



Office of the City Clerk

The City of Morgantown

Linda L. Little, CMC
389 Spruce Street, Room 10
Morgantown, West Virginia 26505
(304) 284-7439 Fax: (304) 284-7525
cityclerk@morgantown.com

**AMENDED AGENDA 2-1-10
MORGANTOWN CITY COUNCIL
REGULAR MEETING
February 2, 2010
7:30 p.m.**

1. **CALL TO ORDER**
2. **ROLL CALL BY CITY CLERK**
3. **PLEDGE TO FLAG**
4. **APPROVAL OF MINUTES:** Regular Meeting – January 19, 2010
5. **CORRESPONDENCE:**
6. **UNFINISHED BUSINESS:**
 - A. **Boards and Commissions**
7. **NEW BUSINESS:**
 - A. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE ADOPTING LAKELAND AVENUE AND A 360 FOOT LENGTH OF ROLLINGWOOD STREET INTO THE CITY OF MORGANTOWN'S STREET SYSTEM FOR PURPOSES OF PUBLIC MAINTENANCE AND CONTROL, IN THE SEVENTH WARD OF THE CITY OF MORGANTOWN, MONONGALIA COUNTY, WEST VIRGINIA.**
 - B. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF FOURTEEN PARCELS OF REALTY IN THE THIRD WARD OF THE CITY OF MORGANTOWN FROM (R-3) MULTI-FAMILY RESIDENTIAL DISTRICT TO (PUD) PLANNED UNIT DEVELOPMENT DISTRICT BY AMENDING ARTICLE 1331.02 OF THE PLANNING & 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 THEREIN.**
 - C. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF APPROXIMATELY 16,500 SQUARE FEET OF REAL ESTATE IN THE FOURTH WARD OF THE CITY OF MORGANTOWN FROM (R-1) SINGLE-FAMILY RESIDENTIAL DISTRICT TO (PRO) PROFESSIONAL, RESIDENTIAL, AND OFFICE DISTRICT BY AMENDING**

ARTICLE 1331 OF THE PLANNING & 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.

D. Consideration of APPROVAL of FIRST READING of AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF A PARCEL OF REAL ESTATE IN THE FOURTH WARD OF THE CITY OF MORGANTOWN FROM (IND) INDUSTRIAL DISTRICT TO(R-1) SINGLE-FAMILY RESIDENTIAL DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING & 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.

E. Consideration of APPROVAL of FIRST READING of AN ORDINANCE BY THE CITY OF MORGANTOWN ITS ACCEPTANCE OF A DEED WHICH TRANSFERS TITLE OWNERSHIP OF A 3.43 ACRE OF REALTY FROM MYLAN PARK FOUNDATION, INC., TO THE CITY OF MORGANTOWN.

F. Consideration of APPROVAL of FIRST READING of AN ORDINANCE AUTHORIZING THE CITY OF MORGANTOWN TO LEASE 3.43 ACRES, AND THE STRUCTURE THEREON LOCATED IN GRANT DISTRICT, MONONGALIA COUNTY, WEST VIRGINIA, TO MYLAN PARK FOUNDATION, INC

G. Consideration of APPROVAL of a RESOLUTION TO MAKE APPLICATION TO THE WEST VIRGINIA LAND AND WATER CONSERVATION FUND FOR \$128,500.00 FOR THE ACQUISITION OF NEIGHBORHOOD PARK PROPERTY FOR OUTDOOR RECREATIONAL ACTIVITIES.

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

9. SPECIAL COMMITTEE REPORTS

**10. REPORT FROM CITY MANAGER:
INFORMATION:**

1. FUTURE COST OF HEALTH INSURANCE FOR CITY RETIREES

NEW BUSINESS:

1. AIRPORT DIRECTOR REQUESTING \$15,000 TO FUND STORM DRAINAGE

11. REPORT FROM CITY CLERK

12. REPORT FROM CITY ATTORNEY

13. REPORT FROM COUNCIL MEMBERS

14. ADJOURNMENT

If you need an accommodation contact us at 284-7439

REGULAR MEETING JANUARY 19, 2010:

The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Monday, January 19, 2010, at 7:30 P.M.

PRESENT: City Manager Dan Boroff, Mayor Bill Byrne, City Clerk Linda Little, Assistant City Manager Jeff Mikorski, City Attorney Steve Fanok, and Council Members, Ron Bane, John Gaddis, Charlie Byrer, Jenny Selin, Marti Shamberger, and Don Spencer.

The meeting was called to order by the Mayor.

APPROVAL OF MINUTES: Minutes from the regular meeting on January 5, 2010, were approved as printed.

CORRESPONDENCE: Mayor Byrne mentioned the disaster in Haiti and how it has touched his heart and asked the community to reach out and help by giving through American Red Cross.org or any organization you wish. Mayor Byrne informed the public that in fact a medical team from Morgantown is going and donations can be made to Dr. Dave Fogarty, 228 South Walnut Street, Morgantown WV. Mayor Byrne then asked for a moment of silence for those in Haiti. Mayor Byrne said anyone wanting to know how to make donations to Haiti can contact the City Clerk for details. Mayor Byrne read a letter from FEMA indicating that the Flood Plain Ordinance adopted on January 5, 2010 is in compliance with the National Flood Insurance Program. Mayor Byrne recognized Kathryn Greever for serving on the Planning Commission from 2007-2009.

UNFINISHED BUSINESS:

BOARDS AND COMMISSIONS: Council then by acclamation appointed Denver Allen to the BOPARC Board; Colonel Edwin T. Parks to Mon. Rivers Trail Commission; and William Petros to the Planning Commission.

NEW BUSINESS:

CONSIDERATION OF APPROVAL OF A RESOLUTION TO OBTAIN \$9,000 FOR LIGHTING IMPROVEMENTS AT THE METROPOLITAN THEATER THROUGH THE COMMUNITY PARTICIPATION GRANT PROGRAM. The above Resolution was presented for approval:

Motion by Gaddis, second by Shamberger to pass the above entitled Resolution. Motion carried 7-0.

PUBLIC PORTION:

Glenn Gallagher, P.O. Box 1574, mentioned that he contacted Bill Austin of the MPO about the crosswalk at the intersection of University Avenue and Westover Bridge by Wings Ole. Mr. Gallagher commented that he has also noticed a crosswalk problem at Foundry and South University that needs addressed. Mr. Gallagher asked should I contact Bill Austin of the MPO?

Mayor Byrne responded to Mr. Gallagher that the City Manager Dan Boroff will check into this problem.

Ruth Allen, 127 Bluegrass Drive, requested Council look at fining pedestrians for jay walking. Ms. Allen stated that recently she had damage to her vehicle while swerving to miss a jay walker and hit another vehicle. Ms. Allen commented that the Police Officer told her there were no Jay Walking laws in the City of Morgantown. Ms. Allen requested that Council consider some laws and fines for the pedestrian and peace of mind for the drivers.

Ray Swager, Swager General Contracting, thanked Council for appointing him to the Urban Deer Committee. Mr. Swager stated that he has been to at least 200 residences and 85% of the people are against the Urban Deer Hunt. Mr. Swager commented that he felt that a new Chair should be selected because Dr. Dave Samuel's biased opinion possibly would not be fair.

Joann Beard, 632 Astor Avenue, also mentioned concerns on the fairness of the selection of the Urban Deer Committee. Ms. Beard suggested other natural alternatives besides hunting to control the deer population in the City. Ms. Beard reminded everyone that deer are the stewards of nature and enhance our culture.

Guy Panrell, 763 South Hills Drive, reminded everyone of the annual Postal Food Drive on May 8th, 2010. Mr. Panrell commented on the Deer that there is a problem all over the City; in fact there were 27 deer in a back yard in Norwood last night. Mr. Panrell stated that the Deer are a safety issue; they can cause waste disease and many other problems.

City Attorney, Steve Fanok, stated that there has been a Jay Walking law on the books for 21 years which states you will be fined if you do not walk across the streets at the designated crosswalks.

There being no more appearances Mayor Byrne then declared the Public Portion closed.

SPECIAL COMMITTEE REPORTS: Councilor Spencer gave an update on the 2010 City of Morgantown Legislative priorities discussed with Legislators at the Municipal League meeting. Councilor Spencer briefly mentioned a few of the bills, SB134; HB2663; HB 4001; role of PSC to control certain services in Class I & II cities; Management of Solid Waste; Towing Companies; and Taxi Services. Councilor Spencer stated that the following are WVML bills of concern, OPEB, PERS, Municipal Costs, Municipal Records, Insurance Proceeds, Use of Radar Guns, and Municipal Juries. Mayor Byrne then thanked Jeff Mikorski, Assistant to the City Manager and Councilors Selin, Bane, Byrer, and Spencer for accepting the grant check of \$18,000 for the Met Theatre in Charleston, WV today.

CITY MANAGERS REPORT:

INFORMATION:

Item No 1:

As directed by City Council, an Urban Deer Committee has been organized to study the option of a limited bow hunt within the City of Morgantown to control the urban deer population. Dr. Dave Samuel has agreed to chair the committee. Other members include Mr. Ray Swager, Marti Shamberger, Mark Wise, and a representative of WVU. The Chairperson may recruit additional members as necessary. Steve Fanok will be the City staff liaison. the first meeting of the committee will be January 21, 2010.

City Manager Dan Boroff stated that the Urban Deer Committee is a temporary administrative group to research this issue only and recommendations will be sent to City Council, and City Council will make the final decision.

Mayor Byrne then informed Council that the next COW will begin at 6:30 p.m. on 1-26-2010 with 10 items so far on the agenda.

CITY CLERK'S REPORT: No Report.

CITY ATTORNEY'S REPORT: No Report.

REPORT FROM COUNCIL MEMBERS:

- Councilor Bane: Councilor Bane commented that the name of the Deer Committee is the Urban Deer Committee not the Urban Deer Hunt Committee. Councilor Bane stated that all recommendations should be considered for Council to look at in making this decision, we need the voice of both sides. Councilor Bane thanked the City Manager and Police Department for helping with the recent breaking and enterings in the First Ward area.
- Councilor Gaddis: Councilor Gaddis responding to Councilor Banes comments on the Urban Deer Committee; we must allow all citizens to communicate their concerns and ideas on this issue. Councilor Gaddis reminded everyone of the Greenmont Neighborhood Association Meeting at 7pm on Monday; South Park Neighborhood Association Meeting on Wednesday at 7pm; and then Monday NHCC with Jeff Mikorski.
- Councilor Byrer: Councilor Byrer reported that on January 20, 2010 the Wiles Hill/Highland Park Neighborhood Association will have their meeting and appoint new officers for 2010. Councilor Byrer commented the deer issue is basically about health safety and property damage, and this committee can come up with some guidelines to help control this issue
- Councilor Selin: Councilor Selin stated that the deer committee is to study if there is a problem of over population and ways of handling it and managing the herd and protecting the citizens' health and safety. Councilor Selin stated that she appreciated the Councilors that were able to come to Charleston for the Municipal League Meeting and equally important are those Councilors that attended the events for MLK day. Councilor Selin reported that the Suncrest Neighborhood Association meeting will be on 1-28 at 7pm
- Councilor Shamberger: Councilor Shamberger thanked the Police Officers that responded to the car breaking & enterings on Louise Avenue, and anyone that has had a break-in on Louise Avenue please contact the Police. Councilor Shamberger gave a thanks to City Departments for the Annual Report for after reading the report it gave me a real appreciation of what everyone does at the City. Councilor Shamberger commented that she takes to heart suggestions for the Urban Deer Committee and will weigh everything and bring recommendations back to Council.
- Councilor Spencer: Councilor Spencer commented that he was sorry for the Jay Walking incident that Ruth Allen experienced and stated that the pedestrian/traffic issue is a frustrating one. Councilor Spencer informed everyone that the Pedestrian Plan will educate not only the drivers but the pedestrians in a safety program. Councilor Spencer informed Council that Governor Manchin mentioned at the Municipal League meeting that Cities must make their communities safer and stronger for 2020. Councilor Spencer mentioned that he was delighted that the Lakewood & Rollingwood Streets are on the COW Agenda. Councilor Spencer informed Council that the Pedestrian Safety Plan is on the web

and also reminded everyone of the Morgantown Pedestrian Safety Plan Public Forum at South Middle School at 6:30pm on January 28, 2010. Councilor Spencer noted that the Department of Highways should be sensitive to the needs of the citizens on the safety of the various difficult crosswalks in the City with lighting and signal capabilities. Councilor Spencer noted that the Census Count 2010 is very important; it is dollars and cents and can bring Federal Grants to the City. Councilor Spencer thanked the Mayor for giving attention to the Haiti situation and that we can truly empathize with the tremendous challenges and hope we can respond to them and help as long as it is needed.

Mayor Byrne:

Mayor Byrne mentioned the Prime Time Shootout coming this weekend to MHS and the WVU Coliseum and that 4 High School teams from the USA Today Super 2 will participate, and Cliff Southarland has brought this to Morgantown which is a tremendous economic help to our community. Mayor Byrne reminded Council that on January 28th the Public Forum at South Middle on Pedestrian Safety will be held. Mayor Byrne added another item to the COW; the Sister City Ordinance for Council's review and discussion. Mayor Byrne reported that Jerome Park has their community meeting on February 1 at 7pm at the Church corner of Darst & Richwood. Mayor Byrne announced that the grand opening of the Census office is January 29th at 1pm. 3rd Floor of the Spillman/Thomas building. Mayor Byrne stated he will be in Charleston tomorrow for the Alumni Event and also will attend the Sub-Committee hearing in reference to the Parking Authority issuing tickets. Mayor Byrne commented it was very cold 10 days ago and our Public Works, Bill Rumble and Staff worked 18 hour days to keep our streets cleared of snow, and they did a great job in doing so. Mayor Byrne attended the MLK Breakfast and Ken Hechler 95 years old spoke for an hour on MLK and was absolutely incredible, and then in the afternoon the celebration by Coalition for Social Justice at MHS was held. Mayor Byrne commented that we are an Inclusive City and we reflect those values and thank you to those for attending the MLK events.

Councilor Seline mentioned the Vote by Mail information she received at the Municipal League Meeting.

Mayor Byrne:

Mayor Byrne stated that if there is anyone that wants to donate to Haiti, the contact information will be available at the City Clerk's office at 304-284-7439 or 284-7434.

ADJOURNMENT: There being no further business, the meeting adjourned by unanimous consent at 8:40 p.m.

City Clerk

Mayor

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

**CITY MANAGER'S REPORT
FOR
COUNCIL MEETING OF FEBRUARY 2, 2010**

INFORMATION:

Item No. 1:

For the past several months, the City of Morgantown has been calculating the future cost of health insurance for City retirees (Other Post Employment Benefits) as required by new national accounting principles. This actuarial study has concluded that the City of Morgantown should escrow an additional \$846,000 per year from the General Fund to fund this liability. Obviously this is not an affordable option and consequently in the near term, City Council will be presented a number of small, incremental recommendations to mitigate this situation.

