN.

Mayor Selin declared this Public Hearing open.

Richard Dumas, 444 Overhill Street, stated that Council is in receipt of my email in support of the position of the Wiles Hill Highland Park Neighborhood Association Resolution. Exhibit D. I also wanted to go on record that I oppose the rezoning request as outlined. Mr. Dumas then presented from his partner an email on behalf of Roger Banks, opposing the Scott properties request to have the area between Jones Avenue, First Street, and Stewart Street rezoned to R-3. Mr. Banks is hoping that the City Council will keep the R-2 District intact and allow it to service its intended purpose for the neighborhood residents. Exhibit E.

Jane Lefevre, 301 Raymond Street, stated that she agrees with everyone that has spoken before her and also wishes Council to keep the neighborhood in its present state.

Michael Cassaza, 510 Short Street, he also supports the Wiles Hill Resolution in opposition of the 18 parcels of real estate.

Ann Dacey, 339 Virginia Avenue, stated that we should keep the Zoning the way it is because it will change the character and dynamics of the neighborhood.

John Duarte, 460 Grove Street, he agrees with everyone and also opposes the rezoning for it will risk the integrity and the viability of this neighborhood.

Randy Jones, 726 Spring Branch Road, by passing this zoning Ordinance of 18 Parcels in Wiles Hills would open up a Pandora's box. Mr. Jones is also in opposition of Council approving this zoning.

Greg Metheney, 2419 Stewartstown Road, discussed with Council the steps he had to get approval for this property and once again asked to get their consideration to approve re-zoning.

Sam Taylor, 460 Virginia Avenue, supports the Wiles Hill resolution is also in opposition of adopting the re-zoning.

Jerry Fletcher, 247 Highland Avenue, stated that adding that much density to the Wiles Hill area would be a mistake and noted that he is also in opposition of the re-zoning.

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

UNFINISHED BUSINESS:

AN ORDINANCE AUTHORIZING THE PURCHASE OF REAL ESTATE AT 2183 UNIVERSITY AVENUE AND DECLARING THE REAL ESTATE PURCHASE AGREEMENT HERETO ATTACHED AS A PART THEREOF. The below entitled Ordinance was presented for second reading.

AN ORDINANCE AUTHORIZING THE PURCHASE OF REAL ESTATE AT 2183 UNIVERSITY AVENUE AND DECLARING THE REAL ESTATE PURCHASE AGREEMENT HERETO ATTACHED AS A PART THEREOF.

After City Manager's explanation, motion by Kawecki, second by Fike. Motion carried 7-0.

AN ORDINANCE AUTHORIZING EXECUTION OF A CONTRACT FOR HISTORIC PRESERVATION FEDERAL GRANT BY AND BETWEEN THE WEST VIRGINIA DIVISION OF FINANCE AND ADMINISTRATION FOR AND ON BEHALF OF THE DIVISION OF CULTURE AND HISTORY AND THE CITY OF MORGANTOWN FOR THE CITY OF MORGANTOWN HISTORIC LANDMARKS COMMISSION. The below entitled Ordinance was presented for second reading.

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After City Manager's explanation, motion by Shamberger, second by Ganz to adopt the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF EIGHTEEN (18) PARCELS OF REAL ESTATE IN THE THIRD WARD OF THE CITY OF MORGANTOWN FROM R-2, SINGLE- AND TWO-FAMILY RESIDENTIAL DISTRICT TO R-3, MULTI-FAMILY RESIDENTIAL DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN. The below entitled Ordinance was presented for second reading.

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After discussion, motion by Kawecki, second by Shamberger to adopt the above entitled Ordinance. Motion failed 5-2.

BOARDS AND COMMISSIONS: The City Clerk, Linda Tucker, updated Council on the vacancies that we have on the Fire Civil Service, Met Theater, Morgantown Housing Advisory, and Urban Landscape. She then reported that on the Traffic Commission Chris Gluck and Lisa Mardis terms expired and requested Council's approval of their reappointment to serve another term. By acclamation Chris Gluck and Lisa Mardis will serve another term on the Traffic Commission.

PUBLIC PORTION:

Mayor Selin declared the Public Portion open.

