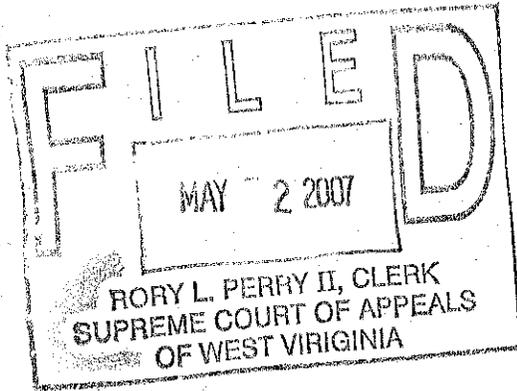


33457

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

CHARLESTON

NEW VISION PROPERTIES II, INC.,
a West Virginia Corporation; **MICHAEL**
C. GOODE, SR., and **SYLVIA D. GOODE,**
husband and wife; and **JOHN J.**
GERVASI and **LINDA S. GERVASI,**
husband and wife,



PETITIONERS

VS.

IN MANDAMUS UPON
ORIGINAL JURISDICTION

THE COUNTY COMMISSION OF
JEFFERSON COUNTY, a public body
corporate of the State of West Virginia;
and
FRANCES B. MORGAN, President and
Member; **ARCHIBALD M.S. MORGAN,**
III, Member; **C. DALE MANUEL,** Member;
JAMES T. SURKAMP, Member; and
GREGORY A. CORLISS, Member,
and
JENNIFER MAGHAN, Clerk, County
Commission of Jefferson County,

RESPONDENTS

PETITION OF
NEW VISION PROPERTIES, II, INC., MICHAEL C. GOODE, SR., and
SYLVIA D. GOODE, and **JOHN J. GERVASI** and **LINDA S. GERVASI,**
FOR A WRIT OF MANDAMUS

Peter L. Chakmakian
Alice Anne Chakmakian
P.O. Box 547
Charles Town, WV 25414
(304) 725-9797

Attorneys for the Petitioners

**PETITION OF
NEW VISION PROPERTIES, II, INC., MICHAEL C. GOODE, SR., AND
SYLVIA D. GOODE, AND JOHN J. GERVASI AND LINDA S. GERVASI
FOR A WRIT OF MANDAMUS**

TO THE HONORABLE JUSTICES OF THE SUPREME
COURT OF APPEALS OF WEST VIRGINIA:

The Petitioners, New Vision Properties, II, Inc., Michael C. Goode, Sr., and Sylvia D. Goode and John J. Gervasi and Linda S. Gervasi, by counsel, Peter L. Chakmakian and Alice Anne Chakmakian, respectfully represent to the Court as follows:

I. INTRODUCTION

This Court has jurisdiction over this action pursuant to the Constitution of the State of West Virginia, Article VIII, § 3 and West Virginia Code §51-1-3 (2006). The Respondent, County Commission of Jefferson County (hereinafter referred to as the "County Commission") is a public body corporate of the State of West Virginia created by Article IX, Section 9 of the Constitution of the State of West Virginia. The Respondent, Frances B. Morgan, is the President of the County Commission; the Respondents, Archibald M.S. Morgan, III, C. Dale Manuel, James T. Surkamp, and Gregory A. Corliss, are duly elected members of the County Commission; the Respondent, Jennifer Maghan, is the Clerk of the County Commission, duly elected by the voters of said county in accordance with Article IX, Section 12 of the Constitution of the State of West Virginia. The Petitioners, New Vision Properties II, Inc., Michael C. Goode, Sr., and Sylvia D. Goode, and John J. Gervasi and Linda S. Gervasi, (hereinafter jointly and severally referred to as the "Petitioners") are the owners of seventeen currently existing individual contiguous parcels of real property situate in Jefferson

County, West Virginia, adjacent to and abutting the corporate limits of the City of Charles Town, a municipal corporation (hereinafter referred to as "the City"). The aforementioned seventeen parcels have been approved by both the Jefferson County Planning Commission and the Charles Town Planning Commission as commercial development ranging from a medical office building to a regional grocery store. The City Council for the City is the governing body of the municipality and is granted the power and jurisdiction as the governing body of the City pursuant to W.Va. Code §8-6-4 to "provide for the annexation of additional territory without ordering a vote on the question" if certain conditions are met. W.Va. Code §8-6-4.

The Petitioners presented, pursuant to the aforesaid Code provision, a request to be annexed into the City. The Petitioners have complied with every aspect of the aforesaid Code provision. The City adopted the Ordinance in accordance with the provisions of the W.Va. Code relating to the adoption of ordinances by a municipality. Thereafter, the City presented to the Respondents a Certificate of Annexation pursuant to said Ordinance and a proposed Order of Annexation, which the Respondents refused to approve, confirm and have entered.

Petitioners seek that a rule be issued by this Honorable Court directed to the Respondents, Frances B. Morgan, President of the County Commission, and Jennifer Maghan, Clerk of the County Commission, to show cause, if they can, why they should not approve, confirm and enter a certain Annexation Order drafted in accordance with W.Va. Code §8-6-4; that after the Respondents shall have had an opportunity to respond to such rule, this Honorable Court issue a peremptory writ of mandamus commanding the Respondents to sign and enter the Annexation Order as required by W.Va. Code §8-6-4; and that this Honorable Court do give Petitioners such other and further relief, including attorneys fees, as it may deem appropriate and as this case may require.

II. PROCEDURAL HISTORY

An ordinance was proposed to annex seventeen currently existing individual contiguous parcels of land into the corporate limits of the City ("Ordinance"). These seventeen parcels are designed and slated for commercial development. The Ordinance had its first reading at a meeting of the City Council on January 16, 2007. On February 5, 2007, the Ordinance had its second reading at a meeting of the City Council, and, at that meeting, the passage of the Ordinance was certified because it was found by the City that the petition to the City to have the additional territory annexed into the City was made by all of the freeholders and all of the qualified voters within the additional territory, and that the Petition was sufficient in every respect pursuant to the requirements of W.Va. Code §8-6-4. (Certificate of Annexation Pursuant to an Ordinance attached hereto as Exhibit A [hereinafter "Certificate"]). On February 5, 2007, Joe Cosentini, Clerk for the City certified the Ordinance and entered it into the City's Journal in accordance with the requirements of W.Va. Code §8-6-4. (Certificate at Exhibit A). On March 8, 2007, a proposed Order was provided to the County Commission approving and confirming the annexation ("Order") (attached hereto as Exhibit B). Said Order was provided to the County Commission for entry in accordance with the provisions of W.Va. Codes §8-6-3 and 8-6-4(b) and met all requirements under those statutes. Respondent, the County Commission, by and through its Commissioners, has unlawfully refused to enter the Order despite the clear statutory mandate requiring it to do so.

III. STANDARD OF REVIEW

The West Virginia Supreme court will utilize the mechanism of a writ of mandamus as extraordinary relief when a public officer or body has failed in the performance of a mandatory, non-delegable duty. *State ex rel. PSC v. Town of Fayetteville*, 212 W.Va. 427, 573 S.E.2d 338 (2002). *State ex rel. Beirne v. Smith*, 214 W.Va. 771, 591 S.E.2d 329 (2003).