NEW BUSINESS:

Item No. 1:

Attached you will find a memo from the Airport Director requesting \$15,000 to fund a storm drainage extension to service the Airport Terminal. I agree with his comments and recommend that the project be funded in the Capital Escrow Account.

This concludes the City Manager's Report.



Dan Boroff, City Manager



Morgantown Municipal Airport

100 Hart Field Road
Morgantown, West Virginia 26505
(304) 291-7461
www.morgantownairport.com

Calvin G. Kelly, III
Airport Director
C: (304) 290-7461
c.glen.kelly@wvdsi.net

January 29, 2010

Mr. Dan Boroff, City Manager
City of Morgantown
389 Spruce Street
Morgantown, WV 26505

IN TURN: City Council Members

Dear Mr. Boroff:

I am requesting emergency funding to alleviate the current problem with the drainage/sewage system. The drainage/sewage system problem in front of the Airport's Terminal this situation must be corrected to avoid further public health issues. MUB has an estimate of \$15,000 to correct the problem which has arisen. We have already spent \$8,134.86 to date to arrest the problem. To correct the problem they propose" installing +/- 100ft of 8" inch pipe, one manhole and any other necessary appurtenances." Your consideration and prompt approval are appreciated.

Respectfully,



Calvin G. Kelly, III
DIRECTOR,

A G R E E M E N T

THIS AGREEMENT is made this ____ day of _____, 2010, by and between the City of Morgantown, by and through the Morgantown Utility Board, a political subdivision of the State of West Virginia, hereinafter called the "Board," and the City of Morgantown, by and through the Morgantown Municipal Airport, a political subdivision of the State of West Virginia, hereinafter called "Applicant(s)." **THESE PARTIES AGREE THAT:**

WHEREAS, Applicant(s) desire(s) the extension of certain storm sewer pipelines of the Applicant as herein described; and,

WHEREAS, the Board is willing and able to perform the work necessary to extend the storm sewer; and,

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter contained, the Parties hereto do now hereby covenant and agree with each other as follows:

FIRST: The Board covenants and agrees to the construction of a storm sewer pipeline as described below:

Install +/- 100-feet of 8" PVC pipe, one manhole, and any other necessary appurtenances, all as shown on the attached "Exhibit A".

SECOND: If the Board shall be delayed or prevented from installing the storm sewer main (and other facilities, if any) described above for any cause, and if such failure or delay in performance shall extend for a period of more than one year from date hereof, Applicant(s) shall have the right to cancel and terminate this Agreement upon 30 days written notice to the Board. Thereafter, both parties shall be relieved from all duties and obligations arising hereunder. If such a withdrawal is made, Applicant(s) remain(s) responsible for the actual costs incurred by the Board prior to the withdrawal. This right to cancel and terminate by Applicant(s) may not be invoked if the Board has received the construction material and Applicant(s) has/have made the deposit or provided the purchase order hereinafter required, in which event Board shall have the obligation to prosecute the work to its completion.

THIRD: Applicant(s) is/are responsible for paying the full and actual cost of the work. The actual cost of the work may include any combination of project administration, mobilization and demobilization, materials, equipment, labor, overheads, engineering/inspection, applicable permits, fees, testing, borings, surveys, contracted services, special insurance, bonding and any/all other

miscellaneous or unforeseen costs related to the performance of the proposed work. Any cost incurred in the acquisition of rights-of-way for the proposed extension shall be included in the actual project cost. Right-of-way costs may include any combination of purchase price, appraisals, appraiser's fees, surveys, engineering, condemnation judgments, court costs, legal fees, and any/all other costs of right-of-way acquisition.

FOURTH: It is hereby stipulated and agreed as follows:

The total good faith estimated cost of the entire extension is **Fifteen Thousand and 00/100 Dollars (\$15,000.00)**.

The total estimated cost to the Applicant(s) is **Fifteen Thousand and 00/100 Dollars (\$15,000.00)**.

FIFTH: Prior to beginning work, the Applicant shall provide the Board an approved Purchase Order for the estimated cost of the project, against which the actual cost shall be billed.

SIXTH: The Board shall monitor the approximate cost of the proposed work as it progresses. Upon the ascertainment of the true actual cost, the Board shall, from time to time and upon completion of the work, provide the Applicant with an appropriate invoice (regardless of whether the actual cost is less than or more than the Purchase Order amount), which Applicant hereby agrees to pay within 30 days of the invoice date.

SEVENTH: The above-described extension shall become and remain the property of the Applicant.

EIGHTH: N/A

NINTH: N/A

TENTH: This Agreement shall be valid and binding on the Board only when executed by its Chairman or General Manager.

ELEVENTH: This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the respective parties.

TWELFTH: This Agreement is the full and final agreement between these Parties regarding the subject work. Any prior statements are invalid insofar as they may contradict the terms included herein. This Agreement may not be modified, except by a writing signed by both Parties. Any notice given hereunder shall be deemed sufficient if in writing and sent by U. S. Mail to the Morgantown

Utility Board at P.O. Box 852, Morgantown, WV 26507 and to Applicant at 100 Hartfield Road,
Morgantown, WV 26505.

MORGANTOWN MUNICIPAL AIRPORT
100 Hartfield Road
Morgantown, WV 26505

MORGANTOWN UTILITY BOARD
P.O. Box 852
Morgantown, WV 26507-0852

By: _____
Calvin G. Kelly III
Airport Director

By: _____
James L. Green
General Manager

BOARDS AND COMMISSIONS - TERMS EXPIRED AND CURRENT VACANCIES

***Council decided on 3-21-06 by unanimous consent that if there is only one candidate for Boards & Commissions, the City Clerk will check with Council before scheduling a Special Meeting.**

URBAN LANDSCAPE COMMISSION:-3 YEAR TERM:


Dale McGill 1st Ward appt resigned. Councilor Bane is looking for replacement. Jerry Stekedee will continue as 4th Ward representative and also going to see if he can serve as the Chamber Rep. Nominated by C/M, rest of City, each Wd, 13 members.

***POLICE & FIRE CIVIL SERVICE COMMISSIONS APPOINT NEW PRESIDENTS IN JANUARY. Information for Boards and Commissions vacancies are placed in the Dominion Post, are advertised on the City's Government Station Channel 15, are posted at the Library and also information is on the City's Web Page.**

1/20/10

Memo

City of Morgantown Public Works Department

To: Dan Boroff, City Manager
From: Terry Hough, Public Works Director 
Subject: Lakeland Avenue and Rollingwood Street
Date: January 15, 2010

In 1993 Lakeland Ave. and Rollingwood St. were opened by a developer in order to construct several single family homes in the Pheasant Hills Addition in Suncrest. Both streets are dedicated public rights-of-way per the Plan of Lots, Pheasant Hill approved by the Morgantown Planning Commission on July 8, 1965. However, they have not been officially accepted by the City of Morgantown for maintenance. Rollingwood Street is approximately 360 ft long at 40 ft. wide; Lakeland Avenue is approximately 1,256 ft long at 50 ft wide; and a final section of Lakeland Avenue is approximately 245 ft. long at 40 ft wide.

The attached petition is from the property owners on both roadways requesting that the City of Morgantown accept both of these public rights-of-way into the maintained street system. Also, attached is an exhibit showing the location of the rights-of-way. Prior to the acceptance of rights-of-way into the system, the roadway must be built per City of Morgantown's specifications. Both of these roadways are asphalt streets with concrete curbs. However, inspections were not conducted during portions of their installation, specifically the final asphalt overlay, due to the fact that the City was never notified of the proposed work. Consequently, there can be no verification as to whether or not portions of the street and curbs were built to City requirements without destructive testing.

A visual inspection was made of the street and curbs to determine if there were any outstanding visible issues that may need to be addressed. At the time, there was some snow on the roadways so a comprehensive inspection could not be performed. However, after speaking with the paving contractor and with the limited visual inspection, it appears that the roadway is sufficient to handle the residential traffic. No comments can be made with respect to any of the underground utilities.

If you have any questions or need any additional information regarding this issue, please do not hesitate to contact me.

December 31, 2009

City Manager's Office
389 Spruce Street
Morgantown, WV 26505

The undersigned property owners on Lakeland and Rollingwood request that the City of Morgantown accept and maintain Lakeland and Rollingwood.

Signature	Name	Street Address
1. Nancy H. Ferrari	Nancy H. Ferrari	561 Lakeland
2. Norman D. Ferrari III	Norman D. Ferrari III	561 Lakeland
3. Martin B. Gresak	Martin B. Gresak	562 Lakeland
4. Elizabeth A. Gresak	Elizabeth A. Gresak	562 Lakeland
5. John C. Cannon	JOHN C. CANNON	1452 Lakeland
6. Stephen E. Robinson	Stephen E. Robinson	1456 Lakeland
7. Hengang Yu	Hengang Yu	1458 Lakeland
8. Venkat K. Venkataraman	VENKAT K. VENKATARAMAN	1466 Lakeland
9. An Chen	An Chen	1474 Rollingwood
10. Naveel Weese Jr	Naveel Weese	1462 Lakeland Ave
11. Sharon Weese	Sharon Weese	1462 Lakeland Ave
12. Carolyn Goff	Car M. Goff	1470 Lakeland Ave
13. E. S. J. J. J.	E. S. J. J. J.	1478 - 11 -
14. T. S. W. A. R. T. Z.	T. S. W. A. R. T. Z.	1482 LAKELAND AVE.
15. Taekhee Lee	Taekhee Lee	568 Rollingwood St.
16. Rajesh Thaker	Rajesh Thaker	576 Rollingwood St.
17. Mahmood Ronaghi	MAHMOOD RONAGHI	1474 Lakeland Ave.
18. Chris Penn	Christy S. Penn	578 Rollingwood St.
19.		
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29.		

AN ORDINANCE ADOPTING LAKELAND AVENUE AND A 360 FOOT LENGTH OF ROLLINGWOOD STREET INTO THE CITY OF MORGANTOWN'S STREET SYSTEM FOR PURPOSES OF PUBLIC MAINTENANCE AND CONTROL, IN THE SEVENTH WARD OF THE CITY OF MORGANTOWN, MONONGALIA COUNTY, WEST VIRGINIA.

WHEREAS, it appears to the Common Council of the City of Morgantown, West Virginia, and the Council has made a legislative determination that the City should adopt both Lakeland Avenue and a 360 foot length of Rollingwood Street as shown on the exhibit hereto attached, and that both Lakeland Avenue and a 360 foot length of Rollingwood Street are needed and useful for street purposes, and that it is in the best interest of the City of Morgantown and of the public generally that both streets be adopted for public maintenance and control.

NOW, THEREFORE, the City of Morgantown hereby ordains for the reasons hereinbefore set forth that Lakeland Avenue and a 360 foot length of Rollingwood Street, as shown on the exhibit hereto attached and made a part of this ordinance, are adopted by the City of Morgantown as part of its street system for purposes of public maintenance and control.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

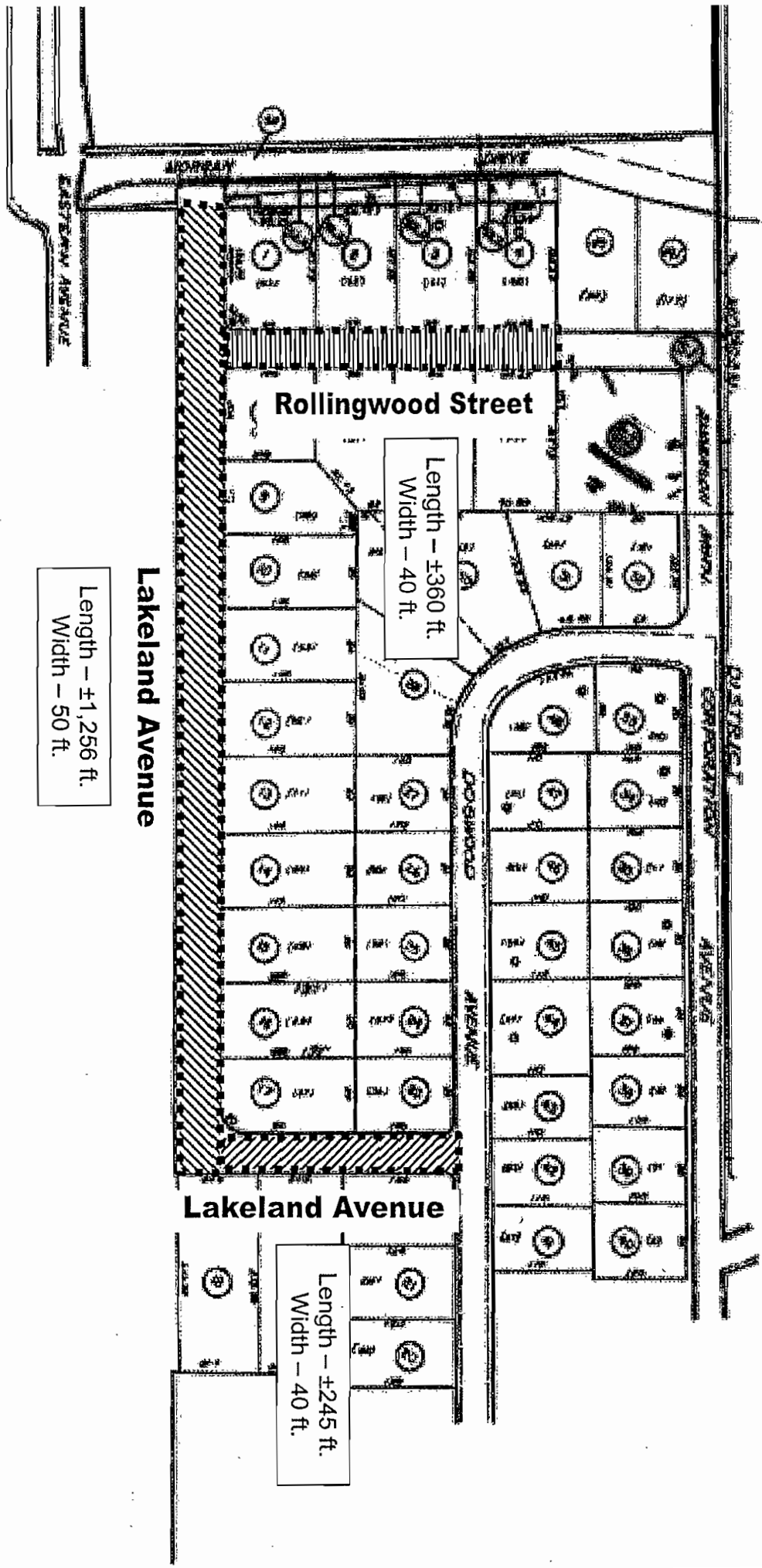
FILED:

CITY CLERK

RECORDED:



EXHIBIT
Lakeland Avenue / Rollingwood Street Acceptance
Morgantown City Council



AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF FOURTEEN PARCELS OF REALTY IN THE THIRD WARD OF THE CITY OF MORGANTOWN FROM (R-3) MULTI-FAMILY RESIDENTIAL DISTRICT TO (PUD) PLANNED UNIT DEVELOPMENT DISTRICT BY AMENDING ARTICLE 1331.02 OF THE PLANNING & 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.