John Duarte, 460 Grove Street, stated that he has been disappointed in this City Government for some time now; and has not voted. Mr. Duarte commented that the Boards and Commission members all have special interests to the City. Mr. Duarte explained that volunteers on these commissions do good work; but seems that by the time issues reach City Hall, decisions are already made. Mr. Duarte was annoyed that the City Clerk had told the Mayor that it was time for him to stop speaking during the Public Hearing.

SPECIAL COMMITTEE REPORTS: Councilor Shamberger gave an update of the Safe Community Committee initiatives and the application for the Safe Community Seal will be submitted in June.

NEW BUSINESS:

AN ORDINANCE PROVIDING FEES AND PROCEDURES: The above entitled Ordinance was presented for first reading:

AN ORDINANCE PROVIDING FEES AND PROCEDURES APPLICABLE TO REQUESTS FOR PUBLIC RECORDS.

After discussion, motion by Nugent, second by Bane, to pass the above entitled Ordinance to second reading. Motion carried 7-0.

AN ORDINANCE AMENDING ARTICLE 1331.06 OF THE PLANNING AND ZONING CODE TO ADJACENT ON-STREET PARKING STALLS TOWARDS MEETING MINIMUM OFF-STREET PARKING REQUIREMENTS: The above entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING ARTICLE 1331.06 OF THE PLANNING AND ZONING CODE AS IT RELATES TO ELIMINATING THE ABILITY OF PERMITTED NON-RESIDENTIAL USES WITHIN THE R-1, R-1A, R-2, AND R-3 DISTRICTS TO COUNT ADJACENT ON-STREET PARKING STALLS TOWARDS MEETING MINIMUM OFF-STREET PARKING REQUIREMENTS.

City Manager, Jeff Mikorski explained the article to Council questions were asked. Motion by Bane, second by Ganz to pass the above entitled Ordinance to second reading. Motion carried 7-0.

AN ORDINANCE AMENDING ARTICLE 1345.06 OF THE PLANNING AND ZONING CODE TO ADJACENT ON-STREET PARKING TO MINIMUM OFF-STREET PARKING REQUIREMENTS: The above entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING ARTICLE 1345.06 OF THE PLANNING AND ZONING CODE AS IT RELATES TO ELIMINATING THE ABILITY TO COUNT ADJACENT ON-STREET PARKING STALLS WITHIN THE B-1, NEIGHBORHOOD BUSINESS DISTRICT TOWARDS MEETING MINIMUM OFF-STREET PARKING REQUIREMENTS.

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

AN ORDINANCE AMENDING ARTICLE 1361.03 OF THE PLANNING AND ZONING CODE, TO ADJACENT ON-STREET PARKING WITHIN SUNNYSIDE OVERLAY: The above entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING ARTICLE 1361.03 OF THE PLANNING AND ZONING CODE TO COUNT ADJACENT ON-STREET PARKING STALLS WITHIN THE SUNNYSIDE OVERLAY DISTRICTS TOWARDS MEETING MINIMUM OFF-STREET PARKING REQUIREMENTS.

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

AN ORDINANCE AMENDING MINIMUM OFF-STREET PARKING REQUIREMENTS FOR BED AND BREAKFAST INN TO COUNT ADJACENT ON-STREET PARKING STALLS:
The above entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING TABLE 1365.04.01 "MINIMUM OFF-STREET PARKING REQUIREMENTS OF THE PLANNING AND ZONING CODE AS IT RELATES TO ELIMINATING THE ABILITY FOR BED AND BREAKFAST INN USES TO COUNT ADJACENT ON-STREET PARKING STALLS TOWARDS MEETING MINIMUM OFF-STREET PARKING REQUIREMENTS.

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

AN ORDINANCE AMENDING PLANNING AND ZONING CODE TO THE SITE PLAN REVIEW: The above entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING ARTICLE 1385 OF THE PLANNING AND ZONING CODE AS IT RELATES TO THE SITE PLAN REVIEW.

City Manager, Jeff Mikorski explained the article, there being no questions from Council, motion by Shamberger, second by Ganz. Motion carried 7-0.

AN ORDINANCE AMENDING THE PLANNING AND ZONING CODE THAT SUPPORT REVISIONS TO "SITE PLAN REVIEW:" The above entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING ARTICLE 1329.02 OF THE PLANNING AND ZONING CODE AS IT RELATES TO THE DEFINITIONS OF TERMS THAT SUPPORT REVISIONS TO ARTICLE 1385 "SITE PLAN REVIEW."