This Court has explained that “mandamus is a proper remedy to require the performance of a nondiscretionary duty by various governmental agencies or bodies.” Syl. Pt. 1, State ex rel. Allstate Insurance Co. v. Union Public Service Dist., 151 W.Va. 207, 151 S.E.2d 102 (1966). It is a proper remedy to require the performance by a county commission of its responsibilities with regard to the municipalities and territories contained in the county’s boundaries. Cowan v. County Commission of Logan County, 161 W.Va. 106, 127, 240 S.E. 2d 675, 686 (1977) (writ of mandamus granted and County Commission of Logan County ordered to enter order holding requirements of W.Va. Code §8-2-1 and 2 met and to proceed according to W. Va. Code §8-2-4 *et seq.*). Before the West Virginia Supreme Court of Appeals may properly issue a writ of mandamus, three elements must coexist: existence of clear right in petitioner to relief sought, existence of legal duty on part of respondent to do the thing petitioner seeks to compel, and absence of another adequate remedy at law. State ex rel. Blankenship v. Richardson, 474 S.E.2d 906, 196 W.Va. 726 (1996); W.Va. Code §51-1-3.

It is proper for a writ of mandamus to originally issue from this Court because circuit courts and the West Virginia Supreme Court of Appeals have concurrent original jurisdiction over proceedings in mandamus. See State ex rel. Silver v. Wilkes, 584 S.E.2d 548 (W.Va. 2003); State ex rel. Summerfield v. Maxwell, 135 S.E.2d 741 (W.Va. 1964) (Supreme Court of Appeals and Fayette County would have concurrent jurisdiction of mandamus proceeding by one candidate for county office to compel Fayette County board of ballot commissioners to omit another candidate’s name from primary election ballot). In addition, there are no disputed issues of material fact to be adjudicated or discovered and because of the issues raised; it is likely that any decision of a circuit court would ultimately be appealed to this Court. Thus, initial consideration by this Court, at the earliest time procedurally available, will be the most economical use of judicial resources and will speed the final resolution of the issues raised. Finally, as a practical matter, if this writ was filed in the Circuit Court of Jefferson County, any Circuit

Judge in Jefferson County would request recusal and refrain from ruling on this issue due to its impact on fellow Jefferson County judicial officers.

IV. ARGUMENT

The Powers and duties of the County Commission are to be performed through Respondent, Jennifer Maghan, its Clerk. W.Va. Const. Art. IX, §12; W.Va. Code §7-1-3; State ex re. v. County Court v. Arthur, 150 W.Va. 293, 145 S.E.2d 34 (1965). West Virginia is still a *Dillon Rule* state. This time honored rule of law is stated as follows:

The county [commission] is a corporation created by statute, and possessed only of such powers as are expressly conferred by the Constitution and legislature, together with such as are reasonably and necessarily implied in the full and proper exercise of the powers so expressly given. It can do only such things as are authorized by law, and in the mode prescribed. Point 3, syllabus Barbor v. County Court of Mercer County, 85 W.Va. 359 [101 S.E. 721 (1920)]. Syllabus Point 1, State ex rel. County Court v. Arthur, 150 W.Va. 293, 145 S.E.2d 34 (1965). State ex rel. State Line Sparkler of WV, Ltd, et al., v. Teach, et al., 187 W.Va. 271, 418 S.E.2d 585 (1992).

The County Commission has no authority to insinuate its refusal to approve, confirm and enter the proposed Order of Annexation as a means of land use regulation. The County Commission has a duty and obligation to recognize the municipal sovereignty of the City. The City is presumed to know what it is doing and has annexed territory and has refused to annex other territory in the immediate past. The annexed territory, which is the subject of this Petition, is a commercial development which would provide additional tax revenues to the City by way of property taxes and, more importantly, Business and Occupation Taxes to be paid by each commercial user. The County Commission is without the authority to refuse to enter the proposed Order. The County Commission has no interest, personal or official, in the municipal annexation matters that come before it other than to administer the law. Matter of City of Morgantown, Syl. Pt. 5, in part, 159 W.Va. 788, 226 S.E.2d 900 (1976). "The powers

exercised by a county commission with regard to municipal annexation are wholly statutory and it can exercise no other powers except those implicit in the specific grant.” *Petition of City of Beckley to Annex. by Minor Boundary Adjustment*, 194 W.Va. 423, 427, 460 S.E.2d 669, 673. This principle is consistent with our general law regarding a legislative grant of power to a municipality...” ‘A municipal corporation has only the powers granted to it by the legislature, and any such power it possesses must be expressly granted or necessarily or fairly implied or essential and indispensable. If any reasonable doubt exists as to whether a municipal corporation has a power, the power must be denied’.” *Id.* At fn. 7 (1995) (citing syllabus Point 1 of *McCallister v. Nelson*, 196 W.Va. 131, 411 S.E.2d 456 (1991), syllabus Point 1, *City of Fairmont v. Investors Syndicate of America [Inc.]*, 172 W.Va. 431, 307 S.E.2d 467 (1983), and syllabus Point 2, *State ex rel. [City of] Charleston v. Hutchinson*, 154 W.Va. 585, 176 S.E.2d 691 (1970). *See also* Syllabus Point 1, *Cowan v. County Commission of Logan County*, 161 W.Va. 106, 240 S.E.2d 675 (1977). “Moreover, it is generally recognized that the legislature may designate the power of annexation absent some constitutional limitations.” *Id.* *See generally*, 56 Am.Jur.2d *Municipal Corporations, Counties and Other Political Subdivisions*, §55 and §63 (1971).

W.Va. Code §8-6-4 expressly provides that annexation of additional territory into a municipality can occur without a vote upon a petition of a majority of freeholders and qualified voters in the additional territory seeking to be annexed. Upon satisfaction that the petition is sufficient in every respect, “the governing body shall enter that fact upon its journal and forward a certificate to that effect to the county commission of the county wherein the municipality or major portion of the territory thereof, including the additional territory, is located. The county commission **shall** thereupon enter an order as described in the immediately preceding section of this article [W.Va. Code §8-6-3]. After the date of the order, the corporate limits of the municipality shall be as set forth herein.” W.Va. Code §8-6-4 (emphasis added).

These annexation statutes, now contained in article six of chapter eight of the Code of West Virginia, provide three methods for properly altering municipal boundaries by annexation of additional territory. Matter of City of Morgantown, 159 W.Va. 788, 266 S.E.2d 900 (1976) (referring to the version of W.Va. Code §8-6-4 in effect in 1976). Although Section 4 (§8-6-4) was amended so as to no longer require sixty percent of the voters and freeholders in the territory to be annexed, the ministerial role of the county commission with respect to the annexation procedure remains the same.

“Through the enactment of these general laws, the Legislature delegated certain functions and responsibilities to the county commission of each county. A county commission is required to perform a ministerial function when it enters an order reflecting the change in boundaries after municipal authorities certify compliance with the statutory procedures of section 2 or 4.” *Id. at 903, 159 W.Va. at 792* (referring to W.Va. Code §8-6-2 and §8-6-4).

Accordingly, pursuant to the clear language of the statute, the entry of the Order which the Respondent President has refused to sign and the Respondent Clerk has refused to enter is a mandatory, non-discretionary and merely ministerial act. Mandamus lies to compel such actions. The Petitioners herein have a clear legal right to have such properly certified Order entered by the County Commission. W.Va. Code §8-6-4. The Petitioners are without adequate relief or remedy at law, in equity, or otherwise, save for the relief prayed for in this Petition.

The Petitioners aver that the City of Charles Town has also filed a Petition for Writ of Mandamus with this Court, involving the same properties and parties, and requesting the same relief. Accordingly, the Petitioners request that this matter be consolidated with the Petition of the City of Charles Town to be considered and heard concurrently by this Court.

In support of this Petition, Petitioners submit the attached Exhibits A and B, as illustrative of the Certificate of Annexation Pursuant to an Ordinance, the resulting proposed Order.

V. CONCLUSION

WHEREFORE, the Petitioners pray that a rule be issued by this Honorable Court directed to the Respondents, Frances Morgan, President of the County Commission of Jefferson County, and Jennifer Maghan, Clerk of the County Commission of Jefferson County to show cause, if they can, why they should not enter the Annexation Order; that, after the Respondents shall have had an opportunity to respond to such rule, this Honorable Court issue a peremptory writ of mandamus commanding the Respondents to sign and enter the Annexation Order as required by West Virginia Code section 8-6-4; and that this Honorable Court give Petitioners such other and further relief, including attorneys fees, as it may deem appropriate and as this case may require.