Property included in this consideration is identified in the 2006 Monongalia County Assessor's tax assessment records as Parcels #23, 23.01, 24, 25, 26, 27, 28, 29, 29.1, 30, 31, 32, 33, and 34 of County Tax Map #19, Morgantown Corporation, District 1.

THE CITY OF MORGANTOWN HEREBY ORDAINS:

1. That the zoning classification for Parcels #23, 23.01, 24, 25, 26, 27, 28, 29, 29.1, 30, 31, 32, 33, and 34 of County Tax Map 19, Morgantown Corporation, District 1 of the 2006 tax assessment as described herein and illustrated on the exhibit hereto attached and declared to be a part of this Ordinance to be read herewith as if the same was fully set forth herein is hereby reclassified from (R-3) Multi-family Residential District to (PUD) Planned Unit Development District.
2. That development within said (PUD) Planned Unit Development District shall be consistent with the regulations set forth in Article 1357 "PUD, Planned Unit Development District" of the City of Morgantown's Planning and Zoning Code and the "Beech View Place Planned Unit Development Outline Plan," the later of which was reviewed by the City of Morgantown Planning Commission on January 14, 2010 and recommended for approval by City Council.
3. That the Official Zoning Map for the City of Morgantown be accordingly changed to show said zoning classification amendment.

This Ordinance shall be effective from date of adoption.

FIRST READING:

Mayor

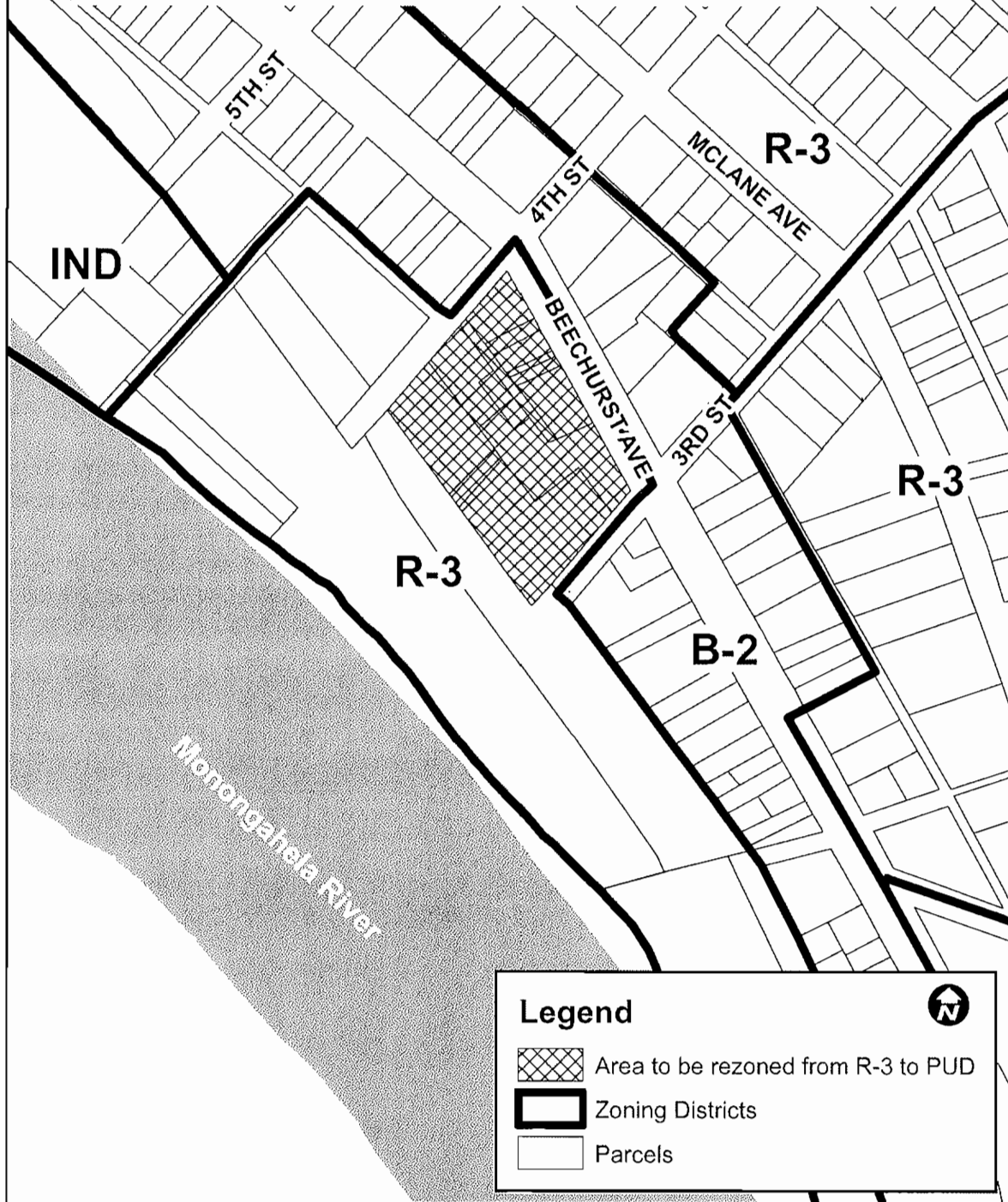
ADOPTED:

FILED:

RECORDED:

City Clerk

**ORDINANCE EXHIBIT:
RZ09-04 / from R-3 to PUD
"Beech View Place Planned Unit Development"**





MORGANTOWN PLANNING COMMISSION

January 14, 2010
6:30 PM
City Council Chambers

President:

Vice-President:

Planning Commissioners:

Sam Loretta, 1st Ward
Tim Stranko, 2nd Ward
Barbara Ferrell, 3rd Ward
VACANT, 4th Ward
Michael Shuman, 5th Ward
Peter DeMasters, 6th Ward
Carol Pyles, 7th Ward
Ken Martis, Admin.
Jennifer Selin, City Councilor

STAFF REPORT

CASE NO: RZ09-04 / Beech View Place / Beechurst Avenue

REQUEST and LOCATION:

Request by Thomas Janidas, on behalf of Beech View Place LLC, for a Planned Unit Development (PUD) zoning map amendment for property located on Beechurst Avenue between 3rd and 4th Streets

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map #19 Parcels #23, 23.01, 24, 25, 26, 27, 28, 29, 29.1, 30, 31, 32, 33, 34; an R-3, Multi-Family Residential and Sunnyside and Beechurst Corridor Overlay Districts.

SURROUNDING ZONING:

North: B-2, Service Business and R-3, Multi-Family Residential District
South and West: R-3, Multi-Family Residential District
East: B-2, Service Business District

BACKGROUND and ANALYSIS:

Some commentary about the Planned Unit Development (PUD) process is in order... The PUD process consists of three procedural steps. Step 1 is preliminary consultations with Staff.

Step 2 is the *Outline Plan Phase*, which is the issue before the Planning Commission now. During this step, the developer sets forth the "vision" or master plan for how the project will evolve. A significant amount of planning is necessary during this phase to establish the overall character of the development, how it interfaces with its spatial context, the types of and intensities of land uses, the amenities being offered, how the project will affect transportation and pedestrian patterns in the area, and some general rules for how the buildings will look and how they will be arranged.

Equally important is what is NOT required during this phase. Such things as detailed engineering studies of storm water control, utility services, detailed engineering drawings of road improvements, detailed site and building plans, etc. are NOT required at this stage of the process. It is simply unreasonable to expect that the developer commit significant resources to dotting every "i" and crossing every "t" at this point, on the *hope* that City Council reclassifies the property to allow the development to proceed. During the Outline Plan phase, Council simply decides whether or not to accept the "vision" presented, based on the reasonable levels of supporting data required. If the answer is yes, then Council merely amends the zoning map, in this case from R-3 to PUD, in order for the detailed analysis to go forward.

Planning Department

Christopher Fletcher, AICP
Planning Director
389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN PLANNING COMMISSION

January 14, 2010
6:30 PM
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The attached "Beech View Place" PUD Outline Plan for the proposed zoning map amendment represents the land uses, development standards, and other applicable specifications of the Planning & Zoning Code that will govern the proposed PUD. If the Outline Plan is silent on a particular land use, development standard, or other specification of the Planning & Zoning Code, then the standard of the underlying district or applicable regulations will apply.

Step 3 is the *Development Plan Phase*. During this phase, the developer has the confidence to go forward with a detailed analysis of the project, knowing that the zoning reclassification is in place. At this point, construction plans are produced, drainage calculations are provided, detailed engineering analyses of infrastructure improvements are completed, final site and building plans are prepared, etc. Staff will compare the Development Plan components to be sure they conform to the parameters of the Outline Plan in terms of densities, architectural styles, land uses, open space, etc. If the Development Plan substantially complies with the Outline Plan, then building permits may be issued at the end of the review. If, however, the plans are substantially *different* from what was proposed in the Outline Plan, then the developer will be required to seek an amendment to the approved Outline Plan - a process that is fully vetted by the Planning Commission and provides the usual opportunities for public participation. If the Outline Plan ultimately does not work and cannot be satisfactorily amended, then the City will simply initiate a zoning map amendment to return the property back to its original classification (R-3). The zoning ordinance also gives the Planning Commission the discretion to review or not review the PUD Development Plan for the proposed project.

The "Beech View Place" PUD Outline Plan highlights include:

- The significant redevelopment of an entire block on Beechurst Avenue between Third and Fourth Streets and WVU's PRT system with an area of 1.6 acres.
- One building will be constructed that includes six stories above the grade of Beechurst Avenue; two levels of parking below said grade, and an interior courtyard. The total building gross area is approximately 404,126 sq. ft. The development will have a Floor Area Ratio (FAR) of approximately 5.8. Project delivery is projected for Fall 2011.
- Residential – 233 units (420 beds) in a combination of studio, one-bedroom, two-bedroom, and three-bedroom apartments. Occupancy will be based on West Virginia Building Code standards. Building and dwelling unit design will exceed minimum federal Fair Housing, federal Americans with Disabilities (ADA), American National Standards Institute (ANSI), and West Virginia Building Code accessibility standards.
- Retail – Approximately 15,000 sq. ft. of retail will be provided along Beechurst Avenue. Proposed commercial uses and occupancies can be found on Page 9 of 19 of the Outline Plan.

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- Parking – 350 spaces will be provided on two parking levels. The lowest level will be accessed from Fourth Street while the second level will be accessed from Third Street. Approximately 75 of these spaces will be reserved for public use to primarily serve the commercial establishment. The proposed parking exceeds Planning & Zoning Code minimum parking requirements.
- Open Space – An open internal courtyard will be developed above the second parking level and at grade with Beechurst Avenue that will provide for landscaping, hardscaping, air, and light. The courtyard will be visible from Beechurst Avenue through two open breezeways. Overall permanent open space comprises approximately 37% of the lot area, which exceeds PUD requirements.
- Exterior Amenities – All building cladding will be masonry brick and limestone. Siding, cement fiberboard, and EIFS will not be included to provide a more durable and sustainable exterior. The elevation of the units at the back of the building has been planned so that privacy will be maintained from the PRT system.
- Public Amenities – The developer is working with the Morgantown Police Department to study the feasibility of incorporating space for a police substation within the building. The petitioner has agreed to develop a trailhead for the Caperton Trail, similar to the facility that exists in the Wharf District. The developer has planned an 18-20 foot setback from the Beechurst Avenue right-of-way to accommodate potential widening and related improvements. This additional setback will also allow the development of a decorative knee-wall that will create sidewalk level outdoor space for eating and lounging and buffer same from Beechurst Avenue. Street trees and decorative lighting will be developed to complement the City's investments on the opposite site of Beechurst. The developer is working with above-ground utility providers to study the feasibility and cost sharing opportunities to relocate lines underground.
- Green Design – Although the developer does not plan to pursue certification under the U.S. Green Building Council's LEED Certification Program, the Outline Plan identifies several sustainable design, development, and construction measures that will be incorporated to promote health of the environment and building occupants. Additionally, the developer will be working with WVU to dedicate three parking spaces for their "WE Car" car sharing program.
- Waste Management – Trash chutes will be provided for commercial and residential units and dumpster facilities will be located within the building. Although Morgantown does not currently have a municipal commercial recycling program, the developer is planning for an on-site recycling collection for commercial and residential tenants. The project team is working with the City and Republic Services to plan these facilities and services.

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- **Traffic Impact** – A Traffic Impact Study has been submitted to the City Engineer and the West Virginia Division of Highways. Although WVDOH has not yet responded, the City Engineer concurs with the report's scope, findings, and conclusions. As stated in the report's Executive Summary,

“The developer will design a pedestrian crossing using pavement markings and signing to improve the safety of pedestrian crossing across Beechurst Avenue at 3rd Street. There are currently no crosswalks across Beechurst at either 3rd or 4th Streets, and existing pedestrian crossing activity is light.”

The developer, City, and Mountain Line Transit evaluated the feasibility of providing a pull-off along Beechurst for transit buses and delivery vehicles. Although sufficient area is available, safety concerns resulting from poor visibility of southbound approaching traffic along Beechurst Avenue and the anticipated difficulty of buses merging back into traffic outweighed benefits. Sufficient area appears to be available for deliveries along Third and Fourth Streets and within the parking levels served by elevators. The developer has agreed to work with Mountain Line Transit to establish a fixed bus stop facility near the Third Street intersection.

Addendum A of this report contains the Planning Department's preliminary Planning & Zoning Code consistency report dated September 14, 2009. Although the proposed development program has been amended to incorporate Staff recommendations, the scale, scope, and fundamental design principals have been maintained.

STAFF RECOMMENDATION:

The Planning Department has worked closely with the petitioner's design professionals to prepare a development program and Outline Plan that highlight the project's observance of the PUD opportunities and objectives. In so doing, the proposed Beech View Place Outline Plan appears to adequately address the PUD general provisions provided in Article 1357.01 of the Planning & Zoning Code (see Section 2, "Statement of Character" of the Outline Plan).

Based on the content of the subject Outline Plan, Staff advises the Planning Commission to submit an affirmative recommendation to City Council to approve the "Beech View Place" PUD and the zoning reclassification of the subject realty from R-3 to PUD with the following considerations:

1. That the "Beech View Place" PUD Outline Plan document be supplemented by this Staff Report and related addenda as the convention to be used in evaluating the petitioner's Development Plan.
2. That review and approval of the project's Development Plan be waived by the Planning Commission and conducted at the staff level. However, should the Development Plan substantially differ from the approved Outline Plan, then the applicant must submit Outline Plan Amendment to the Planning Commission for approval.

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3. The applicant must obtain minor subdivision approval to combine all parcels within the subject development area.
4. That a trailhead entrance to the Caperton Trail at either Third Street or Fourth Street be developed to the satisfaction of the Planning Director and the City Engineer prior to occupancy.
5. That the petitioner, with technical assistance of Mountain Line Transit, develop a fixed transit stop shelter facility along the project's side of Beechurst Avenue between Third and Fourth Streets prior to occupancy.
6. That street trees and decorative lighting be developed to the satisfaction of the Planning Director and the City Engineer, which complements the City's previous streetscape improvements and current plans within the corridor.