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

AN ORDINANCE AMENDING THE PLANNING AND ZONING CODE REGULATIONS PERTAINING TO PERMITTED LAND USES: The above entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING ARTICLE 1331.06 OF THE PLANNING AND ZONING CODE AS IT RELATES TO SUPPLEMENTAL REGULATIONS PERTAINING TO PERMITTED LAND USES TABLE THAT SUPPORT REVISIONS TO ARTICLE 1385 "SITE PLAN REVIEW."

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

AN ORDINANCE AMENDING THE PLANNING AND ZONING CODE AS IT RELATED TO PARKING AND LOADING STANDARDS IN THE GENERAL BUSINESS DISTRICT: The above entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING ARTICLE 1349.08 OF THE PLANNING AND ZONING CODE AS IT RELATES TO PARKING AND LOADING STANDARDS IN THE B-4, GENERAL BUSINESS DISTRICT THAT SUPPORT REVISIONS TO ARTICLE 1385 "SITE PLAN REVIEW."

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

AN ORDINANCE AMENDING THE PLANNING AND ZONING CODE FOR CONDITIONAL USES: The above entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING ARTICLE 1379.01 OF THE PLANNING AND ZONING CODE AS IT RELATES TO GENERAL PROVISIONS FOR CONDITIONAL USES THAT SUPPORT REVISIONS TO ARTICLE 1385 "SITE PLAN REVIEW."

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

A RESOLUTION SUPPORTING AN APPLICATION TO IMPLEMENT A COMPLETE STREET PLAN ON UNIVERSITY AVENUE AND THE ADJACENT CORRIDOR: The above entitled Resolution was presented for approval.

City Manager, Jeff Mikorski, explained the complete streets plan there being no discussion from Council, motion by Nugent, second by Bane, to approve the above entitled Resolution. Motion carried 7-0.

A RESOLUTION APPROVING AND AUTHORIZING TO SUBMIT TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) THE 2015 COMMUNITY DEVELOPMENT BLOCK GRANT ACTION PLAN: The above entitled Resolution was presented for approval.

City Manager, Jeff Mikorski, explained the 2015 CDBG Grant Application Plan, there being no questions from Council, motion by Ganz, second by Bane to approve the above entitled Resolution. Motion carried 7-0.

CITY MANAGERS REPORT:

New Business:

1. Airport project update - Capital Escrow Revision #7

The Airport extension very quickly changed from a conceptual project that would have a five-seven year time period to an expected project beginning next year. Over the past year we have been putting together ideas and strategies to possibly fund an airport extension as a part of an IRT project in the future. The total runway extension project is expected to cost \$31 million. The Air Force Reserve IRT project will reduce the cost by \$8 - \$12 million dollars. In order to request the FAA into matching with the State share of FAA funds, we would need to show that locally, we can support 50% of the remainder of the project. We hope to utilize up to \$5 million

dollars from airport AIP funds over the next five years and up to \$3 million dollars from Capital Escrow over that same time period.

This economic development project gaining momentum and we are working with partners to address all financial needs of the project. I recommend that City Council show support and approve a budget adjustment within the Capital Escrow Fund to utilize \$1,000,000 of Capital Escrow contingency toward the Morgantown Airport Runway Extension Project. As additional revenues come in from Business and Occupation Tax collections (one-time funds), The City Manager will bring additional revisions to City Council to supplement this amount to meet the Runway Extension Project needs. The City Manager's presentation will be a part of the Manager's Report for additional information.

City Manager, Jeff Mikorski, informed City Council that this project is very important to the growth and development to the airport: We need to move forward now.

Assistant City Manager, Glen Kelly, wanted to thank the City Manager, Jeff Mikorski, Mayor Selin and Deputy Mayor Marti Shamberger for allowing him the opportunity to speak and be added to the agenda and give a report at meetings. Mr. Kelley then presented to Council a Power Point presentation of the future Airport Runway Project. After discussion by Council, and a presentation by Holly Childs, from the Mon County Development Authority, a check for \$500,000 was presented to the City Manager, Jeff Mikorski, on behalf of the Airport Runway Project.