**NEW VISION PROPERTIES II, INC.,
MICHAEL C. GOODE, SR., and
SYLVIA D. GOODE, and JOHN J.
GERVASI and LINDA S. GERVASI
BY COUNSEL**



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P.O. Box 547
Charles Town, WV 25414
(304) 725-9797

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON, to wit:

CHRISTOPHER B. SHULTZ, _____, of
NEW VISION PROPERTIES II, INC., PETITIONER named in the foregoing
PETITION OF NEW VISION PROPERTIES II, INC., MICHAEL C. GOODE, SR., and
SYLVIA D. GOODE, and JOHN J. GERVASI and LINDA S. GERVASI, FOR WRIT
OF MANDAMUS, being duly sworn, says that the facts and allegations contained therein
are true, except so far as they are therein stated to be on information, and that so far as
they are therein stated to be upon information, he believes them to be true.

NEW VISION PROPERTIES II, INC.

BY: _____

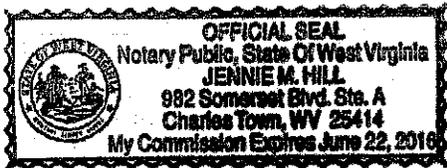
Christopher B. Shultz

Taken, sworn to and subscribed before me this 30 day of April,
2007.

My commission expires:

6/22/2016
(Affix Notary Seal)

Jennie Hill
Notary Public

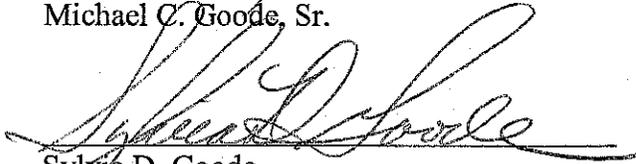


STATE OF WEST VIRGINIA

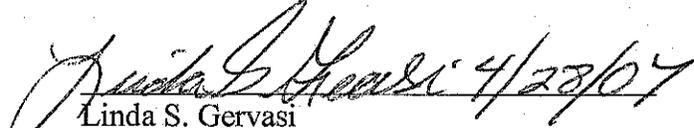
COUNTY OF JEFFERSON, to wit:

MICHAEL C. GOODE, SR., and SYLVIA D. GOODE, husband and wife, and JOHN J. GERVASI and LINDA S. GERVASI, husband and wife, PETITIONERS named in the foregoing PETITION OF NEW VISION PROPERTIES II, INC., MICHAEL C. GOODE, SR., and SYLVIA D. GOODE and JOHN J. GERVASI and LINDA S. GERVASI, FOR WRIT OF MANDAMUS, being duly sworn, says that the facts and allegations contained therein are true, except so far as they are therein stated to be on information, and that so far as they are therein stated to be upon information, they believe them to be true.


Michael C. Goode, Sr.


Sylvia D. Goode

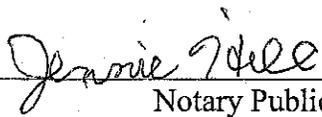

John J. Gervasi

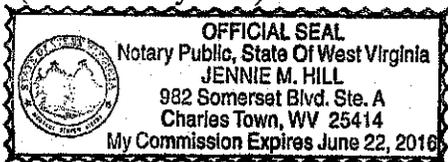

Linda S. Gervasi

Taken, sworn to and subscribed before me this 28 day of April, 2007.

My commission expires:

6/22/2010
(Affix Notary Seal)


Notary Public



SCHEDULE OF EXHIBITS

EXHIBIT A

**CERTIFICATE OF ANNEXATION PURSUANT
TO ORDINANCE**

EXHIBIT B

**PROPOSED ORDER OF ANNEXATION (REFUSED
THE COUNTY COMMISSION)**

EXHIBIT C

**MINUTES OF THE MEETING OF THE COUNTY
COMMISSION DURING WHICH PROPOSED ORDER
OF ANNEXATION WAS REFUSED**

EXHIBIT A

EXHIBIT A

CERTIFICATE OF ANNEXATION PURSUANT TO AN ORDINANCE

AN ANNEXATION ORDINANCE ANNEXING THE PROPERTIES OF
NEW VISION PROPERTIES II, INC., MICHAEL C. GOODE, SR., SYLVIA D. GOODE,
JOHN C. GERVASI AND LINDA S. GERVASI AND STATE OF WEST VIRGINIA

WHEREAS, West Virginia Code 8-6-4(b) provides that a qualified voter in the additional territory sought to be annexed includes firms and corporations in the additional territory regardless of whether the firm or corporation is a freeholder, and

WHEREAS, New Vision Properties II, Inc. is the owner and qualified voters of fourteen parcels of real estate situate in Charles Town and Harpers Ferry Districts, Jefferson County, West Virginia, being shown on the Assessor's Map of Jefferson County, West Virginia on Charles Town District Map 9C, Parcels 1,2,4,5,6,7,8 and 9 and on the Harpers Ferry District Map 11 as Parcels 44.4, 44.5, 44.6, 44.7, 44.8 and 44

WHEREAS, Michael C. Goode, Sr., Sylvia D. Goode, John C. Gervasi and Linda S. Gervasi are owners and freeholders of one parcel of real estate situate in the Charles Town District, Jefferson County, West Virginia and being shown on the Assessor's Map on Charles Town District Map 9C, Parcel 3, and

WHEREAS, the State of West Virginia is a owner and qualified voter pursuant to West Virginia Code 8-6-4(b) of one parcel of real estate sought to be annexed and did not join in the petition for annexation, and

WHEREAS, pursuant to West Virginia Code 8-6-4(d) a qualified voter of the additional territory who is also a freeholder of the additional territory may join only in one petition, and

WHEREAS, West Virginia Code 8-6-4(b) does provide that there shall be allowed only one signature on a petition per parcel of property and any freeholder interest that is held by more

than one individual or entity shall be allowed to sign the Petition only upon approval by the majority of the individuals or entities which have an interest in the parcel of property, and

WHEREAS, Michael C. Goode, Sr., Sylvia D. Goode, John C. Gervasi and Linda S. Gervasi have joined in the Petition as all of the freeholders of their parcel of real estate showing their consent to the annexation, and

WHEREAS, the additional territory is contiguous with the municipal boundaries of the City of Charles Town, and

WHEREAS, a majority of the freeholders of the additional territory sought to be annexed have petitioned the City of Charles Town to have the additional territory annexed into the municipality by signing the petition in accordance with West Virginia Code 8-6-4, and

WHEREAS, a majority of the qualified voters of the additional territory sought to be annexed have petitioned the City of Charles Town to have the additional territory annexed into the municipality by signing the petition in accordance with West Virginia Code 8-6-4, and

NOW, THEREFORE, BE IT ORDAINED THAT the City Council of the municipality of the City of Charles Town (1) adopts the recitals set forth above as true and correct and that they are hereby incorporated in the ordinance as if set out in full, (2) hereby finds and is satisfied that the petition is sufficient in every respect and that the recorder is directed to enter this fact upon the City's journal and forward a certificate to that effect to the County Commissioners of Jefferson County, West Virginia requesting that they enter an Order annexing the property in the petition to the municipality of City of Charles Town. Further, after the date of the entry of the County Commission's Order, the corporate limits of the municipality of Charles Town shall be as set forth therein.