Enclosure(s): Application and Outline Plan

Planning Department

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AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF APPROXIMATELY 16,500 SQUARE FEET OF REAL ESTATE IN THE FOURTH WARD OF THE CITY OF MORGANTOWN FROM (R-1) SINGLE-FAMILY RESIDENTIAL DISTRICT TO (PRO) PROFESSIONAL, RESIDENTIAL, AND OFFICE DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING & 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.

Property included in this consideration is identified as an approximate 16,500 square foot portion of former Parcel #37 of County Tax Map #55, Morgantown Corporation District, of the 2006 Monongalia County Assessor's records.

THE CITY OF MORGANTOWN HEREBY ORDAINS:

1. That the zoning classification for approximately 16,500 square feet of former Parcel #37 of County Tax Map #55 of the 2006 tax assessment as described herein and illustrated on the exhibit hereto attached and declared to be a part of this Ordinance to be read herewith as if the same was fully set forth herein is reclassified from (R-1) Single-Family Residential District to (PRO) Professional, Residential, and Office District.
2. That the Official Zoning Map be accordingly changed to show said zoning classification.

This Ordinance shall be effective from date of adoption.

FIRST READING:

Mayor

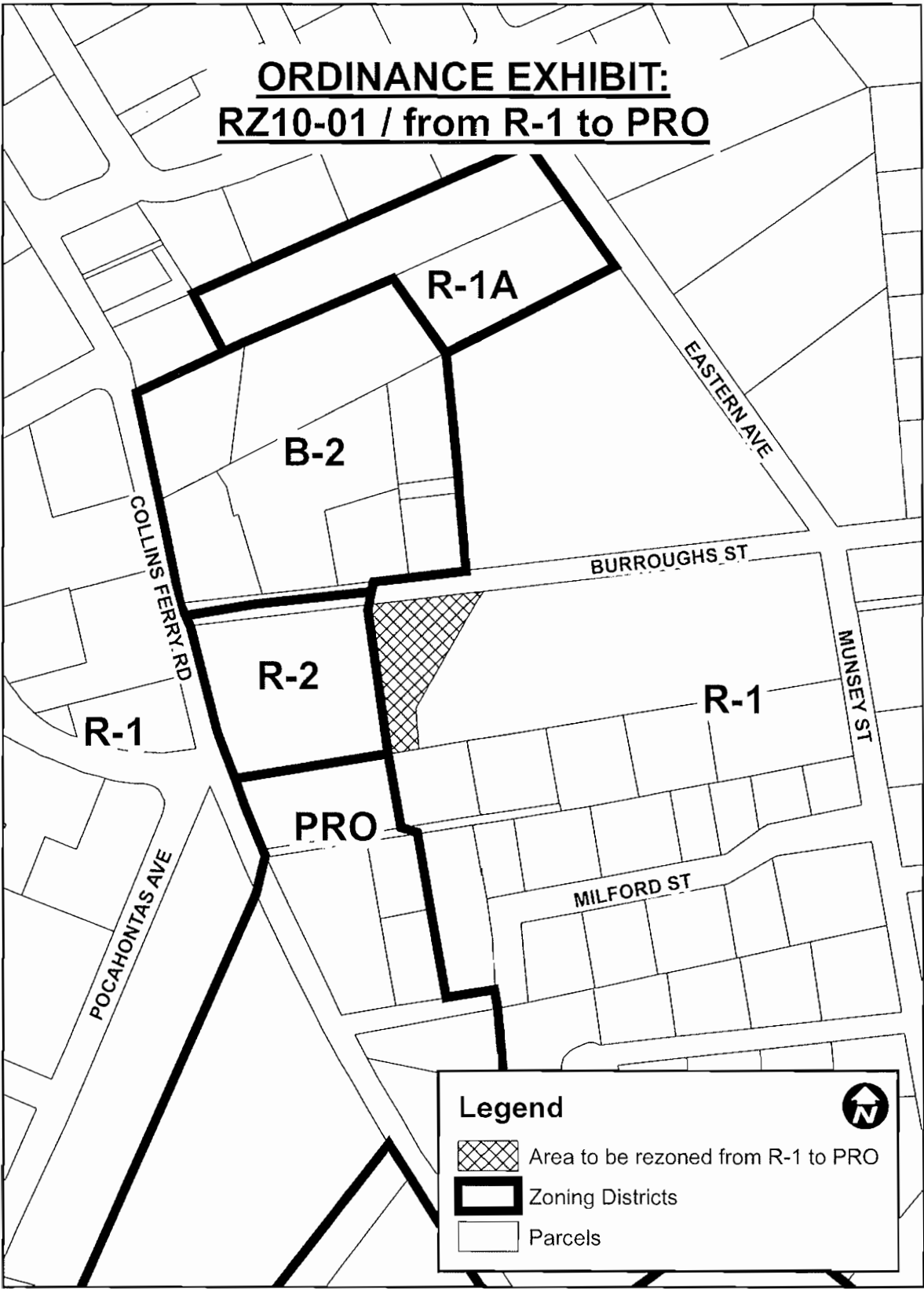
ADOPTED:

FILED:

RECORDED:

City Clerk

ORDINANCE EXHIBIT:
RZ10-01 / from R-1 to PRO





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Jennifer Selin, City Councilor

STAFF REPORT

CASE NO: RZ10-01 / Vintner Reserve, LLC / Burroughs Street

REQUEST and LOCATION:

Request by Vintner Reserve, LLC for a zoning map amendment to reclassify realty on Burroughs Street from R-1, Single-Family Residential to PRO, Professional, Residential, and Office District.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map #55, part of former Parcel #37; R-1, Single-Family Residential District

SURROUNDING ZONING:

North: B-2, Service Business District
South & East: R-1, Single-Family Residential
West: R-2, Single and Two-family Residential District and PRO, Professional, Residential, and Office District

BACKGROUND:

The petitioner seeks to reclassify a portion of former Parcel #37 of Tax Map #55 from R-1, Single-Family Residential to PRO, Professional, Residential, and Office. The area for which the zoning map amendment has been requested is the remnant portion of the "Vintner Reserve" major subdivision approved by the Planning Commission in April 2008. The area was reserved for later development due to its topographical isolation from the "Vintner Reserve" subdivision.

Addendum A of this report illustrates the location of the subject realty and surrounding zoning.

ANALYSIS:

Because the subject area adjoins a PRO District at the site's southwest corner, the proposed zoning map amendment is considered a zoning district boundary adjustment.

According to Article 1341.01 of the Planning & Zoning Code, the purpose of the PRO District is to:

"...provide for a mixed use of professional, office and appropriate residential uses in transition areas between more intensive commercial districts and less intensive residential neighborhood districts."

Additionally, Article 1341.05 (C) provides that the total maximum gross floor area of any building in the PRO District may not exceed 4,000 sq. ft.

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As shown in Addendum B of this report, Map LU-2 of the 1999 Comprehensive Plan illustrates that the planned use for the subject realty is "Public/Institutional." This planned use is most likely attributed to the previous church use that occupied the larger tract for many years.

The adjacent "Unity House" development that fronts Collins Ferry Road is on a parcel that was subdivided from the larger church tract in 1997. This area is also shown in Map LU-2 as "Public/Institutional". Staff speculates that the process of inventorying existing land uses, which is an ordinary task in developing a Comprehensive Plan, most likely occurred around the time of this subdivision and did not account for the land use change.

Map LU-2 also shows that commercial uses were planned to the north of the subject area across Burroughs Street, which is a redeveloped commercial area, and to the south for parcels fronting Collins Ferry Road. The land uses and development within said areas appear to be consistent with Map LU-2.

West Virginia State Code §8A-7-8 provides that if a zoning amendment is inconsistent with the adopted comprehensive plan, then City Council, with the advice of the Planning Commission, must find that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the comprehensive plan was adopted and that those changes have substantially altered the basic characteristics of the area.

The following points are noted economic and physical changes that have significantly influenced the character of the immediate area since the adoption of the 1999 Comprehensive Plan.

- The adjacent "Unity House" multi-family development was not reflected in the 1999 Comprehensive Plan.
- The church structure has been razed and the majority of said tract, with the exception of the small area for which the zoning map amendment is sought, has been redeveloped into a single-family residential subdivision.
- The development intensity directly across Burroughs Street from the subject zoning map amendment area has significantly increased from the commercial uses existing at the time of Comprehensive Plan adoption.
- Although the subject area's landscape characteristic of topographic isolation from properties to the east, south, and west remains the same, the subject area has become more isolated due to changes in the adjacent built environment in terms of density and intensity.
- Although no comparative traffic count data is readily available, the installation of a three-way stop by the West Virginia Division of Highways at the intersection of Burroughs Street and Collins Ferry Road in recent years, which is approximately 240 feet from the subject zoning map amendment area, indicates that traffic volumes have increased along Burroughs Street.

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The highest, best, and most functional use of the subject zoning map amendment area no longer appear to be consistent with desired development patterns and land uses permitted in the R-1 District. The following points attempt to demonstrate that the requested PRO District classification for same may be more appropriate:

- Market and quality of life prospects for the development of a permitted R-1 District single-family dwelling on the subject site have been diminished due to:
 - The lack of privacy or buffer/screening opportunities from the "Unity House" multi-family development and its rear parking lot, which overlooks the subject site as a result of landscape and building height elevations.
 - The alignment of one of the access drives from Burroughs Street to the mixed-use development across from the subject site would result in headlights shining into a single-family dwelling.
 - The bowl-shape created by the site's landscape and development to the east and west along with its opening at Burroughs Street may increase or amplify traffic noise and vibration for a single-family dwelling.
- Measures needed to control runoff from slopes down to the base of the site may exceed realistic development costs for a single-family dwelling.
- A large portion of the site has steep slopes leaving limited area for development. As such, development would most likely be significantly less than the maximum 4,000 sq. ft. standard in the proposed PRO District.

STAFF RECOMMENDATION:

Zoning map amendment requests should be evaluated on their land-use merits alone. The applicant's development intentions are extraneous and the Commission should consider the request on its merits as a land-use decision. In conducting such an analysis, the Commission should determine if PRO is the appropriate zoning classification for the subject realty, weighing all possible future development and land use scenarios as permitted by the Planning & Zoning Code (please refer to Table 1331.05.01 "Permitted Land Uses").

The Planning Department advises the Commission to determine that there have been major economic, physical, and social changes to the degree of substantially altering the basic characteristics of the subject area to the extent that a zoning reclassification is justified based on the analysis presented herein.

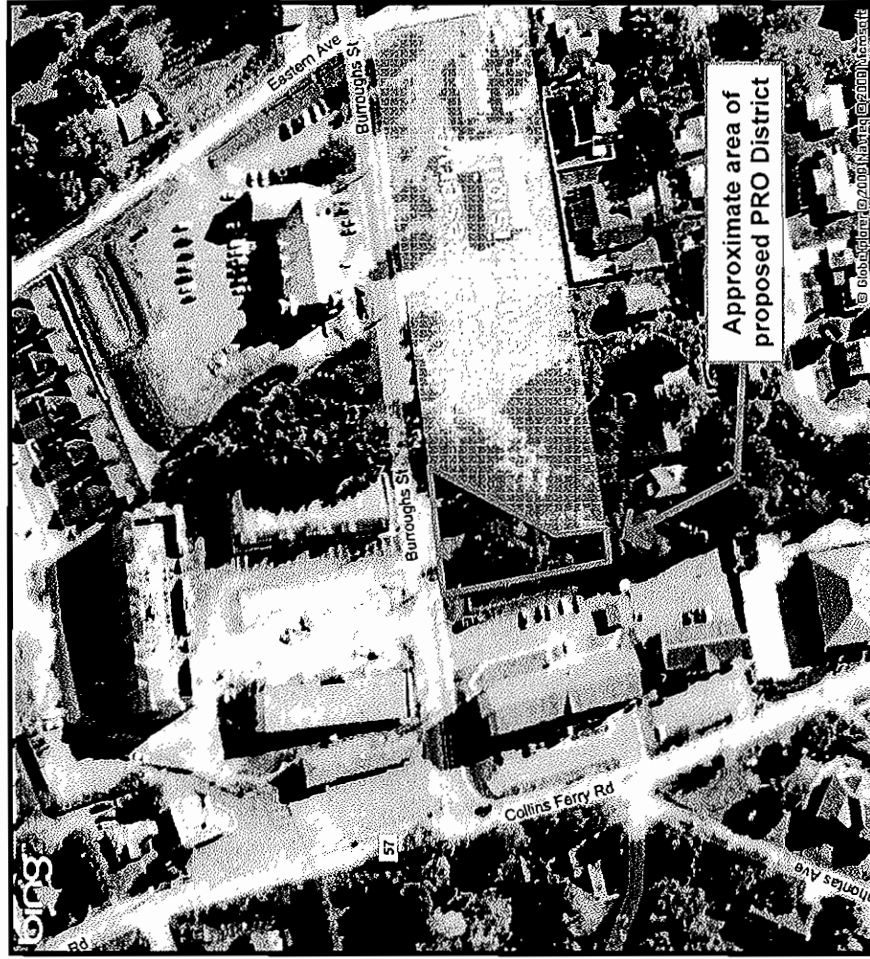
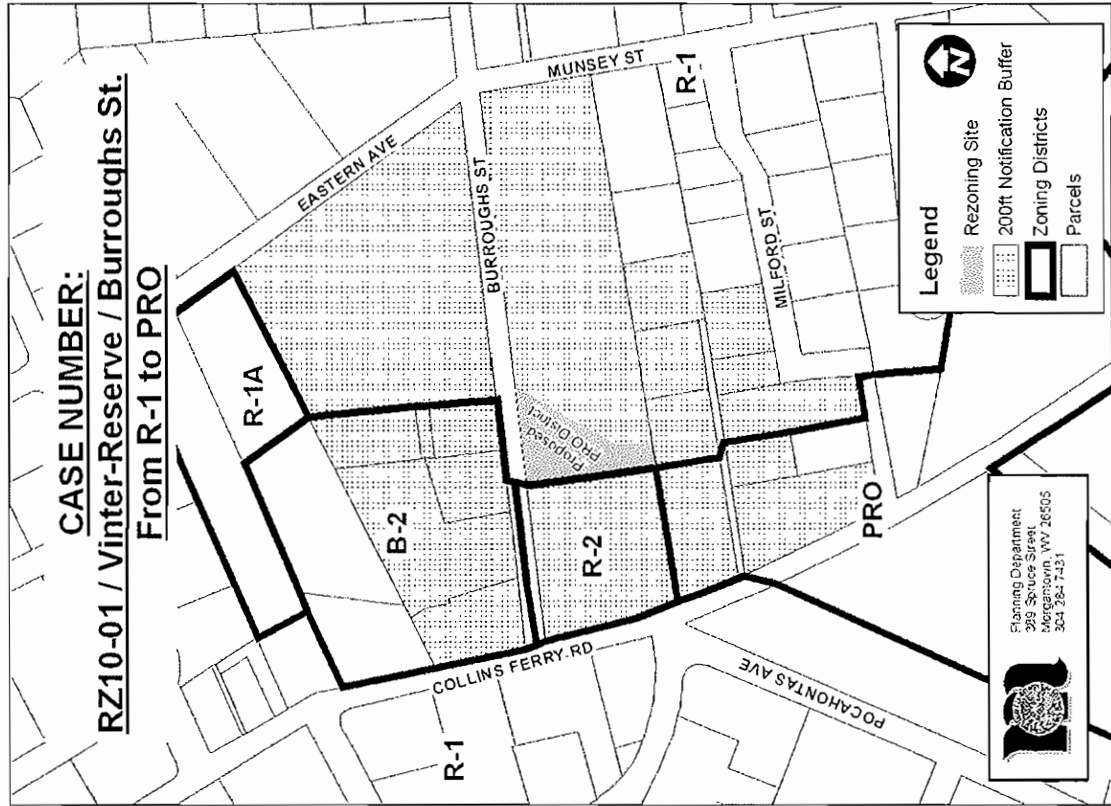
Further, Staff advises the Commission to forward a recommendation to City Council to approve a zoning map amendment extending the adjacent PRO District boundary to include part of former Parcel #37 of Tax Map #55 from R-1 to PRO as illustrated in Addendum A of this report.