City manager, Jeff Mikorski, then recommended that City Council show support of the Runway Project by approving a budget adjustment within the Capital Escrow Fund by \$1,000,000. Motion by Ganz, second by Shamberger, motion carried 7-0.

REPORT FROM CITY CLERK: Mrs. Tucker updated Council on Election and Canvassing results and responded to Mr. Duarte that he mis-understood her actions during the Public Hearing; she was directing the Mayor that the speaker must stay on subject.

REPORT FROM CITY ATTORNEY: No Report

REPORT FROM COUNCIL MEMBERS:

Councilor Bane:

No Report.

Councilor Kawecki:

Councilor Kawecki requested that the City Clerk order more City Pins for events.

Councilor Nugent:

Councilor Nugent noted that the City Airport is heading in the right direction and appreciate the report on the long term vision on projects given this evening. He also mentioned discussion with the City Manager on paving and also questioned pot holes that need taken care of by the Department of Highway. The City Manager responded

that City Administration is continuing to contact the DOH and will continue to do so and will report back to Council. Councilor Nugent thanked the City Clerk's office and staff during the election process.

Councilor Shamberger

Councilor Shamberger commented that she appreciates the City Manager and the Assistant City Manager's enthusiasm and also the support of the Development Authority for the Airport. Councilor Shamberger congratulated everyone on Council that won the election. She then stated that hopefully the next election we can increase participation. She thanked MTC for their performance this evening and she recently attended a Morgantown High School Grease performance, great seeing kids doing good things. She then reminded everyone that the first Friday at Woodburn, had about 80 people to show and then stated that the events are held the first Friday's of every month. She also announced that there was going to be a work session to discuss some drainage issues on May 9th but that meeting was canceled.

Councilor Fike:

Councilor Fike mentioned his request in regards to the WVU Student Ex-officio Liaison be placed on a COW, by consensus, Council approved item to be placed on the COW.

Councilor Ganz:

Councilor Ganz thanked the City Manager and Assistant City Manager for all the good news this evening on the Airport. Councilor Ganz mentioned hearing the Fire Chief on the radio and requested that he come to a future COW meeting to discuss Fire Department concerns. She also mentioned if you do not or wish not to keep your pet when moving from the area; please contact M-snap or find appropriate homes. She also agreed with Councilor Nugent that infrastructure begets infrastructure. She then mentioned the Ethics Commission issue which was put to bed March a year

ago and is hoping that the accusations have stopped. She then thanked City Engineer Damien Davis and Officer Balderson for coming to the last Suncrest Neighborhood Meeting and talking about NH Watch and Traffic Studies in our community. She also thanked Chris Fletcher Director of Development Services for his hard work on zoning and downtown design. She noted her appreciation of Dr. Seuss and the theatrical performance this evening; and mentioned a book by Dr. Seuss everyone should read.

Mayor Selin:

Mayor Selin publicly announced that her personal slogan is “Fly WV” and support our airport and all airports in WV. She then stated that MTC has a soft spot in her heart and she really enjoyed their performance this evening. She reported that Bike to Work Day is next Friday. She announced events: Bird walk at Dorsey Knob; Black Bear reading series at the MAC and the adaptation Into the Woods at the MET on May 22, 23rd and 25th.

ADJOURNMENT: There being no further items of business or discussion, the meeting adjourned by unanimous consent at 10:15 p.m.

City Clerk

Mayor

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

OFFICE OF THE



PROSECUTING ATTORNEY

MARCIA L. ASHDOWN
MONONGALIA COUNTY COURT HOUSE
243 HIGH STREET
MORGANTOWN, WEST VIRGINIA 26505

Main: (304) 291-7250
Fax: (304) 291-7255

April 3, 2015

George Papandreas
41 Euclid Avenue
Morgantown, WV 26501

Re: Your complaint regarding Ward/Boundary Commission/Morgantown City Council

Dear Mr. Papandreas:

I have reviewed the materials you submitted to me, which were also forwarded to me by the Monongalia County Commissioners following your appearance at a Monongalia County Commission meeting in March. In the course of considering your accusations against various city council members and a Ward Boundary Commission member, I reviewed: portions of the Morgantown City Charter, an opinion letter issued by the West Virginia Ethics Commission, an opinion by former City Attorney Stephen Fanok along with the West Virginia Supreme Court case Mr. Fanok was asked to review for the Ward Boundary Commission, and W.Va. Code.