CITY OF CHARLES TOWN

By: 

Peggy A. Smith, Mayor

First Read:

Date: 01/16/07

Second Read:

Date: 02/05/07

CERTIFICATE

The undersigned, being the Clerk for the City of Charles Town, hereby certifies that the above ordinance is a true copy of the ordinance of the City of Charles Town entered into its journal as of the 5th day of FEBRUARY, 2007.

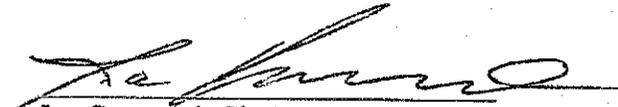

Joe Cosentini, Clerk

EXHIBIT B

EXHIBIT B

IN THE COUNTY COMMISSION OF JEFFERSON COUNTY, WEST VIRGINIA

In Re: Annexation of Additional Territory of the City of Charles Town Pursuant to
West Virginia Code Section 8-6-4

ORDER

A certificate of the governing body of the City of Charles Town has this day filed showing that an annexation has been made, in the manner required by law, to the corporate limits thereof, and that by such annexation the said corporate limits are as follows:

Parcel 1 Part of Windmill Crossing Subdivision Charles Town District

Beginning at a point with station 48+23/30' Lt in the northerly right-of-way of US Route 340 per project X319-340-486 and project 319-340-13.05

Thence with said right-of-way line the following twenty-two (22) courses and distances:

North 14°43'39" East, a distance of 61.85 feet to a point;

Thence North 59°56'36" East, a distance of 597.05 feet to a point;

Thence North 59°43'41" East, a distance of 681.41 feet to a point;

Thence North 09°45'07" West, a distance of 32.12 feet to a point;

Thence North 72°15'51" East, a distance of 126.88 feet to a point;

Thence North 73°19'54" East, a distance of 437.62 feet to a point;

Thence North 79°46'55" East, a distance of 1364.90 feet to a point;

Thence North 74°49'37" East, a distance of 398.30 feet to a point;

Thence South 77°59'26" East, a distance of 106.25 feet to a point;

Thence North 67°59'57" East, a distance of 592.92 feet to a point;

Thence North 14°07'27" East, a distance of 178.74 feet to a point;

Thence North 64°13'37" East, a distance of 915.00 feet to a point;

Thence North 81°09'16" East, a distance of 240.42 feet to a point;

Thence North 64°13'37" East, a distance of 600.00 feet to a point;

Thence North 61°54'48" East, a distance of 495.40 feet to a point;

Thence North 61°56'11" East, a distance of 25.02 feet to a point;

Thence North 65°49'27" East, a distance of 777.64 feet to a point;

Thence North 61°01'07" East, a distance of 997.32 feet to a point;

Thence North 62°29'10" East, a distance of 400.12 feet to a point;

Thence North $61^{\circ}03'14''$ East, a distance of 850.00 feet to a point;

Thence North $07^{\circ}43'42''$ East, a distance of 117.20 feet to a point;

Thence departing the Right-of-way line of US Route 340 South $11^{\circ}24'51''$ East, a distance of 325.26 feet to a set rebar in the westerly right-of-way line of West Virginia Route 340/4 - Marlowe Road;

Thence with said right-of-way line of Marlowe Road the following two (2) courses and distances; southerly along a curve concave to the west having a radius of 1175.00 feet and a central angle of $8^{\circ}07'41''$ and being subtended by a chord which bears South $18^{\circ}06'32''$ East 166.55 feet, a distance of 166.69 feet to a set 5/8" rebar;

Thence South $14^{\circ}02'42''$ East tangent to said curve, a distance of 114.18 feet to a 5/8" rebar;

Thence departing the said right-of-way North $70^{\circ}21'09''$ East, a distance of 25.12 feet to the center line of Marlowe Road;

Thence with the center line of Marlowe Road, South $14^{\circ}02'42''$ East, a distance of 92.45 feet;

Thence South $75^{\circ}57'18''$ West, a distance of 25.00 feet to a point in the westerly right-of-way of Marlowe Road;

Thence with said right-of-way line of Relocated Somerset Boulevard the following three (3) courses and distances; North $69^{\circ}10'52''$ West, a distance of 36.93 feet to a set 5/8" rebar;

Thence South $76^{\circ}02'53''$ West, a distance of 47.91 feet to the beginning of a curve tangent to said line;

Thence westerly a distance of 135.71 feet along the curve concave to the north, having a radius of 625.00 feet and a central angle of $12^{\circ}26'29''$ to a set 5/8" rebar in the boundary line of Commercial Lot 7 per Windmill Crossing Subdivision;

Thence South $60^{\circ}47'26''$ West, a distance of 1355.33 feet to a set 5/8" rebar in the easterly boundary line of Tri-State Baptist Church, corner of Commercial Lot 1;

Thence with the boundary line of Commercial Lot 1 and Tri-State Baptist Church, North $77^{\circ}04'17''$ West, a distance of 343.61 feet to a found pipe in the southerly right-of-way of West Virginia Route 340/6 Somerset Boulevard;

Thence with said right-of-way line of Somerset Boulevard the following twelve (12) courses and distances; South $61^{\circ}23'47''$ West, a distance of 357.94 feet to a point;

Thence South $63^{\circ}42'47''$ West, a distance of 92.06 feet to a point;

Thence South $64^{\circ}13'56''$ West, a distance of 1812.41 feet to a point;

Thence South $58^{\circ}32'24''$ West, a distance of 115.73 feet to a point;

Thence South $65^{\circ}33'43''$ West, a distance of 55.01 feet to a point;

Thence South $65^{\circ}10'50''$ West, a distance of 312.27 feet to a point;

Thence South $23^{\circ}38'29''$ West, a distance of 42.29 feet to a point;

Thence South 66°26'04" West, a distance of 58.76 feet to a point;
Thence South 66°48'54" West, a distance of 193.48 feet to a point;
Thence South 45°41'00" West, a distance of 166.65 feet to a point;
Thence South 64°13'37" West, a distance of 43.00 feet to a point;
Thence South 85°00'43" West, a distance of 146.54 feet to a point;
Thence departing the said right-of-way North 36°04'40" West, a distance of 44.72 feet to a point;
Thence North 19°13'37" East, a distance of 11.31 feet to a point;
Thence North 24°12'12" West, a distance of 37.25 feet to a point in the southerly right-of-way of West Virginia Route 340 per project X319-340-486;
Thence with said right-of-way South 65°47'48" West, a distance of 744.93 feet to a point;
Thence South 72°29'57" West, a distance of 304.94 feet to a point;
Thence South 73°53'25" West, a distance of 407.35 feet to a point;
Thence South 78°07'26" West, a distance of 1107.46 feet to a point;
Thence North 12°58'31" West, a distance of 26.00 feet to a point;
Thence South 77°32'49" West, a distance of 253.51 feet to a point;
Thence North 18°15'19" West, a distance of 10.00 feet to a point;
Thence South 79°51'41" West, a distance of 208.26 feet to a point;
Thence South 62°26'06" West, a distance of 172.09 feet to a point;
Thence South 71°33'56" West, a distance of 129.66 feet to a point;
Thence South 60°14'49" West, a distance of 489.09 feet to a point;
Thence South 04°30'23" West, a distance of 14.46 feet to a point;
Thence South 06°34'22" West, a distance of 55.48 feet to a point;
Thence North 76°34'40" West, a distance of 37.11 feet to a point;
Thence South 75°37'16" West, a distance of 161.14 feet to a point;
Thence South 36°28'15" West, a distance of 22.50 feet to a point;
Thence South 65°31'56" West, a distance of 161.40 feet to a point;
Thence North 03°01'59" West, a distance of 15.01 feet to a point;
Thence South 65°38'01" West, a distance of 509.93 feet to a point;
Thence departing the said right-of-way North 02°28'26" West, a distance of 67.24 feet to a point in the northerly right-of-way of West Virginia Route 340 per project X319-340-486;
Thence North 65°38'01" East, a distance of 231.27 feet to the Point of Beginning.