Planning Department

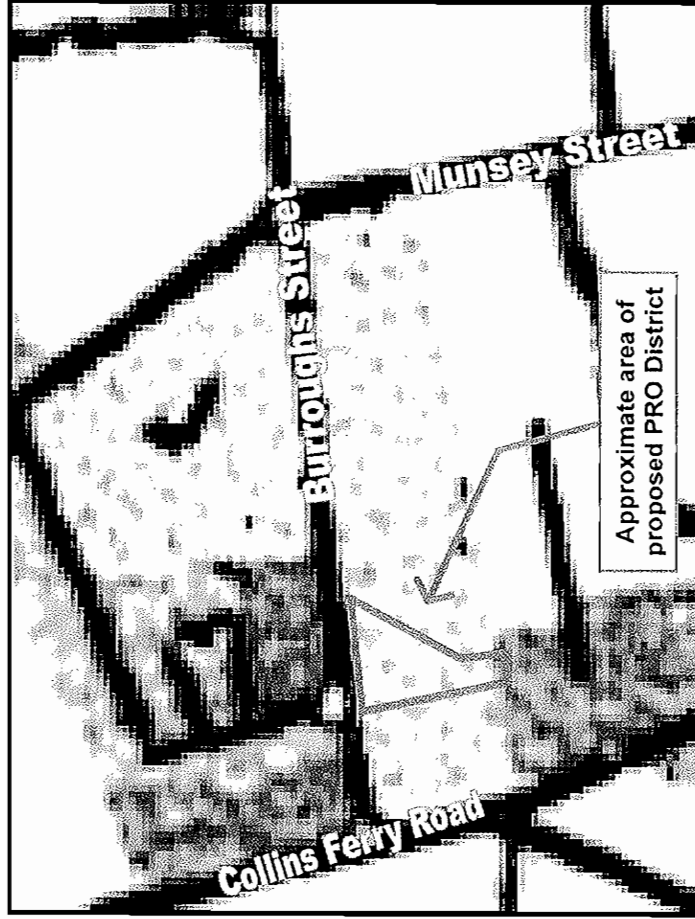
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STAFF REPORT ADDENDUM A

RZ10-01 / Vintner Reserve, LLC / Burroughs Street



STAFF REPORT ADDENDUM B
RZ10-01 / Vintner Reserve, LLC / Burroughs Street



MAP LU-2 Comprehensive Plan Morgantown, West Virginia

PREPARED BY: LDR International, Inc. Planning and Urban Design

January 1999

- Legend:**
- | | | | |
|--|--|--|--|
| | Existing | | Proposed |
| | Single-Family Residential | | Single-Family Residential |
| | Multi-Family Residential, Mobile Home Park | | Multi-Family Residential, Mobile Home Park |
| | Mixed Residential/Commercial | | Mixed Residential/Commercial |
| | Commercial | | Commercial |
| | Public / Institutional | | Public / Institutional |
| | Agricultural/Forest | | Agricultural/Forest |
| | Parks and Recreation | | Parks and Recreation |
| | Historic District | | Historic District |
| | Trail System | | Trail System |
| | Rivers, Streams, Waterways | | Rivers, Streams, Waterways |
| | Environmental Protection Corridors | | Environmental Protection Corridors |
| | Entrance Gateways | | Entrance Gateways |
| | Economic Development Opportunities | | Economic Development Opportunities |
| | Riverfront Redevelopment Area | | Riverfront Redevelopment Area |
| | Steep Slope Protection Areas | | Steep Slope Protection Areas |
| | Planned Major Road Improvements | | Planned Major Road Improvements |
| | Corridor Overlay District | | Corridor Overlay District |
| | City Boundary | | City Boundary |

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF A PARCEL OF REAL ESTATE IN THE FOURTH WARD OF THE CITY OF MORGANTOWN FROM (IND) INDUSTRIAL DISTRICT TO (R-1) SINGLE-FAMILY RESIDENTIAL DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING & 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.

Property included in this consideration is identified in the 2006 Monongalia County Assessor's records as Parcel #1 of County Tax Map #16; Morgantown Corporation District.

THE CITY OF MORGANTOWN HEREBY ORDAINS:

1. That the zoning classification for Parcel #1 of County Tax Map #16 of the 2006 tax assessment as described herein and illustrated on the exhibit hereto attached and declared to be a part of this Ordinance to be read herewith as if the same was fully set forth herein is reclassified from (IND) Industrial District to (R-1) Single-Family Residential District.
2. That the Official Zoning Map be accordingly changed to show said zoning classification.

This Ordinance shall be effective from date of adoption.

FIRST READING:

Mayor

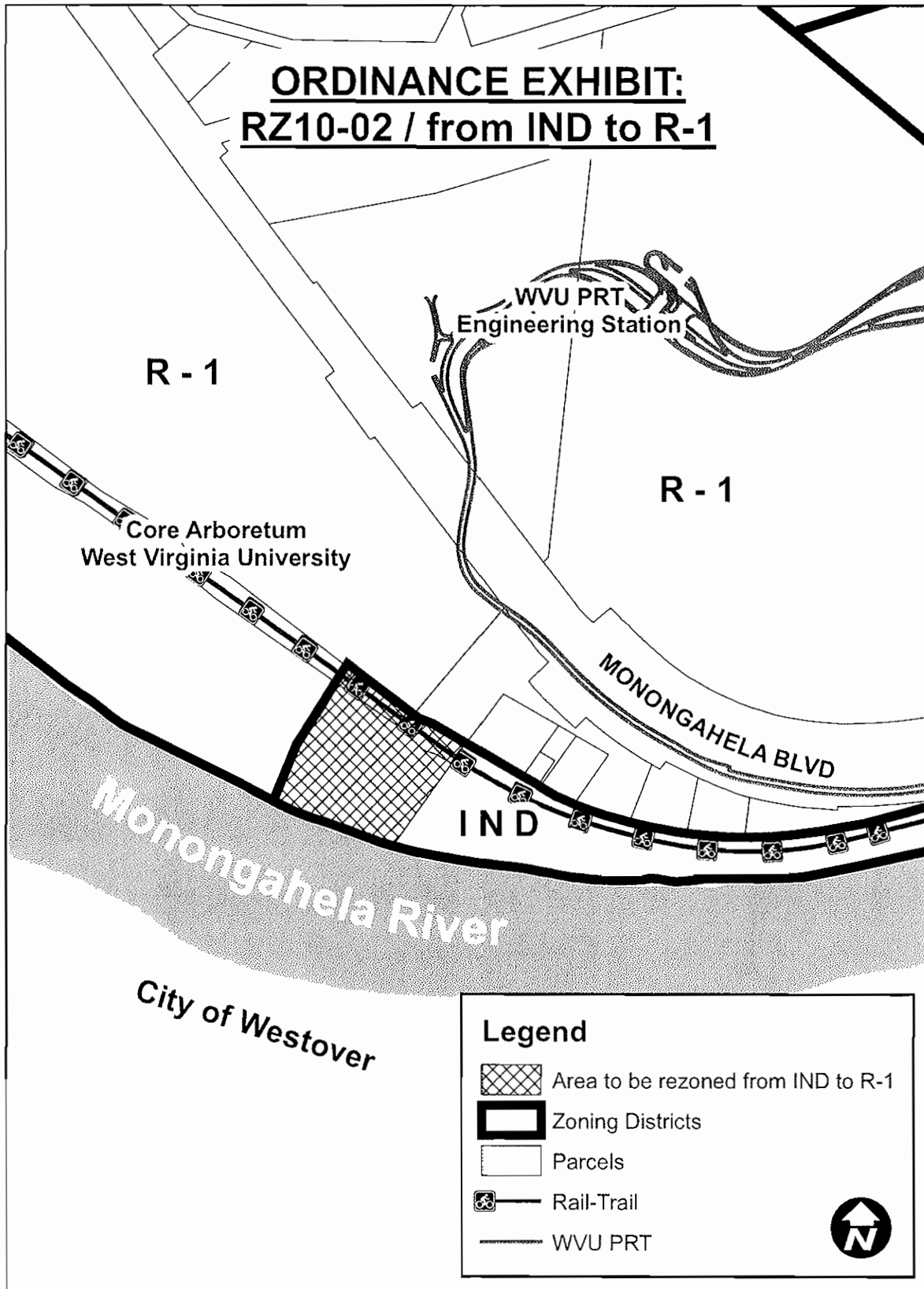
ADOPTED:

FILED:

RECORDED:

City Clerk

ORDINANCE EXHIBIT:
RZ10-02 / from IND to R-1





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Jennifer Selin, City Councilor

STAFF REPORT

CASE NO: RZ10-02 / Becilla / Tax Map #16, Parcel #1

REQUEST and LOCATION:

Request by Paul Becilla for a zoning map amendment to reclassify Parcel #1 of Tax Map #16 from IND, Industrial District to R-1, Single-family Residential District; subject realty is adjacent to the Monongahela River and WVU's Earl L. Core Arboretum

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map #16, Parcel #1; IND, Industrial District

SURROUNDING ZONING:

North & West: R-1, Single-family Residential District
East: IND, Industrial District
South: *Monongahela River*

BACKGROUND and ANALYSIS:

The petitioner has acquired the subject realty, which is approximately 4.57 acres, for the purpose of developing one (1) single-family dwelling. The subject realty abuts WVU's Earl L. Core Arboretum and the City's Rail-Trail system. The property is accessed from Sixth Street, across property owned by Greer Steel Company, and then along a dirt/gravel road across the City's Rail-Trail property. Addendum A of this report illustrates the location of the subject realty.

Table 1331.05.01 "Permitted Land Uses" of the Planning & Zoning Code does not permit the development of single-family dwellings, either by-right or by conditional use approval, in the Industrial District. Further, Article 1381.03 (K) provides that:

"Variances from the use of a parcel or a building...shall not be permitted under any circumstances."

As such, the petitioner seeks zoning map amendment approval to reclassifying the subject property from IND, Industrial District to R-1, Single-Family Residential District.

The Industrial zoning classification of the subject site and southerly along the riverfront is attributed to the once heavily industrialized uses of this area that included glass-related production, heavy rail, and river barge loading docks. With the exception of Morgantown Energy Associates' coal-fired cogeneration plant and Greer Limestone Company's river barge loading facility, much of the industrial development has since been vacated and/or redeveloped.

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Because the site is located along the Monongahela River and within close proximity to the Monongahela Boulevard / Beechurst Avenue corridor, there have been commercial and mixed-use development contemplations along this section of the River over the years. However, Staff speculates that market constraints attributed to the site's seclusion; the lack of public right-of-way from the property to said corridor; the location of MUB's sanitary sewer mainline, which includes sections above ground; steep slopes between the trail and Monongahela Boulevard; and, floodplain constraints appear to have made previous economic development conceptions unattainable.

The petitioner's request represents a significant "down zoning" from permitted industrial-type development to permitted single-family residential development. Industrial-type development on the petitioner's 4.5 acre site could adversely impact the Arboretum and Rail-Trail system, both of which provide passive open space and active recreational amenities that serve the region.

Map LU-2 of the 1999 Comprehensive Plan illustrates that the planned use for the subject realty was "Parks and Recreation" (see Addendum B of this report). This planned use designation appears to have been consistently given to tracts where City-owned parks are located.

There are two additional parcels that are privately-owned within the immediate area (see Addendum A). Map LU-2 appears to illustrate one of said parcels as "Single-family Residential." The other parcel was illustrated as "Public/Institutional", a designation which appears to have been consistently given to tracts owned by WVU as well as the Morgantown Municipal Airport property. In addition, there appears to be a portion of the Arboretum that was illustrated as "Mixed Residential/Commercial" even though WVU has owned this property since 1948.

The Planning Department has no working knowledge as to why the subject site, even though privately-owned, was planned for public recreation use nor is Staff aware of why the other noted inconsistencies were included in the 1999 Comprehensive Plan. It may simply have been an oversight or a cartography error in preparing Map LU-2.

West Virginia State Code §8A-7-8 provides that if a zoning amendment is inconsistent with the adopted comprehensive plan, then City Council, with the advice of the Planning Commission, must find that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the comprehensive plan was adopted and that those changes have substantially altered the basic characteristics of the area.

It is the opinion of the Planning Department that approving the petitioner's request does not necessitate an inconsistency justification as provided in State Code but rather recognition that the 1999 Comprehensive Plan's Map LU-2 did not accurately reflect ownership of the subject realty.

Planning Department

Christopher Fletcher, AICP
Planning Director
389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN PLANNING COMMISSION

January 14, 2010
6:30 PM
City Council Chambers

President:

Vice-President:

Planning Commissioners:

Sam Loretta, 1st Ward
Tim Stranko, 2nd Ward
Barbara Ferrell, 3rd Ward
VACANT, 4th Ward
Mike Shuman, 5th Ward
Peter DeMasters, 6th Ward
Carol Pyles, 7th Ward
Ken Martis, Admin.
Jennifer Selin, City Councilor

STAFF RECOMMENDATION:

Zoning map amendment requests should be evaluated on their land-use merits alone. The applicant's development intentions are extraneous and the Commission should consider the request on its merits as a land-use decision. In conducting such an analysis, the Commission should determine if R-1, Single-Family Residential District is the appropriate zoning classification for the subject realty, weighing all possible future development and land use scenarios as permitted by the Planning & Zoning Code (please refer to Table 1331.05.01 "Permitted Land Uses" of the Planning & Zoning Code).

The Planning Department advises the Commission to determine that:

- The planned use for the subject parcel was inaccurately illustrated in Map LU-2 of the 1999 Comprehensive Plan because:
 - The planned use of "Parks and Recreation", as provided in Map LU-2, appears to have been intended and reserved for City-owned public parks and recreation areas and facilities.
 - Parcel #1 of Tax Map #16 is not owned by the City of Morgantown or other governmental entity for the purpose of providing public open space or recreation but rather privately-owned.
- The current IND, Industrial District classification is inconsistent with Map LU-2 and does not represent highest and best uses for the subject realty as industrial-type development may adversely impact adjoining public recreational uses and facilities that serve the greater Morgantown region.