For the reasons set forth herein, it is my opinion that the matters of which you complain do not constitute "malfeasance in office," which could generate a charge under W.Va. Code §6-6-7(b)(2)(3). That code section authorizes the prosecuting attorney and/or other persons and entities to prefer charges for "official misconduct, malfeasance in office, incompetence, neglect of duty or gross immorality..." As several of those terms are defined in code §6-6-1, I cannot conclude that the actions of the individuals, whom you have identified, would constitute "malfeasance in office," as you have asserted.

The Morgantown City Charter itself allows the City Council to *approve* or *disapprove* the recommendations of the Ward Boundary Commission. The Charter requires reasons to be specified for disapproval of the recommendations. A review of the transcript of the December 2, 2014, regularly scheduled city council meeting reflects that the ward boundary report was vigorously, even hotly, debated followed by a vote by the city council members: four to disapprove the report and three to approve. The transcript shows that each of the disapproving council members articulated on the record his or her reason(s) for disapproval.

As to the propriety of Jenny Selin and Nancy Ganz voting on ward boundary issues as council persons who, in a future term of office, could be affected, I have seen, as you most likely have seen, the March 6, 2014, Advisory Opinion 2014-10 from the WV Ethics Commission. The opinion by the acting chairperson of the Ethics Commission held that it would not be a conflict of interest or other ethical problem for city council members to vote on ward boundary questions under the circumstances you have described (and which are apparent in transcripts, minutes, and other documentation.) The ethics opinion states in closing that it has precedential effect and may be relied upon in good faith by public servants.

Former City Attorney Stephen Fanok provided a written opinion to the members of the Ward Boundary Commission dated November 18, 2014, in which he addressed the question of whether the case *State of West Virginia Ex rel. Cooper v. Tennant* (cited as 229 W.Va. 585 (2012)) had any effect (or guidance) on the method of establishing ward boundaries as set forth in the city charter. The *Cooper v. Tennant* case resulted in a very lengthy opinion by the West Virginia Supreme Court of Appeals, ultimately finding that allegations of partisan "gerrymandering" by the West Virginia legislature did not constitute equal protection violations of the West Virginia State Constitution. Mr. Fanok's review of the *Thornton v. Cooper* opinion further distanced the context of that case from the Morgantown City Council's decisions as to ward boundaries because city council elections are (1) *non-partisan* and (2) every council seat is an "at large" election, meaning that every qualified voter within the City of Morgantown has the right to vote for a council member for each of the seven wards of the city. Therefore, as stated by Mr. Fanok, there were no issues for city council of either "equal representation violations" or "gerrymandering". I agree with Mr. Fanok.

I further note that, as stated in *Cooper v. Tennant*, supra, which involved *partisan* gerrymandering, the West Virginia Supreme Court of Appeals stated, "Gerrymandering, in and of itself, is not unconstitutional and has clearly been deemed acceptable in legislative redistricting decisions."

In your email to me of Sunday, March 29, 2015, you stated, "The WV Secretary of State's Office indicated that this ["gerrymandering"] is a probable violation of federal election law also." I have inquired of individuals in the Office of the Secretary of State, who have advised me that such an opinion was not, and would not have been, rendered. Perhaps there was some misunderstanding.

For these reasons I cannot find that your complaint supports a charge of malfeasance in office, and I conclude that this is a political matter in which my office may not involve itself.

Thank you for your concerns and interest in these matters.

Sincerely,



Marcia L. Asdown
Prosecuting Attorney

MLA/dss

Cc: Monongalia County Commission



**Wiles Hill-Highland Park
Neighborhood Association**

Post Office Box 415
Morgantown, WV 26501

2015-2016 Officers

Neha Lal
President

Jimmie Simmons
Vice President

Nadine Kelly
Secretary/Treasurer

Richard Dumas
Past President

A resolution of the Wiles Hill-Highland Park Neighborhood Association [2015.04.15-01] concerning the rezoning of eighteen parcels as petitioned by Scott Properties, LLC, on the twelfth of December, two thousand fourteen.