Containing 65.9831 Acres, more or less.

Parcel 2
Part of Windmill Crossing Subdivision
Harpers Ferry District

Beginning at a set 5/8" rebar in the easterly right-of-way of West Virginia Route 340/4 Marlowe Road;

Thence North 60°38'25" East, a distance of 245.26 feet to a set 5/8" rebar in the westerly boundary line of JDC Enterprises L.L.C. (Tax Map 11, Parcel 44.2, Harpers Ferry District);

Thence with said boundary line the following two (2) courses and distances; South 14°52'07" East, a distance of 272.27 feet to a set 5/8" rebar;

Thence North 72°39'19" East, a distance of 342.82 feet to a found rebar in the westerly boundary line of WORCO (Tax Map 11, Parcel 44.3, Harpers Ferry District);

Thence with the said boundary line the following three (3) courses and distances; South 14°35'06" East, a distance of 25.57 feet to a found rebar;

Thence South 55°35'47" East, a distance of 40.53 feet to a found rebar;

Thence South 76°10'34" East, a distance of 258.56 feet to a found rebar in the westerly boundary of Sullivan (Tax Map 11C, Parcel 21, Harpers Ferry District);

Thence with the boundary line of Sullivan, South 13°26'48" West, a distance of 99.72 feet to a fence post, common corner of Sullivan and Quinn (Tax Map 11C, Parcel 8, Harpers Ferry District);

Thence with boundary line of Quinn, South 41°05'14" West, a distance of 40.60 feet to a found rebar, common corner of Quinn and Lott (Tax Map 11C, Parcel 7, Harpers Ferry District);

Thence with the boundary line of Lott the following two (2) courses and distances; South 41°41'41" West, a distance of 53.74 feet to a found rebar;

Thence South 17°39'24" East, a distance of 302.23 feet to a found rebar, common corner of Lott and Stevens (Tax Map 11C, Parcel 5, Harpers Ferry District);

Thence South 74°35'16" West, a distance of 149.80 feet to a found rebar, common corner of Stevens and Melvin & Miles (Tax Map 11C, Parcel 4, Harpers Ferry District);

Thence South 74°27'06" West, a distance of 149.64 feet to a found rebar, common corner of Melvin & Miles and Taulton (Tax Map 11C, Parcel 3, Harpers Ferry District);

Thence South 74°33'22" West, a distance of 157.87 feet to a found rebar, common corner of Taulton and Tabler (Tax Map 11C, Parcel 2, Harpers Ferry District);

Thence South 74°33'46" West, a distance of 142.46 feet to a found rebar, common corner of Tabler and Hatcher (Tax Map 11C, Parcel 1, Harpers Ferry District);

Thence South $74^{\circ}28'57''$ West, a distance of 131.05 feet to a set $5/8''$ rebar in the westerly right-of-way line of West Virginia Route 340/4 Marlowe Road;

Thence with the said right-of-way of Marlowe Road, North $13^{\circ}36'53''$ West, a distance of 493.11 feet to a set $5/8''$ rebar;

Thence departing the said right-of-way South $75^{\circ}57'18''$ West, a distance of 25.00 feet to the center line of Marlowe Road;

Thence with the center line of Marlowe Road, North $14^{\circ}02'42''$ West, a distance of 92.45 feet;

Thence North $70^{\circ}21'09''$ East, a distance of 25.12 feet to a point in the easterly right-of-way of Marlowe Road;

Thence along said right-of-way, North $14^{\circ}02'42''$ West, a distance of 109.28 feet to a set $5/8''$ rebar in the beginning of a curve tangent to said line;

Thence northerly a distance of 129.20 feet along the curve concave to the west, having a radius of 1225.00 feet and a central angle of $6^{\circ}02'35''$ to the Point of Beginning.

Containing 11.5957 Acres, more or less.

It is therefore ORDERED that such annexation to said corporate limits of Charles Town be, and the same is hereby APPROVED and CONFIRMED, and the Clerk of the Court is directed to deliver to the said Council of City of Charles Town a certified copy of this Order, as soon as practical after the entry of the same.

COUNTY COMMISSION OF
JEFFERSON COUNTY, WEST VIRGINIA

BY: _____
Frances Morgan, President

Entered: _____

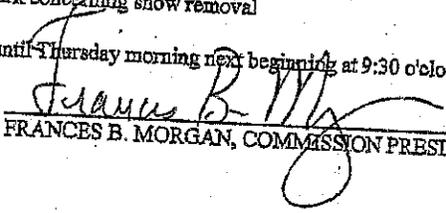
EXHIBIT C

Correspondence received from Lyn Widmyer concerning Kendig Keast.

Correspondence received from Willis Nowell concerning Kendig Keast.

Correspondence received from Matt Clark concerning snow removal

Upon rising, the Commission recessed until Thursday morning next beginning at 9:30 o'clock a.m.


FRANCES B. MORGAN, COMMISSION PRESIDENT

SPECIAL SESSION:

State of West Virginia, County of Jefferson, to-wit:

At a Special Session of the County Commission of said County and State continued and held at the Old Charles Town Library meeting room thereof on Monday, March 5, 2007 beginning at 7:00 o'clock p.m.

PRESENT: A.M.S. (Rusty) Morgan, III; President Pro Tem
Gregory Corliss, Dale Manuel, James Surkamp; Commissioners

Frances B. Morgan was absent due to a prior commitment

In re: PUBLIC MEETING; SUBDIVISION ORDINANCE REWRITE DISCUSSION
Commissioner R. Morgan outlined the rules and procedures of the public meeting and introduced Lane Kendig from Kendig Keast Collaborative. Mr. Kendig provided a detailed report on the current status of the Subdivision Ordinance draft.

Mr. Kendig answered questions from members of the public and comments were given by: Harry McMahon, Samuel Cochran, Daniel Lutz, Lynn Welch, Stacey Reed, Mark Dyck, Ron Parr and Jeff Bresee.

Upon rising, the Commission recessed until Thursday morning next beginning at 9:30 o'clock a.m.

A.M.S. (RUSTY) MORGAN, PRESIDENT PRO TEM

REGULAR TERM:

State of West Virginia, County of Jefferson, to-wit:

At a Regular Term of the County Commission of said County and State continued and held at the Courthouse thereof on Thursday, March 8, 2007, beginning at 9:30 o'clock a.m.

PRESENT: Frances B. Morgan, President;
James Surkamp; A.M.S. (Rusty) Morgan, III;
Dale Manuel; Greg Corliss; Commissioners

In re: PLEDGE OF ALLEGIANCE
Commissioner Surkamp conducted the Pledge of Allegiance.

In re: DISPENSE WITH READING OF MINUTES
Motion by Manuel, second by Corliss to dispense with the reading of the Minutes for the Board of Review and Equalization meetings held on Tuesday, February 6, 2007, Friday, February 9, 2007, Monday, February 12, 2007 and Tuesday, February 13, 2007, and to approve the Minutes as prepared. Motion carried.
Motion by R. Morgan, second by Manuel to dispense with the reading of the Minutes for the meeting held on Thursday, March 1, 2007, and to approve the Minutes as amended. Motion carried.
Motion by Manuel, second by R. Morgan to dispense with the reading of the Minutes for the Special meeting held on Monday, March 5, 2007, and to approve the Minutes as prepared. Motion carried.

In re: APPROVAL OF PURCHASE ORDERS
Motion by Manuel, second by Corliss to approve the following Purchase Orders for the Week of March 5, 2007, totaling \$10,088.18: 43614, 43622, 43623, 42770, 42925, 43324, 43730, 43733, 43735, 43640, 43646, 43729, 43569, 43570, 43571, 43573 and 43731. Motion carried.