Staff advises the Commission to forward a recommendation to City Council to approve the requested zoning map amendment so that Parcel #1 of Tax Map #16 is reclassified from IND, Industrial District to R-1, Single-family Residential District.

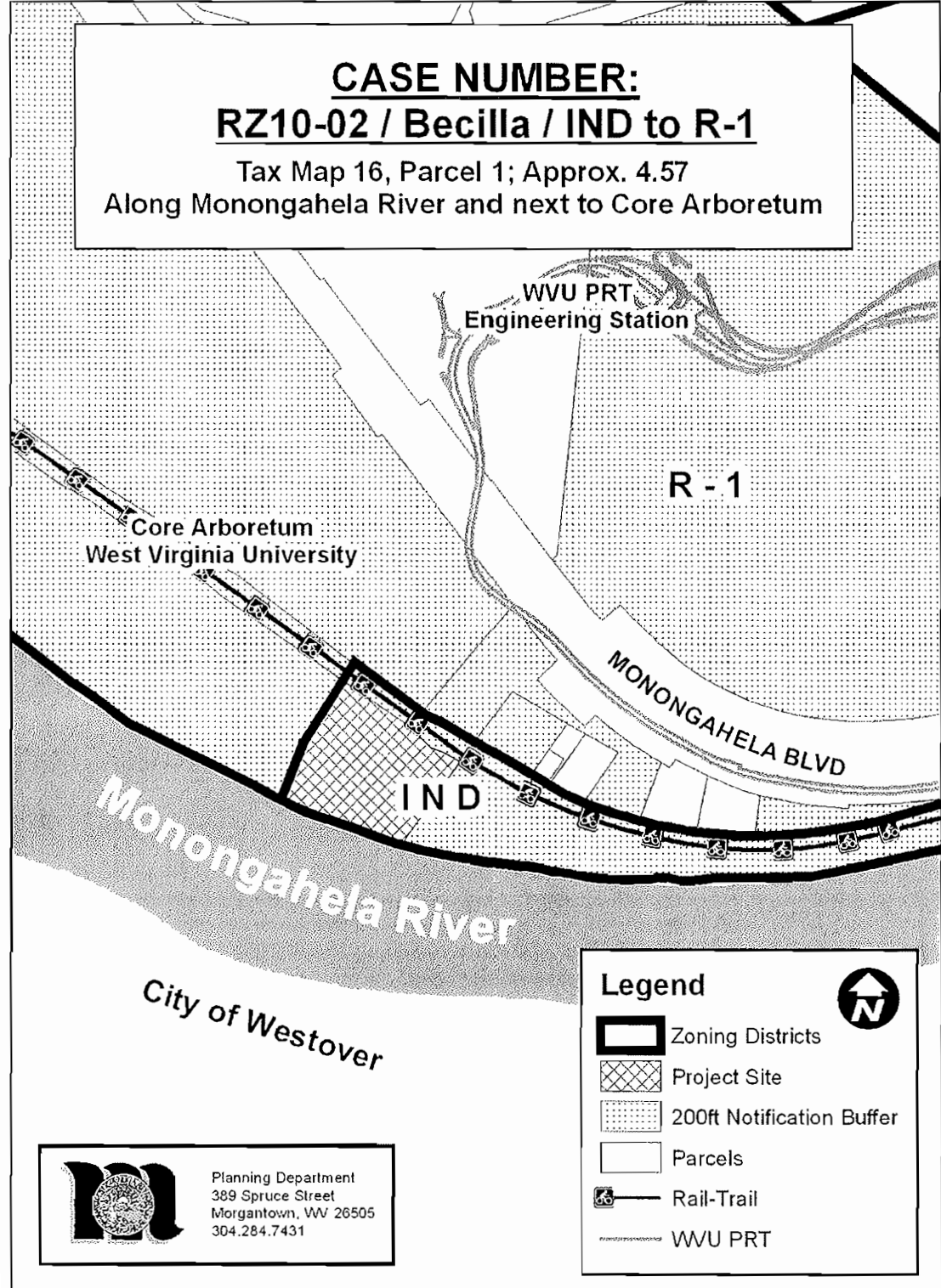
Planning Department

Christopher Fletcher, AICP
Planning Director
389 Spruce Street
Morgantown, WV 26505
304.284.7431

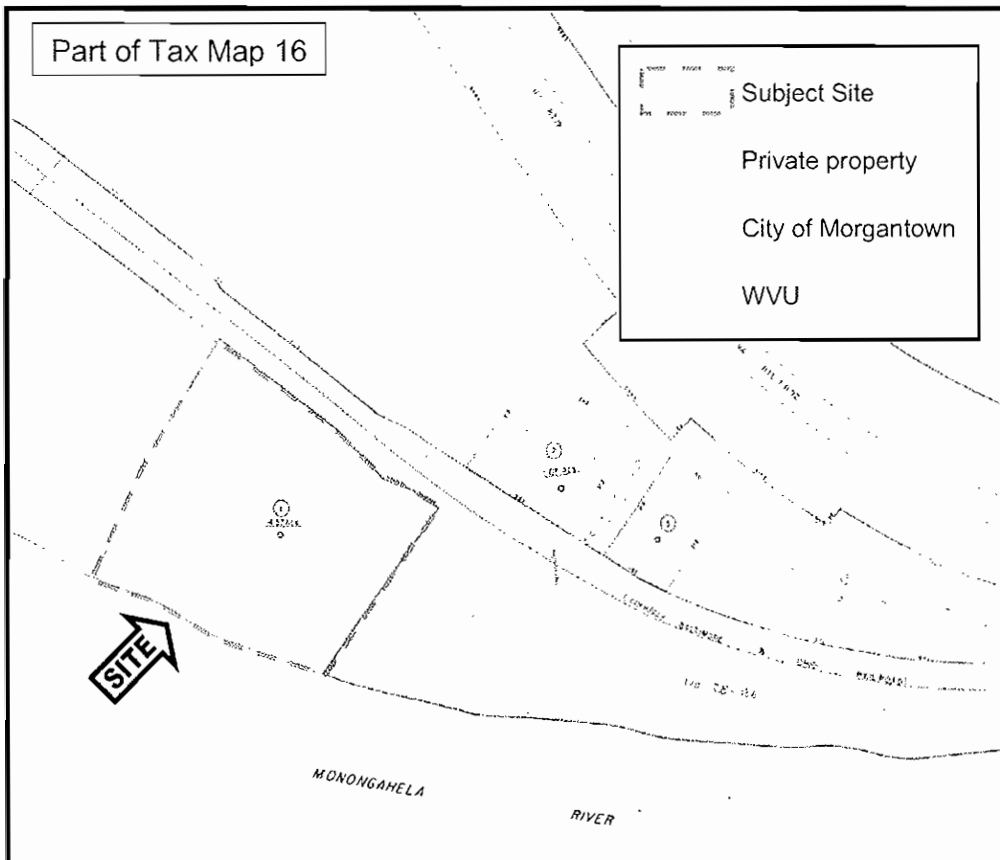
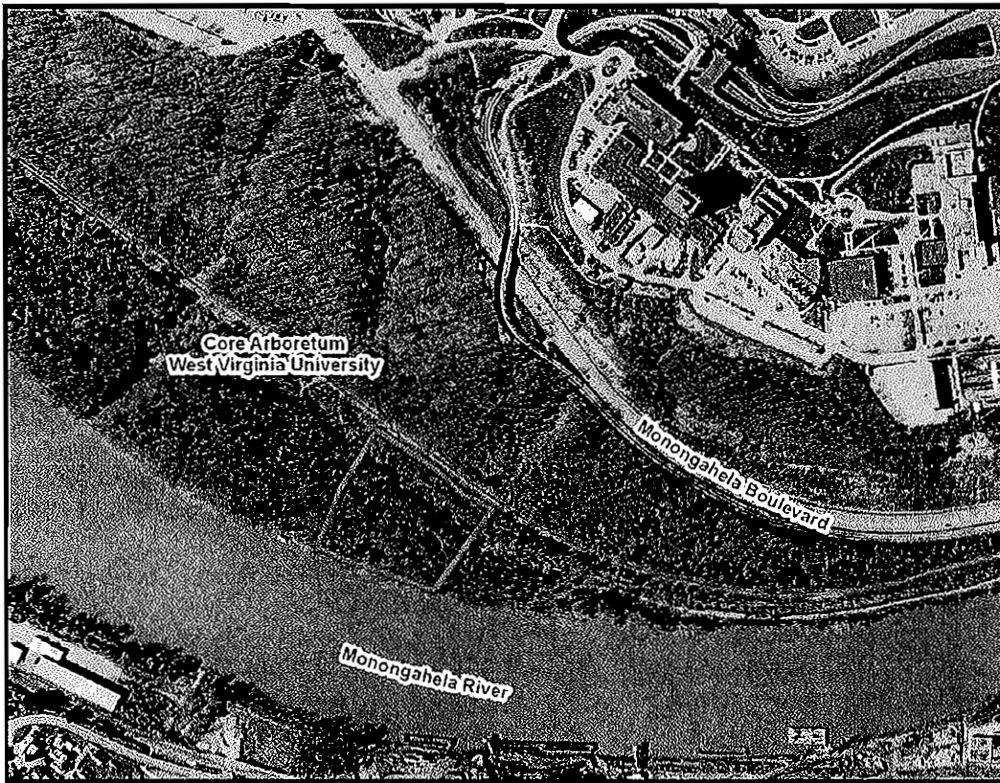
STAFF REPORT ADDENDUM A
RZ10-02 / Becilla / Tax Map #16, Parcel #1

CASE NUMBER:
RZ10-02 / Becilla / IND to R-1

Tax Map 16, Parcel 1; Approx. 4.57
Along Monongahela River and next to Core Arboretum

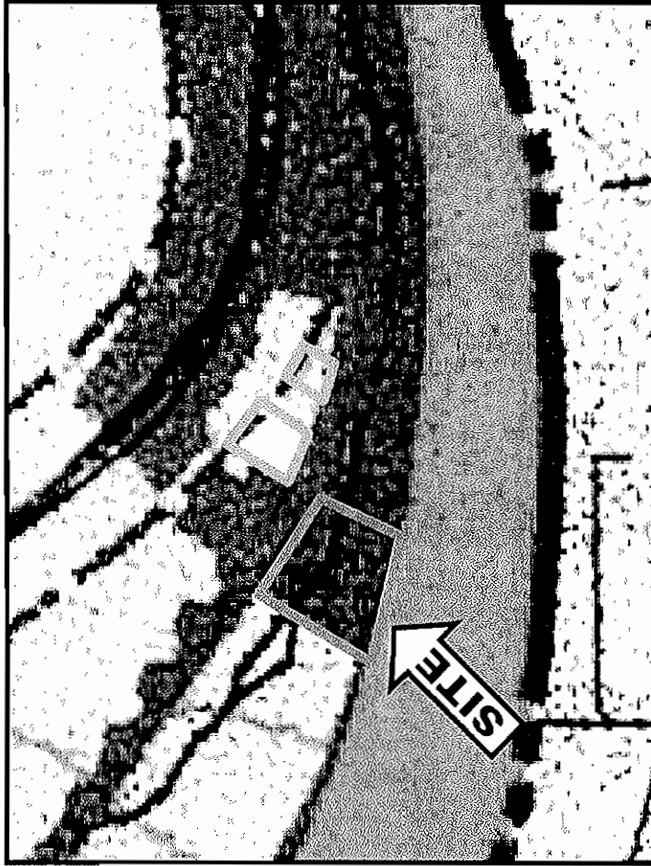




 Planning Department
389 Spruce Street
Morgantown, WV 26505
304.284.7431



STAFF REPORT ADDENDUM B

RZ10-02 / Becilla / Tax Map #16, Parcel #1
























	Approximate location of petitioner's property (zoning map amendment area)
	Approximate location of remaining privately-owned parcels within the immediate area

MAP LU-2 Comprehensive Plan Morgantown, West Virginia

PREPARED BY: LDR International, Inc. Planning and Urban Design

January 1999

- Legend:**
- | | | | |
|---|-------------------------------------|---|---|
|  | Existing |  | Planned |
|  | Single-Family Residential |  | Single-Family Residential, Mobile Home Park |
|  | Multi-Family Residential/Commercial |  | Mixed Residential/Commercial |
|  | Commercial |  | Public / Institutional |
|  | Agricultural/Forest |  | Parks and Recreation |
|  | Historic District |  | Trail System |
|  | Rivers, Streams, Waterways |  | Environmental Protection Corridors |
|  | Entrance Gateways |  | Economic Development Opportunities |
|  | Riverfront Redevelopment Area |  | Steep Slope Protection Areas |
|  | Planned Major Road Improvements |  | Corridor Overlay District |
|  | City Boundary | | |

AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING ITS ACCEPTANCE OF A DEED WHICH TRANSFERS TITLE AND OWNERSHIP OF A 3.43 ACRE PARCEL OF REALTY FROM MYLAN PARK FOUNDATION, INC., TO THE CITY OF MORGANTOWN.

The City of Morgantown hereby ordains that it will accept ownership of the realty, described in the deed hereto attached, from the Mylan Park Foundation, Inc.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

THIS DEED, Made this the ____ day of February, 2010, by and between **Mylan Park Foundation, Inc., a West Virginia non-profit corporation**, party of the first part, Grantor, and **The City Of Morgantown, a municipal corporation**, party of the second part, Grantee.

WITNESSETH: That for and in consideration of the sum of TEN DOLLARS (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, the said Grantor, **Mylan Park Foundation, Inc., a West Virginia non-profit corporation**, does hereby grant and convey, with covenants of SPECIAL WARRANTY, unto the said Grantee, **The City Of Morgantown, a municipal corporation**, all of the following described lot or parcel of real estate, together with the buildings and improvements thereon and the appurtenances thereunto belonging, situate, lying, and being in Grant District, Monongalia County, West Virginia, and more particularly bounded and described as follows, to-wit:

Beginning at a point in the lands of Mylan Park Foundation, Inc. and running thence with lands of Mylan Park Foundation, Inc., S. 21° 14' 58" W. 521.27 feet to a point on the Northern right-of-way limits of a non-exclusive forty (40) foot access way or road; thence with two (2) lines of said forty (40) foot access road, N. 81° 03' 29" W. 96.29 feet to a point; thence N. 81° 25' 55" W. 139.10 feet to a point, said point being a common corner for the forty (40) foot access way and a thirty (30) foot non-exclusive access way; thence with the Eastern line of said thirty (30) foot access road, N. 12° 58' 22" E. 578.36 feet to a point in lands of Mylan Park Foundation, Inc.; thence S. 68° 45' 02" E. 313.04 feet to the point and place of beginning and containing 3.43 acres, more or less. The beginning point for the 3.43 acres is established as follows: S. 71° 41' 17" E. 193.79 feet from a 1/2-inch iron bar (found), said iron bar being a common corner of said Monongalia County Schools Foundation, Inc. and land now or formerly owned by the West Virginia Department Of Transportation (Deed Book No. 1120, at Page No. 597).