WHEREAS,

the Morgantown City Council approved the city's current Comprehensive Plan, on the eighteenth of June, two-thousand thirteen, [Art. 1301 et al.] in purpose to establish a single unified code relating to the subject of planning and zoning, as a comprehensive guide for the future growth and development of the City; and

WHEREAS,

the Morgantown City Council has yet to adopt updated planning and zoning code reflecting the intent of the city's current Comprehensive Plan; and

WHEREAS,

R-2 zoned residential districts [Art. 1337.01] are intended to be developed at a slightly higher density than in single family neighborhoods to preserve and protect the characteristics of existing medium density family neighborhoods; and

WHEREAS,

Scott Properties, LLC, has petitioned the City of Morgantown to reclassify eighteen property parcels – an area generally bounded by First Street, Jones Avenue and Stewart Street – adjoining the Wiles Hill neighborhood from R-2 to R-3; and

WHEREAS,

the density of development permissible in a R-3 zoned residential district is significantly higher than a R-2 zoned residential district should the petitioner develop the property in conjunction with a conditional use permit; and

WHEREAS,

the Wiles Hill-Highland Park Neighborhood Association, established in nineteen seventy-two, protects and preserves quality of life and property values of the residential neighborhood and contributes to the greater good of the Morgantown community through the work of its members: Now, therefore,

BE IT RESOLVED,

we, the members of the Wiles Hill-Highland Park Neighborhood Association, pray the Morgantown City Council deny the petitioner's request given the adverse effects that will devalue the adjoining R1-A single-family neighborhood; and

FURTHER RESOLVED,

we pray the Morgantown City Council maintain the present R-2 zoned residential district designation rather than risking the integrity and viability of the adjacent R-1A single-family neighborhood leading to future zoning encroachments; and

FURTHER RESOLVED,

we pray the Morgantown City Council diligently work to adopt updated planning and zoning code to better implement the city's current Comprehensive Plan; and

FINALLY RESOLVED,

we pray the Morgantown City Council honor the city's current Comprehensive Plan by further studying the greater area as outlined in the official document.

Neha Lal, President
1 Bryson Avenue

Nadine Kelly, Secretary/Treasurer
466 Overhill Street

<http://WilesHill-HighlandPark.org/>

info@WilesHill-HighlandPark.org

A 501 (c)(7) Non-Profit.

Established in 1972.

Re: Zoning Variance Wiles Hill

From : Wesley Nugent <wes@wnugent.com>

Tue, May 05, 2015 04:17 PM

Subject : Re: Zoning Variance Wiles Hill

To : AnSusan Inskip <ansu4542@gmail.com>

Cc : City Council <CityCouncil@cityofmorgantown.org>, Linda Little <llittle@cityofmorgantown.org>, Jeff Mikorski <jmikorski@cityofmorgantown.org>

Dear AnSusan and Keith,

I'm writing to confirm receipt of your email.

By way of this email, I'm sharing your correspondence with City Council as well as the City Manager and City Clerk.

Thank you for taking time to contact me and share your perspective regarding the proposed rezoning request.

Respectfully,
Wes

On Tue, May 5, 2015 at 3:41 PM, AnSusan Inskip <ansu4542@gmail.com> wrote:

Good Afternoon Wes, Just wanted to let you know we are in agreement with the neighborhood association in opposition to the requested variance to allow 80 ft tall buildings in this area. We are opposed to further encroachment on our neighborhood. Please feel free to add our names to the opposition. Thank you. AnSusan & Keith Inskip

—
Wesley "Wes" Nugent
Third Ward City Councilor, Morgantown, W.Va.
[Connect online @ WNugent.com](#)
[Facebook](#) | [LinkedIn](#) | [Twitter](#)

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Exhibit D

Zimbra

llittle@cityofmorgantown.org

Fwd: TOMORROW: Jones Avenue Rezoning Ordinance- Public Hearing & Second Reading at City Council

From : richard dumas <ridu54@gmail.com>

Mon, May 04, 2015 05:22 PM

Subject : Fwd: TOMORROW: Jones Avenue Rezoning Ordinance- Public Hearing & Second Reading at City Council

2 attachments

To : Jeff Mikorski <jmikorski@cityofmorgantown.org>, citycouncilward2@cityofmorgantown.org, citycouncilward7@cityofmorgantown.org, citycouncilward6@cityofmorgantown.org, citycouncilward5@cityofmorgantown.org, citycouncilward4@cityofmorgantown.org, citycouncilward3@cityofmorgantown.org, citycouncilward1@cityofmorgantown.org, llittle@cityofmorgantown.org

Good afternoon:

Due to my current schedule I am nor sure if I will be able to attend the meeting tomorrow night, however I would like to go on the record in opposition of the rezoning request outlined below. I would like to further go on the record as supporting the position of the Wiles Hill - Highland Park Neighborhood Association.