In re: APPROVAL OF ACCOUNTS PAYABLE
 Motion by Manuel, second by Corliss to approve the list of the Accounts Payable dated March 8, 2007 as presented by the County Clerk and reviewed by the County Commission. Motion carried.

Check #	Dept	Vendor Name	PO #	AMT W/ PO#	AMT W/O PO#	Amount
51851	439	AMERICAN PLANNING ASSOC	43638	\$150.00		\$150.00
51852	700	ARCH WIRELESS	42918	\$322.20		\$322.20
51852	712	ARCH WIRELESS	41997	\$366.10		\$366.10
51853	425	ABH SERVICES	43484	\$2,235.00		\$2,235.00
51853	425	ABH SERVICES			\$6,797.00	\$6,797.00
51854	ALLOC	BARDANE PUBLIC HLTH CNTR			\$1,382.66	\$1,382.66
51854	ALLOC	BARDANE PUBLIC HLTH CNTR			\$2,471.75	\$2,471.75
51855	ALLOC	BOLIVAR/HF PUBLIC LIBRARY			\$11,250.00	\$11,250.00
51856	PAYROLL	BUREAU FOR CHILD SUPPORT			\$72.00	\$72.00
51857	439	B-K	43644	\$125.96		\$125.96
51857	425	B-K	43721	\$581.00		\$581.00
51858	PAYROLL	BUREAU/CHILD SUPPORT			\$62.31	\$62.31
51859	439	COUNTRY ROAD TIRE & AUTO	43719	\$430.91		\$430.91
51859	716	COUNTRY ROAD TIRE & AUTO	43720	\$516.94		\$516.94
51860	716	CREAMERS	43723	\$954.71		\$954.71
51860	425	CREAMERS	43725	\$66.41		\$66.41
51860	700	CREAMERS	43724	\$98.05		\$98.05
51861	424	C.T. WATER DEPT			\$122.64	\$122.64
51861	425	C.T. WATER DEPT			\$833.18	\$833.18
51862	712	VERIZON			\$150.00	\$150.00
51863	ALLOC	OLD CHARLES TOWN LIBRARY			\$11,250.00	\$11,250.00
51864	430	CHANNING BETE	43693	\$833.71		\$833.71
51865	PAYROLL	CHILD SUPPORT ENF AGENCY			\$23.07	\$23.07
51866	405	JAMES CASMIRO III			\$316.22	\$316.22
51867	439	CAMPBELL/MILLER/ZIMMERMAN			\$13,163.75	\$13,163.75
51868	405	DELL COMPUTER	43526	\$100.24		\$100.24
51869	405	DHER	43530	\$450.00		\$450.00
51870	716	EASTERN PAN. PRINT& COPY	43728	\$80.81		\$80.81
51871	INVEST	EQUITABLE			\$15.00	\$15.00
51872	992	ESRI	42429	\$20,400.00		\$20,400.00
51873	425	BHRLICH			\$92.00	\$92.00
51874	ALLOC	GENERAL COUNTY FUND			\$3,750.00	\$3,750.00
51875	401	GB ASSOCIATES			\$4,250.00	\$4,250.00
51876	711	GLOBALETAR	43667	\$1,616.14		\$1,616.14
51877	439	THE HERALD MAIL	43641	\$912.15		\$912.15
51878	439	ICC	43647	\$200.00		\$200.00
51879	INVEST	ING			\$175.00	\$175.00
51880	ALLOC	JEFF CO BOARD OF HLTH			\$47,432.70	\$47,432.70
51881	431	JEFF CO. DEVE. AUTHORITY			\$60,000.00	\$60,000.00
51882	712	JEFFERSON PUBLISHING CO			\$23.00	\$23.00
51882	439	JEFFERSON PUBLISHING CO	43643	\$153.60		\$153.60
51883	439	JOURNAL			\$351.98	\$351.98
51884	All Depts	JEFFERSON SECURITY BANK			\$4,729.00	\$4,729.00
51885	425	NICHOLAS LOWE			\$650.00	\$650.00
51886	712	PRIORITY DISPATCH	43325	\$565.00		\$565.00
51887	712	MSAG			\$350.00	\$350.00
51887	712	MSAG			\$896.38	\$896.38
51888	All Depts	COMPTRROLLER MD			\$811.96	\$811.96
51889	700	MCKINNEY'S AUTO REPAIR	43726	\$22.00		\$22.00
51890	PAYROLL	MD CHILD SUPPORT ACCT			\$140.00	\$140.00
51891	401	FRANCES MORGAN			\$102.92	\$102.92
51892	712	CHRISTINE MILLER			\$8.00	\$8.00
51883	INVEST	NACO/NATIONWIDE RETIRE.			\$765.21	\$765.21
51884	712	NATIONAL OF EMERGENCY MED	42926	\$90.00		\$90.00

51895	439	NAT. INST OF BUSINESS MGT.	43636	\$97.00		\$97.00
51896	ALLOC	JEFF CO PARK & REC			\$61,250.00	\$61,250.00
51897	403	PIPER	43039	\$24.34		\$24.34
51898	439	PENNSYLVANIA STATE UNIV	43645	\$1,645.00		\$1,645.00
51899	424	ROACH OIL			\$514.60	\$514.60
51900	401	ROBERT RODECKER			\$2,500.00	\$2,500.00
51901	ALLOC	SHEPHERDSTOWN LIBRARY			\$11,250.00	\$11,250.00
51902	712	SOFTWARE SYSTEMS	42769	\$584.00		\$584.00
51902	982	SOFTWARE SYSTEMS	43791	\$319.94		\$319.94
51902	404	SOFTWARE SYSTEMS			\$113.00	\$113.00
51902	404	SOFTWARE SYSTEMS			\$410.00	\$410.00
51902	402	SOFTWARE SYSTEMS			\$374.00	\$374.00
51902	404	SOFTWARE SYSTEMS			\$318.00	\$318.00
51902	403	SOFTWARE SYSTEMS			\$425.00	\$425.00
51902	403	SOFTWARE SYSTEMS			\$50.00	\$50.00
51902	402	SOFTWARE SYSTEMS			\$676.00	\$676.00
51902	428	SOFTWARE SYSTEMS			\$28.00	\$28.00
51902	404	SOFTWARE SYSTEMS			\$71.00	\$71.00
51902	982	SOFTWARE SYSTEMS			\$71.00	\$71.00
51903	ALLOC	S. JEFFERSON/SUMMIT PT LIB.			\$11,711.10	\$11,711.10
51904	All Depts	SHERIFF OF JEFFERSON CO			\$11,250.00	\$11,250.00
51905	All Depts	SHERIFF OF JEFFERSON CO			\$38,662.56	\$38,662.56
51906	401	STAPLES			\$27,160.60	\$27,160.60
51906	405	STAPLES			\$615.22	\$615.22
51906	412	STAPLES			\$46.93	\$46.93
51906	430	STAPLES	40894		\$629.86	\$629.86
51906	700	STAPLES			\$368.13	\$368.13
51906	712	STAPLES			\$729.96	\$729.96
51906	960	STAPLES			\$763.84	\$763.84
51907	439	THOMASSEN	43727	\$231.70		\$231.70
51908	711	US CELLULAR			\$135.32	\$135.32
51908	711	US CELLULAR			\$146.57	\$146.57
51909	982	UNITED SYSTEM & SOFTWARE			\$321.00	\$321.00
51910	424	US POSTAL SERVICE			\$5,070.00	\$5,070.00
51911	INVEST	VALIC			\$100.00	\$100.00
51912	425	WINCHESTER EQUIP CO	43722	\$482.61		\$482.61
51913	712	WALMART			\$260.52	\$260.52
51913	716	WALMART			\$82.26	\$82.26
51914	402	XEROX	43382	\$304.03		\$304.03
51914	402	XEROX	43383	\$223.15		\$223.15
TOTALS				\$35,182.70	\$348,507.62	\$383,690.52