There is granted and conveyed as appurtenant to the 3.43 acres, more or less, the right of ingress, egress, and regress over, across, and upon those two (2) certain non-exclusive easements and roadways, and for

the installation, maintenance, repairs, and removal of all utility lines and services, including but not limited to electric, gas, water, and sewage lines, and more particularly described as follows:

Forty (40) Foot Access Road (Easement No. 1 as shown on the attached Plat Of Survey): Beginning at a point which is S. 08° 55' 43" W. 272.55 feet from a 1/2-inch iron pin set in the Western right-of-way line of West Virginia Route No. 46, N. 81° 06' 11" W. 43.73 feet to a point; thence, with a curve to the left having a radius of 155 feet, an arc length of 198.19 feet and a chord bearing and distance at S. 62° 16' 00" W. 184.96 feet to a point; thence S. 25° 38' 11" W. 39.32 feet thence with a curve to right having a radius of 80 feet, an arc length of 102.35 feet and a chord bearing and length of S. 62° 17' 21" W. 95.51 feet; thence N. 81° 03' 29" W. 22.37 feet to a point designating the Southwestern corner of the aforesaid 3.43 acres; thence with the Southern line of the 3.43 acres, N. 81° 03' 29" W. 96.29 feet; thence continuing with said Southern line, N. 81° 25' 55" W. 139.10 feet to a point; thence with the Southern line at a thirty (30) foot non-exclusive easement, N. 81° 25' 55" W. 30 feet to a point on the Western limits of said thirty (30) foot non-exclusive easement, thence with a line of the forty (40) foot easement, S. 12° 58' 22" W. 40 feet to a point; thence S. 81° 25' 55" E. 172.14 feet to a point; S. 81° 03' 29" E. 118.53 feet to a point; thence with a curve to the left having a radius of 120 feet and an arc length of 153.53 feet, and a chord bearing and distance at N. 62° 17' 21" E. 143.27 feet to a point; thence N. 25° 38' 11" E. 39.32 feet; thence with a curve to the right having a radius of 115 feet, arc length of 147.04 feet, and a chord bearing and length of N. 62° 16' 00" E. 137.23 feet; thence S. 81° 06' 11" E. 43.67 feet to a point on the Western right-of-way line of West Virginia Route No. 46, thence with a curve having a radius of 525 feet, arc length of 8.76 feet and a chord bearing and distance of N. 8° 37' 05" E. 8.76 feet to a point; thence N. 09° 05' 46" E. 31.24 feet to the beginning.

Thirty (30) Foot Non-Exclusive Easement (Easement #2 as shown on the attached Plat Of Survey): Beginning at a point which designates the Southwestern corner of the aforesaid 3.43 acres and running thence with the Western line of said 3.43 acres, N. 12° 58' 22" E. 578.36 feet to the Northwestern corner of the 3.43 acres; thence N. 68° 45' 02" W. 30.3 feet to a point; S. 12° 58' 22" W. 585.03 feet to a point on line of the forty (40) foot access easement; thence with said forty (40) foot easement S. 81° 25' 55" E. 30 feet to the point of beginning.

And being part of that certain 132.95 acres, more or less, tract or parcel of real estate that was conveyed to Monongalia County Schools Foundation, Inc., now by change of name, Mylan Park Foundation, Inc. by Patriot Mining Company by Deed dated the 28th day of August, 2003, and recorded in the Office of the Clerk of the County Commission of Monongalia

County, West Virginia, in Deed Book No. 1257, at Page No. 694, and a portion of the forty (40) foot right-of-way is part of that certain property conveyed to Monongalia County Schools Foundation, Inc. by Patriot Mining Company, Inc. by Deed dated the 28th day of February, 2002, and recorded in said Clerk's Office in Deed Book No. 1234, at Page No. 684.

This conveyance is made subject to all prior exceptions, reservations, rights-of-way, easements, building restrictions and other conditions as made and imposed upon the title to the real estate herein described and conveyed by the Grantor herein or its predecessors in title.

This conveyance is made subject to the prior exception and reservation of all coal, oil, gas, and other minerals as heretofore conveyed, excepted and reserved.

The Grantor, on its other property, has developed a parking lot for automobiles, trucks, motorcycles, and other motorized vehicles along the Northern property line of the parcel herein described and conveyed for its use in conjunction with its other land and the parcel herein conveyed (the "Property"). As an appurtenant to the Property, the Grantor does hereby grant to the Grantee, its successors and assigns, and their invitees the right to use in conjunction with the Grantor, each on a non-exclusive basis, the right to use said lot for the parking of motorized vehicles for those guest, employees, and invitees of the Grantee who are using the facilities now or hereafter constructed on the Property, together with the right of ingress, egress, and regress over the same for said parking. The use of the parking lot shall be at no cost to the Grantee, its successors, assigns, employees, or invitees, or others using the Property. The area of the Grantee's property that is affected by the non-exclusive parking easement is shown on the attached Plat Of Survey as Easement 3, and being more particularly described as follows:

Beginning at a point which represents the Northwestern corner of the 3.43 acres herein described and conveyed, and running

thence N. 68° 45' 02" W. 134.80 feet to a point; thence S. 21° 14' 58" W. 623.64 feet to a point; S. 83° 13' 04" E. 70.03 feet; S. 81° 25' 55" E. 123.92 feet to a point designating the Southwestern corner of said 3.43 acres; thence with the Western line of same, N. 12° 58' 22" E. 578.36 feet to the beginning, containing 2.44 acres.

There is granted as appurtenant to the aforesaid easement the right of ingress, egress, and regress over and across the following described area (shown on the attached Plat Of Survey as Easement 3):

Beginning at a point which designates the Southwestern corner of the above-described parking easement, and running thence S. 21° 14' 58" W. 41.31 feet; thence S. 83° 13' 04" E. 79.72 feet; thence S. 81° 25' 55" E. 120.21 feet; thence N. 12° 58' 22" E. 40.12 feet; thence with the Southern line of said parking easement, N. 81° 25' 55" W. 123.92 feet; thence N. 83° 13' 04" W. 70.03 feet.

The above easements and rights-of-way are designated on a Plat attached hereto prepared by CTL Engineering Of West Virginia, Inc. dated the 19th day of January, 2010.

The real property described in this Deed together with its improvements and appurtenances is subject, however, to a use restriction requiring said property to be used exclusively for a General Purpose Community Center which provides non-offensive activities which include, appropriate educational programs, social functions, exhibitions, entertainment programs, community meetings, athletic programs, young people's activities, and such other appropriate activities as are generally offered by other General Purpose Community Centers located in other geographical areas, for the benefit of the citizens and residents of The City Of Morgantown and Monongalia County, West Virginia, together with their invitees. This use restriction covenant shall run with the land for a period of eighty (80) years commencing with the date of this Deed and terminating on the ____ day of February, 2090, and shall be enforceable under the laws of the State of West Virginia. As part of the consideration for the sale of the real estate described in this Deed, the Grantee, The City Of Morgantown, West Virginia, a municipal corporation, agrees to comply with

this use restriction covenant and to require any of its future assignees or transferees to accept and agree thereto as well.

The real estate herein described and conveyed is entered upon the Land Books of Monongalia County, West Virginia, for the year 2009, in Grant District, as part of the following entry in the Non-Taxable Section of the Land Books:

Tax Ticket No. 23924
Monongalia County Schools Foundation, Inc.
Map 6B, Parcel 3
111.897 Ac. Sur. Dents Run
Non-Taxable

DECLARATION OF CONSIDERATION OR VALUE

In compliance with Article 22, Chapter 11 of the Code of West Virginia, the undersigned hereby declares that the within conveyance is from a West Virginia non-profit corporation to a municipality of the State of West Virginia and is exempt from excise taxes on the transfer of real property.

IN WITNESS WHEREOF, Mylan Park Foundation, Inc., a West Virginia non-profit corporation, has caused its name to be subscribed hereto by Mark R. Nesselroad, its President, for and on behalf thereof, and by authority duly given.

Attest:

Mylan Park Foundation, Inc.
A West Virginia non-profit corporation

Secretary & Treasurer

BY: _____
Mark R. Nesselroad
ITS: President

STATE OF WEST VIRGINIA

COUNTY OF MONONGALIA, TO-WIT:

The foregoing instrument was acknowledged before me in my said County and State this ____ day of _____, 2009, by Mark R. Nesselroad, the President of Mylan Park Foundation, Inc., a West Virginia non-profit corporation, for and on behalf thereof, and by authority duly given.

My Commission Expires: _____.

[NOTARY SEAL]

NOTARY PUBLIC

THIS INSTRUMENT WAS PREPARED BY:

Stephen K. Shuman, Esquire

Reeder & Shuman

P.O. Box 842

Morgantown, WV 26507-0842

Msl-3\2009\Mylan Park Foundation, Inc \Deed (to City of Morgantown) (1-20-10)

AN ORDINANCE AUTHORIZING THE CITY OF MORGANTOWN TO LEASE 3.43 ACRES, AND THE STRUCTURE THEREON LOCATED IN GRANT DISTRICT, MONONGALIA COUNTY, WEST VIRGINIA, TO MYLAN PARK FOUNDATION, INC.

The City of Morgantown hereby ordains that its City Manager is authorized to execute the lease agreement, hereto attached, by and on behalf of the City of Morgantown.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

FINAL COPY 1-18-10

This lease made and entered into this ____ day of February, 2010, by and between the City of Morgantown, a West Virginia municipal corporation as Lessor and Mylan Park Foundation, Inc., a West Virginia corporation as Lessee having an address of 500 Mylan Park Lane, Morgantown, WV 26501.

Witness: That for in consideration of the sum of Ten Dollars cash in hand paid by the Lessee to the Lessor the receipt of which is hereby acknowledged and the further consideration of the mutual covenants and agreements herein contained the Lessor does hereby lease and let unto the Lessee and the Lessee does hereby take from the Lessor that certain parcel of real estate together with the buildings and improvements thereon, and appurtenances thereto situate in Mylan Park, Grant District, Monongalia County, West Virginia, more particularly located and described as follows, to wit:

Beginning at a point in the lands of Mylan Park Foundation, Inc., and running thence with lands of Mylan Park Foundation, Inc., S. 21° 14' 58" W. 521.27 feet to a point on the Northern right-of-way limits of a non-exclusive forty (40) foot access way of road; thence with two (2) lines of said forty (40) foot access road, N. 81° 03' 29" W. 96.29 feet to a point; thence N. 81° 25' 55" W. 139.10 feet to a point, said point being a common corner for the forty (40) foot access way and a thirty (30) foot non-exclusive access way; thence with the Eastern line of said thirty (30) foot access road, N. 12° 58' 22" E. 578.36 feet to a point in lands of Mylan Park Foundation, Inc.; thence S. 68° 45' 02" E. 313.04 feet to the point and place of beginning and containing 3.43 acres, more or less. The beginning point for the 3.43 acres is established as follows: S. 71° 41' 17" E. 193.79 feet from a 1/2-inch iron bar (found), said iron bar being a common corner of said Monongalia County Schools Foundation, Inc. and land now or

formerly owned by the West Virginia Department of Transportation (Deed Book No. 1120, at Page No. 597).

Together with all utilities easements, sewer and sewer line easements, drainage easements, rights-of-way easements to and from said property to the public highway, and the right to use the adjacent parking area for vehicles and covenants of use restrictions, and all other appurtenances thereto. This conveyance is further made subject to all prior exceptions, reservations, rights-of-way, easements, building restrictions, and other conditions including the prior exception and reservation of all coal, oil, gas and other minerals as heretofore conveyed excepted and reserved. All as duly set forth in that certain deed from Mylan Park Foundation, Inc., a West Virginia corporation to the City of Morgantown, a municipal corporation, dated the 29th day of June, 2009, duly recorded in the office of the Clerk of the County Commission of Monongalia County, West Virginia, to which deed reference is here made for specific description of all of the appurtenances which are a part of this lease and all exceptions and reservations which are likewise excepted and reserved from this lease as fully set forth in said deed which reference is here made for further descriptive purposes.

TERMS AND CONDITIONS OF THIS LEASE:

1. RENT: Beginning with the date of this lease Lessee shall pay unto the Lessor an annual rent for the premises during their initial term of this lease

shall be the sum of one dollar per year. If the lease is renewed the Lessee shall pay to the Lessor an annual rent for the premises during the renewal term of this lease the sum of one dollar per year.

2. TERM OF THIS LEASE: The initial term of this lease shall commence on the date of this lease agreement. The initial term of this lease shall be for a period of ten years from the commencement date. Provided that the Lessee is not in default in the performance of any of its obligations under this lease agreement the Lessee shall have the right and option to renew this lease for seven consecutive ten-year terms which shall each commence immediately upon the expiration of the initial term or any renewal term of this lease which is in effect at the time it expires. The renewal terms shall commence automatically without notice from the Lessee to the Lessor unless the Lessee provides the Lessor with written notice that the Lessee does not intend to renew this lease for such renewal term at least sixty days prior to the then existing term expiration. If this lease is renewed all terms and conditions of this lease shall remain in full force and effect during each renewal period. Provided, however, that, in the event that the renewal terms of this Lease are subject to the term limitations of W. Va. Code Section 8-12-18 or any successor or similar statute, then prior to the end of such limited term, Lessor shall take all reasonable steps to have this Lease approved as a new Lease for the remainder of the renewal terms. In the event that approval as a new lease is

required, but approval is not obtained despite Lessor's reasonable efforts, then this Lease will terminate at the end of Fifty (50) years from the Commencement Date.

3. LEASEHOLD IMPROVEMENTS: The Lessee shall not at any time remove any leasehold improvements or fixtures installed in or on the leased premises whether installed by or on behalf of the Lessee unless their removal is consented to in advance by the Lessor in writing; and at the expiration or termination of this lease, all such leasehold improvements and fixtures are to be deemed to be part of the leased premises.

4. CONSTRUCTION AND IMPROVEMENT RIGHTS: The Lessee shall make no structural improvements to the lease premises unless otherwise provided under the provisions of this lease without the written consent of the Lessor setting forth the nature of the improvements and the extent thereof.

5. ASSIGNMENT AND SUBLETTING: The Lessee shall not have the right to sublet or sublease the lease premises or any part thereof without the written consent of the Lessor specifically granting such right to the Lessee and the Lessee shall further have no right to assign this lease or any portion thereof to a third party without the written consent of the Lessor setting forth the terms of said assignment and approving the same.

6. USE REQUIREMENTS: The Lessee shall use the leased premises for providing the services of a community center for the citizens of Morgantown

and Monongalia County, West Virginia and their invitees which activities shall include but not be limited to educational programs, social functions, exhibitions, entertainment, community meetings, conventions, athletic functions, young people activities, and such other appropriate uses as otherwise generally provided by community centers such as the facilities covered by this lease agreement. The Lessee shall have the right to charge fees to individuals and groups who elect to conduct private use of the community center's facilities for limited periods of time for the above purposes or functions as provided by the community center during this lease agreement. The Lessee shall use the lease premises in full compliance with all federal, state, local laws, ordinances and regulations and the Lessee shall ensure proper compliance therewith at all times.