I feel that the current zoning is in place to protect the residential areas of Morgantown from encroachment by larger developments.

The argument that no one spoke against the proposed change at the BZA DOES NOT make this requested change the right thing to do for those you have been elected to represent.

I ask that this communication be read and made part of the public comments on this issue.

Sincerely,

Richard J Dumas
444 Overhill St.
Morgantown WV

"The world is my country, all mankind are my brethren, and to do good is my religion."

Thomas Paine, Patriot

----- Forwarded message -----

From: "President" <president@wileshill-highlandpark.org>
Date: May 4, 2015 4:45 PM
Subject: TOMORROW: Jones Avenue Rezoning Ordinance- Public Hearing & Second Reading at City Council
To: "Wiles Hill-Highland Park Friends" <friends@wileshill-highlandpark.org>, "members@wileshill-highlandpark.org" <members@wileshill-highlandpark.org>
Cc:

Dear neighbors,

As some of you might be aware, there is currently a bid to rezone certain properties on Jones Avenue from R2 to R3 under consideration. This matter is on the agenda for discussion at tomorrow's City Council meeting, tomorrow at 7pm.

This potential rezoning to R3 could allow for the construction of a high rise (maximum building height of 80ft) building, as opposed to medium density town-home/condominium buildings (maximum building height of 55ft) in the current R2 zoning. This could profoundly impact the population density and profile, viewline, traffic, infrastructure, and hence quality of life in the Wiles Hill - Highland Park neighborhoods, as well as open the door to further rezoning.

We, as an association, are taking the stand of saying "Leave our R2 buffer zones intact". Please find attached to this email a copy of the resolution sent by our association to the City Council, as well as the official massing report for reference.

Roger Banks
444 Overhill Street
Morgantown, WV 26505
May 5, 2015

RE: Scott Properties Rezoning request

Dear Council Members:

Much to my regret I am unable to attend tonight's Morgantown City Council Meeting as I have had to go out of town. I have, however, asked that this letter be read on my behalf and be included as part of the official record.

I am opposed to the request by Scott Properties LLC to have the area between Jones Avenue, First Street and Stewart Street rezoned R-3. This property is currently zoned as R-2 which is intended to allow for higher density while providing a buffer for the R-1 and R-1A neighborhoods. Granting the request for rezoning is a permanent change and would apply to any future owner of this property.

Approving this zoning change along with the conditional use provisions of R-3, which could be granted other city bodies including BZA, Planning Commission or even court ruling, would allow for this area to have some of the highest density in any area designated as a buffer for Morgantown's R-1 and R-1A residential neighborhoods.

Based on what has transpired with the development of Jones Place – converting a development which should have been single and/or two family town home units into another high density student apartment complex including apartments in the basement of a number of these building – I feel that the request to rezone the area in question is just a stepping stone to what the developer truly wants. If rezoning is approved, I feel, there will be an immediate request for a conditional use of this property which history shows the developer will go to any length to obtain. Permitted by right uses in an R-3 zoned area include buildings that are up to four stories or 55 feet in height. Conditional use could raise this height to anything less than 80 feet and taking into consideration the grade of the land at the site and how the height is calculated; the end result could be significantly greater on the Stewart Street side of any development.

Keep the R-2 District intact and allow it to serve its intended purpose to:

- (A) Provide for Two Family housing development and customary accessory uses at a density slightly higher than in single family neighborhoods, and
- (B) Preserve the desirable character of existing medium density family neighborhoods, and
- (C) Protect the medium density residential areas from change and intrusion that may cause deterioration, and
- (D) Provide for adequate light, ventilation, quiet, and privacy for neighborhood residents.

As a closing comment I would like to state that with the current trends at Morgantown City Council and WVU it is becoming more difficult to remain committed to Morgantown as a home which I have loved for nearly 30 years. Help renew my faith and deny this request.

Sincerely,



Roger D Banks