DEPT	NAME	DEPT AMTS
401/COM	CO. COMMISSION	\$7,468.14
402/CCLK	CO. CLERK	\$1,577.18
403/CIR CLK	CIRCUIT CLERK	\$499.34
404/TAX	TAX OFFICE	\$912.00
405/PA	PROS ATTY	\$913.39
406/ASSR	ASSESSORS	
408/GOV	ST.COMPNET CHG BO GOV UNIT	
412/AG	AG AGT	\$629.86
413/ELB	ELECTION	
415/MAG CT	MAGISTRATE COURT	
415/	GENERAL SCHOOL/CO TRANSFER	
418/STK	STOCK ROOM	
424/CHS	COURT HOUSE	\$5,707.24
425/OB	OTHER BUILDING	\$11,737.20
428/DATAP	DATA PROCESSING	\$28.00
430/HLS	HOMELAND SEC	\$1,201.84
431/ECON DEV	ECON DEV	\$60,000.00

439/PZ	PLANNING ZONING	\$17,462.05
700/SHERF	SHERIFF DEPT	\$1,172.21
701/SHERF	SHERIFF DEPT	
704/WV JAIL	ST/WV REGIONAL JAIL	
711/OBS	EMERG SVC	\$1,898.03
712/911	911 COMMUNICATION	\$4,056.84
716/A/C	ANIMAL CONTROL	\$1,634.72
801/MTL HLTH	MENTAL HEALTH	
808GOV UNIT	SWA CONTRIB OTHER GOV UNIT	
900/PARK&REC	JEFFERSON CO. PARKS& REX	
916/LIBRARY	LIBRARY CAPITAL OUTLAY	
960/IMPACT	IMPACT FEES	\$36.62
965/CAP/AA	AMBULANCE AUTH CAP OUTLAY	
975/CAP OTL	CO. CLERK / CAPITAL OUTLAY	
976/CAP/CIR	CIRCUIT CLERK/CAPITAL OUTLAY	
978/CAP/PA	PROS ATTY/CAPITAL OUTLAY	
979/CAP/TAX	TAX OFFICE/CAPITAL OUTLAY	
980/CAP/SRF	SHERIFF DEPT/CAPITAL OUTLAY	
982/DATA	DATA PROCESSING - IMAGING	\$12,352.04
986/CAP/COMM	CO. COMMISSION/CAPITAL OUTLAY	
992/CAP/911	911 COMMUNICATION/CAP OUTLAY	\$20,400.00
998/PRK/REC	PARKS & REC COMMUNITY CENTER	
ALLOC	ALLOCATIONS	\$161,287.11
ALL DEPTS	ALL DEPTS	\$71,364.12
010/GRANT	GRANTS	
INVEST	INVESTMENTS	\$1,055.21
PAYROLL	PAYROLL	\$297.38
TOTALS		\$383,690.52

In re: LEGISLATIVE ISSUES

Commissioner Surkamp discussed SB 497/HB 2804. Motion by Surkamp, second by R. Morgan to fix a Resolution to Senator Yoder regarding the County Commission opposition on SB 497/HB 2804. Motion passed.

In re: COMPLETE BOND RELEASE - MURALL LIMITED PARTNERSHIP

Motion by R. Morgan, second by Corliss to approve the complete bond release in the amount of \$95,000.00 for Murall Limited Partnership - Quail Ridge Subdivision, Section II, Phase I, Lots 44-48, 51-81 & residue. Motion carried.

In re: BONDING AND ACTIVITY REPORT

Paul Raco, Executive Director of Planning, Zoning and Engineering, appeared before the Commission for the Planning Commission activity report. Mr. Raco discussed the Spruce Hill Subdivision bonding. The Commission agreed to place this matter on the March 22, 2007 agenda and to have Mr. Raco send out formal notices. Motion carried.

In re: PUBLIC COMMENTS

Nancy Lutz appeared before the Commission and commented on Law Enforcement banter on the air.

Daniel Lutz appeared before the Commission and commented on the Ag Task Force meeting with Kendig Keast.

In re: MARIAN BUCKNER & REBECCA MACLEON - POTOMAC HEADWATERS RC&D - BUDGET REQUEST

Marian Buckner and Rebecca MacLeon appeared before the Commission to request funding. Ms. MacLeon introduced Ora Dixon, Potomac Headwaters RC&D Council Member and Kellie Boles, Agricultural Development Officer.

Ms. MacLeon presented a plaque to the County Commission with appreciation and to recognize the County Commission for the past 15 years of financial support.

The Commission agreed to discuss this request during budget deliberations.

In re: ED DUNLEAVY - SHEPHERDSTOWN BATTLEFIELD FUNDING REQUEST

Ed Dunleavy appeared before the Commission to request funding for the Shepherdstown Battlefield. After discussion, the Commission agreed to discuss this request during budget deliberations.

In re: MEG BURNS - DISCUSS INCOME FROM RACE TRACK

Meg Burns appeared before the Commission to discuss the video lottery income that is received from the Charles Town Races and Slots. Ms. Burns requested that a portion of VLT money be given to the schools. The Commission commented that 80% of property taxes collected are for the schools and that HB 2718 would allow a percentage of table games would also go to the schools if passed during the election. After further discussion, no action was taken.

In re: APPOINTMENT OF ALTERNATE MEMBER TO THE BOARD OF ZONING APPEALS

No action was taken on this agenda item.

In re: APPOINTMENT TO THE JEFFERSON COUNTY BUILDING COMMISSION

No action was taken on this agenda item.

In re: APPOINTMENT TO THE PROPERTY SAFETY ENFORCEMENT AGENCY

No action was taken on this agenda item.

In re: LEGISLATIVE ISSUES

Commissioner Manuel reported on the following legislative issues: \$20 Flat Fee on Land Transfers for Affordable Housing, 3½% teacher raise, SB 721 still at the bottom of the agenda, mapping bill, water bill SB 679. Commissioner Manuel requested a wrap up session after the budget is completed to discuss Legislation. The Commission agreed to discuss this at a later date after the budget is complete and set a date and time for a wrap up session with our Delegates and Senators.

In re: TRINA BARTLETT - WV 211 PRESENTATION

Trina Bartlett appeared before the Commission to discuss WV 211 and to request funding. After discussion, the Commission agreed to discuss this during budget deliberations.

**In re: JENNIFER S. MAGHAN - COUNTY CLERK'S REPORT
- COUNTY CLERK'S END OF MONTH REPORT
- BUDGET REVISION REQUEST**

Jennifer S. Maghan, County Clerk appeared before the Commission to give the weekly County Clerk's report. Ms. Maghan gave the Commission a monthly report for February, 2007. Ms. Maghan also requested a budget revision for her County Clerk's fund and Election fund. The Commission authorized the County Administrator to prepare the required documents for the budget revision and to place this matter on next week's agenda.

The Commission took a 5 minute break at 11:05 a.m.

Elizabeth Blake appeared before the Commission to request that Ron Molters be appointed to the Multi-Jurisdictional Planning Committee representing Bolivar and informed the Commission that the request will be on next week's agenda.

In re: KENDIG KEAST UPDATE/ORDINANCE REWRITE DISCUSSION

The Commission discussed the visit with Kendig Keast and agreed to send a letter to ask that Kendig Keast provide the Commission with policy and procedures questions as soon as possible and to thank them for their appearance and looking forward to seeing them in April.

In re: SHEPHERDSTOWN BATTLEFIELD TRANSPORTATION ENHANCEMENT GRANT

No action was taken on this agenda item.