7. **PROHIBITED USES:** No illegal, improper or offensive use or activities shall be permitted on the lease premises.

Lessee shall not:

- a. permit waste or allow anyone under its control to cause or permit waste on the premises; or
- b. fail to keep all mechanical apparatus including plumbing and electrical facilities and utilities on the premises in good workable condition and repair at all times during the term of this lease agreement.

8. **SIGNS:** Lessee at its sole costs shall be responsible for all installation, maintenance, repair and associated management and costs of all signage on the lease premises.

9. **LESSOR RIGHT TO INSPECT:** Lessor, at all reasonable times with proper notice shall have the right during Lessee's hours of operation to enter upon and examine the leased premises and make such inspections as the Lessor may deem necessary for the protection of the premises. Lessee has the right to have a representative of the Lessee accompanied Lessor during all inspections.

10. **SURRENDER OF PREMISES:** At the end of the term, however determined, Lessee shall peacefully deliver to the Lessor the lease premises vacant, unencumbered, in good repair, and broom clean ordinary wear and tear accepted. At any time during the last 120 days of the term of this lease or any renewal thereof, the Lessor upon 24 hours notice during the Lessee's hours of operation may show the premises to prospective tenants.

11. **MAINTENANCE:** The Lessee is hereby charged with the responsibility of maintaining the lease premises and improvements constructed thereon in a good, neat and workmanlike condition comparable to the condition of the premises on the date that this lease was entered into subject only to normal wear and tear which the facility may receive from the proper use thereof. All maintenance requirements to maintain the premises as above provided shall be at

the cost of the Lessee and shall be paid promptly upon completion. In the event more than minor repairs are required at any time to the lease premises or the improvements constructed thereon except as otherwise provided by this lease agreement the Lessee shall promptly see that said repairs are made in a good workmanlike order and completed with a minimum of delay.

12. UTILITIES AND SERVICES: Except as otherwise provided by this lease agreement Lessee shall be responsible for the extension of, maintenance of, and repairs to all utilities servicing the premises including, but not limited to water, sewerage, electricity, gas and telephone. Notwithstanding the foregoing if said utilities are damaged or otherwise need repair or maintenance, Lessee shall be responsible for all cost and expenses associated therewith; providing, however, Lessee shall not be responsible if said utilities are damaged or otherwise in need of repair or maintenance because of the negligence or willful misconduct of the Lessor, its agents, contractors, employees, customers, patrons, invitees, licensees or guests. In the event of such damage by Lessor, its agents, contractors, employees, customers, patrons, invitees, licensees or guests, the Lessee shall repair the same and shall invoice Lessor for the cost associated therewith which the Lessor shall pay within 30 days from receipt thereof.

13. TAXES AND ASSESSMENTS: Lessee shall timely pay or cause to be paid, as applicable, before delinquency, all taxes, assessments and fees assessed

by any governmental authority against the Lessee, its business, the leased premises, the leasehold estate created by this lease and Lessee's personal property on the lease premises.

14. BUSINESS AND OCCUPATION TAXES: Lessee shall timely pay, or cause to be paid before delinquency all income, unemployment compensation, workers' compensation, business and occupation taxes, franchise fees, and all other miscellaneous business taxes assessed against the Lessee's business or the lease premises.

15. QUIET ENJOYMENT: Lessor represents warrants and covenants that prior delivery of the premises to the Lessee it will have good and marketable fee simple title to the premises, free and clear of any liens and encumbrances except for general rights away and easements that will not adversely impact the lease premises provided Lessee is not in default hereunder, Lessor covenants that the Lessee shall peacefully and quietly hold and enjoy the lease premises without hindrance by the Lessor or any party claiming under the Lessor and all other persons and entities.

16. EMINENT DOMAIN: If all or any substantial portion of the leased premises shall be condemned or taken by right of eminent domain or be conveyed to prevent the exercise thereof the Lessor and the Lessee shall divide all of the

proceeds received from the actual take of any portions of leased premises as follows:

- A. The Lessor's share of the division of the proceeds received from the actual take of the lease premises shall be the sum of money allocated for the actual value of the real estate without any improvements constructed or placed thereon.
- B. The Lessee's share of the division of the proceeds received from the actual take of the lease premises shall be the sum of money allocated for the actual value of the improvements constructed or placed upon the real estate through the date of said take. (This figure constitutes all of the remaining money from the actual take of the leased premises after deducting the sum of money allocated to the Lessor under subparagraph A paragraph 16 hereof.)

Both the Lessor and the Lessee shall place the sums of money they receive in their individual restricted accounts at BB&T Bank, Morgantown, West Virginia to be used as follows:

The Lessor will use the sum received by it to acquire and prepare a satisfactory parcel of real property located in Mylan Park for the reconstruction of a new community center comparable to the one which was taken by the eminent domain proceeding. The Lessee shall provide the new site location to the Lessor for a sum of money not greater in amount than the sum it received under subparagraph A, paragraph 16 of this agreement. This new parcel of real property shall be substituted in place of the original parcel of real property taken by this condemnation proceeding. The description of the new parcel of real estate

conveyed by Mylan Park to the Lessor under the terms of this paragraph shall be reduced to writing in an addendum fully describing said parcel of real estate and setting forth such other information as may be required to permit the substitution under this lease of said parcel of real estate for the parcel of real estate taken in the condemnation proceeding under the terms of the lease agreement. The addendum containing said information shall then be made a part of this lease agreement as Addendum No. 1.

The Lessee as soon as the above described addendum is fully executed and signed by the parties and becomes a part of this lease agreement shall proceed to construct a new community center upon the substituted parcel of real property described in the addendum agreement with the proceeds it received from the take and deposited in the bank account at BB&T Bank and shall attempt to the best of its ability to provide all of the functions of the community center which was taken by virtue of the eminent domain proceeding upon the completion of said construction.

The Lessor and Lessee shall endeavor to complete the repair or replacement of the original community center which was taken by the eminent domain proceeding within two years from the date of the take. During the construction phase for the new building all of the provisions of the lease agreement shall continue in full force and effect with the exception that the operation of the new

building will be suspended until the construction of said building is completed by the Lessee. After completion of the building it shall become the replacement building for the new community center.

17. MAINTENANCE OF THE INTERIOR, AND EXTERIOR PORTION OF THE LEASED PREMISES: The Lessee covenants to and with the Lessor that it will maintain the interior and exterior portion of the lease premises and the improvements thereon in clean sanitary and attractive condition without odors during the term of this lease in compliance with all state, county and federal laws in conjunction therewith. In addition, the Lessee shall not block or impede the use of any of the rights of way described in this lease which are to be jointly used by other Lessees or officials of Mylan Park, Inc. and their invitees.

18. FIRE AND OTHER CASUALTY INSURANCE: The Lessee shall obtain fire and other casualty insurance on the improvements constructed upon the lease premises in an amount equal to the replacement value of the community center building constructed thereon from a financially responsible insurance company licensed to do business in West Virginia and shall keep said insurance in full force and effect during the entire term of the initial and any renewal terms of this lease. Said insurance company shall provide a certificate evidencing that said insurance is in full force and effect during the entire duration of this lease. In the event that said insurance company elects to cancel said insurance or change any

terms of its insurance policy evidencing said insurance it shall give both the Lessor and the Lessee written notification thereof not less than 120 days before any said action shall become effective at the address set forth in this lease agreement for each of said parties.

In the event that the insured property (community center building) or other leasehold improvements are damaged or destroyed as a result of fire or other casualty during the term of this lease all insurance payments of damage awards paid by virtue of the insurance policy or policies by the insurance company or companies shall be payable in full to the Lessee who shall be required under the terms of this lease to expeditiously repair said damage and/or construct a new building (community center) as soon as possible after settling all insurance claims.

The Lessee shall deposit all payments received from the insurance proceeds in a restricted bank account at BB&T Bank, Morgantown, West Virginia which shall approve any withdrawals from said account under the terms of this lease agreement for the reconstruction or repair of damage to said improvements upon the lease premises and shall satisfy itself that the funds in said account had been used as required by the provisions of this lease agreement for the reconstruction or repair of the improvements upon said lease premises.

The Lessee shall immediately proceed to repair any repairable damage to the community center and other leasehold improvements upon the leased premises, or

to rebuild the same if the improvements are damaged too severely to repair and to complete all repairs within one year from the date of the loss or to rebuild the same if damaged beyond repair within two years from the date of loss. This lease shall continue in full force and effect during said period, however, all operating functions of said improvements (community center) shall be suspended during the repair or reconstruction thereof until said work is completed.

19. PUBLIC LIABILITY INSURANCE: During the initial term or any renewal terms of this lease the Lessee shall at its sole cost and expense purchase and keep in full force and effect public liability insurance from financially responsible insurance companies licensed to do business in West Virginia underwritten on an occurrence basis in respect to the use and occupancy of the premises by the Lessee or the Lessor, their agents and invitees, with respect to the negligent acts or omissions of the Lessee or the Lessor and their employees, agents, servants, invitees and licensees in an amount of not less than one million dollars for injury to any one person and not less than ten million dollars per occurrence on account of personal injury or death to one or more persons and not less than one million dollars on account of damage to property. This insurance shall be issued in a joint policy naming both the Lessor and the Lessee as joint insureds.

20. ~~HOLD HARMLESS CLAUSE:~~ ^{RELEASE:} The Lessee and the Lessor do expressly release the other from any claim for damages or other casualties suffered by any event that does not grow out of the deliberate and intentional act of the other or their agents and/or employees or invitees in the event of fire or casualty loss or any other loss under the terms of this lease agreement.

21. BUILDERS RISK INSURANCE: The Lessee shall maintain at its sole expense, builders risk insurance during periods when improvements are being repaired or reconstructed on the premises. All of the above insurance is to be underwritten by an insurance company licensed to do business in the State of West Virginia and acceptable to the Lessee and the Lessor jointly and must contain a clause or endorsement providing that such policy or policies may not be cancelled or terminated within 60 days prior to written notice to both the Lessee and the Lessor.

22. BANKRUPTCY OR INSOLVENCY: Bankruptcy or other insolvency proceedings taken by or against the Lessor or the Lessee shall constitute a breach of this lease and termination thereof and said bankruptcy court or insolvent parties shall have no rights thereunder which can or might pass to the trustee.

23. FORFEITURE AND OTHER TERMINATION: In addition to those remedies provided by the laws of the State of West Virginia, in the event that the

Lessee fails to pay any installment or rent as herein provided when the same is due and payable, fails to maintain proper liability insurance and/or fire or other casualty insurance as herein provided, fails to maintain the improvements upon the lease premises as herein required or replace any broken glass or properly maintain all improvements upon the lease premises or fails to perform any other covenant or conditions herein at the option of the Lessor shall cause the forfeiture of this lease and entitle the Lessor to reenter and take possession of the lease premises and failure of the Lessor to exercise that option shall not constitute a waiver of the Lessor of its right to exercise said option upon the occurrence of a future default of the same nature.

24. The Lessor and the Lessee shall not have the right nor authority to encumber or place any lien on the property covered by the terms of this lease agreement.

25. **MEMORANDUM OF LEASE:** This lease is not to be recorded however, either party may record a Memorandum of Lease after notifying the other party. The party recording the Memorandum of Lease shall prepare and pay all costs of preparing and recording of the Memorandum of Lease.

26. **PARTIAL INVALIDITY/SEVERABILITY:** If any term, covenant or provision of this lease or application thereof to any person or circumstance is at any time or to any extent held invalid or unenforceable, the remainder of this lease

or application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, are not to be effected thereby, at each term, covenant, condition and provision of this lease is to be valid and enforced to the fullest extent permitted by law. The unenforceability, invalidity or illegality of any provision of this lease does not render any other provision of this lease unenforceable, invalid or illegal.

27. NOTICES: Any notices to be given under the terms of this lease must be in writing and are to be sent by hand delivery, by reputable overnight express courier, or by certified mail, return receipt requested, to the last-known address of the part to whom the notice is to be given, as follows:

Lessor: City of Morgantown
Attn: City Manager
389 Spruce Street
Morgantown, WV 26505

Lessee: Mylan Park Foundation, Inc.
500 Mylan Park Lane
Morgantown, WV 26501

Except as otherwise provided in this lease, notice is to be deemed delivered upon hand-delivery or deposit with the overnight carrier or the U.S. Postal Service. Either party is entitled to change its address for notice upon providing all other parties with written notice of change thereof.

IN WITNESS WHEREOF, the City of Morgantown, a West Virginia municipal corporation, has caused its name to be subscribed hereto by Dan Boroff, its City Manager, by authority duly given, and Mylan Park Foundation, Inc., West Virginia non-profit corporation has caused its name to be subscribed hereto by Mark Nesselroad, its President, by authority duly given, each as of the Execution date:

LESSOR:

City of Morgantown,
A West Virginia municipal corporation

By: _____

Its: City Manager _____

LESSEE:

Mylan Park Foundatin, Inc.
a West Virginia on-profit corporation

By: _____

Its: President _____

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, TO-WIT:

I, _____, a notary public of said county, do certify that **DAN BOROFF**, the City Manager of the City of Morgantown, a West Virginia municipal corporation, who signed the writing hereto annexed, bearing date as the _____ day of February, 2010, has this day in my said county, before me, acknowledged the same to be the act and deed of said corporation.

Given under my hand this _____ day of February, 2010

My commission expires: _____

Notary Public

{NOTARIAL SEAL}

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, TO-WIT:

I, _____, a notary public of said county, do certify that **MARK NESSELROAD**, the President of Mylan Park Foundation, Inc., a West Virginia non-profit corporation, who signed the writing hereto annexed, bearing date as the _____ day of February, 2010, has this day in my said county, before me, acknowledged the same to be the act and deed of said limited liability company.

Given under my hand this _____ day of February, 2010.

My commission expires: _____

Notary Public

{NOTARIAL SEAL}

RESOLUTION

Whereas, the City of Morgantown will make application to the West Virginia Land and Water Conservation Fund for \$128,500.00 for the acquisition of neighborhood park property for outdoor recreational activities. Land and Water Conservation Fund grants require a local match equal to the grant request.

Whereas, the Council of the City of Morgantown authorizes the City Manager, Dan Boroff, to submit an application to the State of West Virginia requesting funding for the acquisition of park property out of the Land and Water Conservation Fund and make available the local match for the project.

Whereas, the City Council authorizes the City Manager, Dan Boroff, to sign any and all documents and papers which accompany or are part of this application, and any and all documents and papers necessary for the completion of the project should it receive National Park Service Approval

Whereas, the City of Morgantown agrees to abide by all rules and regulations pertaining to the Land and Water Conservation Fund Program, and to operate and maintain the proposed park property for public outdoor recreational use under the requirements of the Land and Water Conservation Fund should this project receive Federal assistance.

Now, therefore, the City of Morgantown, by adoption of this resolution this 2nd day of February, 2010, agrees to all foregoing statements.

Mayor

City Clerk