In re: SCHEDULE A MEETING WITH CABLE FRANCHISE LEGAL COUNSEL - ROBERT RODECKER

The Commission discussed scheduling a meeting with Robert Rodecker, Legal Counsel for the cable franchise. The Commission agreed to schedule a meeting the first or second week of April. The Commission directed that Leslie Smith, County Administrator call Comcast and request a copy of a proposal.

In re: EXECUTIVE SESSION TO DISCUSS THE POSSIBLE PURCHASE OF PROPERTY AND ASSOCIATED LEGAL AND CONTRACTUAL MATTERS

The Commission discussed this agenda item under Executive Session with Brandon Sims, Legal Counsel.

In re: LETTER TO GOVERNOR EXPRESSING DISSATISFACTION WITH THE FORM FOR APPLICATION FOR REVIEW OF PROPERTY ASSESSMENT

Commissioner F. Morgan withdrew this item from the agenda.

In re: EASTERN PANHANDLE TRANSPORTATION AUTHORITY: BYLAWS, MINUTES AUTHORITY

The Commission discussed the availability of the bylaws and minutes of the Eastern Panhandle Transportation Authority. The County Administrator reported that Jim Mickey is scheduled on the County Commission agenda March 29th, 2007 for a presentation.

In re: JEFFERSON COUNTY CHAMBER OF COMMERCE - REQUEST FOR PERMISSION TO INCLUDE WINE AT THE MOUNTAIN HERITAGE ARTS AND CRAFT FESTIVALS

Motion by R. Morgan, second by Corliss to approve the request received from the Jefferson Chamber of Commerce to give permission to include wine at the Mountain Heritage Arts and Crafts Festivals. Motion carried.

In re: REV. ERNEST LYLES - PROJECT EXCEL BUDGET REQUEST

Rev. Ernest Lyles appeared before the Commission to request funding for Project Excel. Susan Offutt, Principal for the Shepherdstown Elementary School was present and expressed her support for Project Excel. The Commission agreed to discuss this request during budget deliberations.

In re: JANE RISSLER - JOINT CITY/COUNTY PLANNING

Jane Rissler appeared before the Commission to discuss Joint City/County Planning. She also discussed pipestem annexations and presented a petition with 633 signatures asking for the City of Charles Town to hold all annexations until there is cooperation between the City and the County.

In re: LONG RANGE PLANNER INTERVIEWS - TRAVEL EXPENSES

Motion by Manuel, second by R. Morgan to approve the expenses for the travel expenses for the Long Range Planner interviews not to exceed \$1,000 and limited to airfare and one night lodging. Motion carried.

The Commission took a 5 minute break at 11:45 a.m.

In re: JAMES B. CRAWFORD - CHARLES TOWN ANNEXATION CONTINUED

James B. Crawford, Attorney for the City of Charles Town appeared before the Commission for approval of an annexation order for the City of Charles Town for Windmill Crossing. Mike Thompson, Prosecuting Attorney was present and commented on pipestem annexations and the level of services. Jeff Polczynski, Communications Director appeared before the Commission and commented on the problems with pipestem annexations and the problems with the addressing process.

Motion by Surkamp, second by R. Morgan to request that the City of Charles Town provide names of owners of the adjacent property to be annexed, prepare a cost of services and a service analysis report. Commissioner Surkamp withdrew his motion.

Motion by Surkamp to require the City of Charles Town provide names of owners of the adjacent property to be annexed, prepare a cost of services and a service analysis report for every annexation to show reasonable proof of the annexation. Commissioner Surkamp withdrew his motion.

Motion by Corliss, second by Manuel to deny the Annexation Application Certification because it did not meet the test of reasonableness and it is also in conflict with 8A regarding continuity/contiguous. Motion carried.

For the record, Commissioner Surkamp presented a copy of the Public Education Session - Formal Presentation of Attorney for the City of Charles Town - Linda Gutsell, Esq.

In re: BRANDON SIMS - LEGAL UPDATE AND REPORT

Brandon Sims, Assistant Prosecuting Attorney appeared before the Commission to give a legal update and report. Ms. Sims addressed the release of personnel records.

Motion by Surkamp, second by Corliss to transfer the personnel file of Kirk Davis from DPZE to Mark Sohiavons, immediately. Motion passed by a 4-1 vote. Commissioner Manuel voted no.

Stephanie Grove, Assistant Prosecuting Attorney appeared before the Commission to ask who in the Zoning Board of Appeals would be able to certify a large document needed in court. In the past, Becky Burns or Paul Raco certified the documents. The Commission agreed to have Christine Chalmers along with Becky Burns certify the documents and to have Ms. Burns work with Ms. Chalmers so she can certify documents in the future.

Motion by R. Morgan, second by Manuel to enter into Executive Session with legal counsel in order to discuss the Ranson Litigation. Motion carried.

Motion by R. Morgan, second by Manuel to return to Regular Session. Motion carried.

In re: RE-ORGANIZATION

Motion by Manuel that the reorganization plan adopted last week be altered by reassigning the Capital Projects Manager to the Facilities Planning Department under the supervision of Chief Planner, Paul Raco. Motion failed due to the lack of a second.

In re: MARK SCHIAVONE - TRANSITION PLAN FOR CAPITAL PROJECTS MANAGER - REVIEW TRANSITION PLANNING TO ESTABLISH CIP AND IMPACT FEE DEPARTMENT

Mark Schiavone appeared before the Commission to discuss the Transition Plan for the Capital Projects Manager that was discussed previously with Kirk Davis and Roger Goodwin. After discussion, motion by R. Morgan, second by Surkamp to receive the Transition Plan as amended to include additional bonding responsibilities in consideration to Kirk Davis' current job duties. Motion carried.

In re: TRANSITION PLAN FOR REORGANIZATION OF PZE

Commissioner Corliss presented a draft transition plan for reorganization of PZE. After discussion, motion by Corliss, second by R. Morgan to approve the draft transition plan for reorganization of PZE and a list of job descriptions as presented by Commissioner Corliss.

Motion by Manuel to lay this on the table for next week. Motion failed due to the lack of a second. The original motion by Corliss, second by R. Morgan to approve the draft transition plan for reorganization of PZE and a list of job descriptions as presented by Commissioner Corliss. Motion passed by a 4-1 vote. Commissioner Manuel voted no.

Commissioner Manuel asked James Casimiro, Assistant Prosecuting Attorney if the County Commission may make an appointed commission directly responsible for control of a county function outlined in WV Code? Mr. Casimiro informed the Commission that he would review the request and give an update later.

In re: KRISTINA CREA - REQUEST FOR USE OF LIBRARY MEETING ROOM FOR AN ART EXHIBIT

By unanimous consent the Commission denied the request received by Kristina Crea for the use of the Library meeting room for an Art exhibit.

In re: JEFFERSON COUNTY COMMUNITY CENTER - PALMER CONSTRUCTION COMPANY CHANGE ORDER

The Commission agreed to place this agenda item on next week's agenda.

In re: CORRESPONDENCE FROM ELLIOTT KIRSCHBAUM - REQUEST TO APPEAL ASSESSMENT INCREASE

The Commission directed the County Administrator to send a letter to Elliott Kirschbaum and inform him that the Board of Review and Equalization is not able to look at this request and that the deadline expired February 9, 2007 at noon.

In re: DRAFT AGREEMENT - OLD JAIL COURTHOUSE ANNEX - ROCKWELL CONSTRUCTION

Motion by Manuel, second by R. Morgan to have the Commission legal counsel and Rockwell Construction to work together on the agreement. When it is worked out then the Commission authorized the President of the Commission to affix her signature to the required documents. Motion carried.

In re: CORRESPONDENCE FROM RALPH LORENZETTI - WITHDRAWAL AS FIDUCIARY COMMISSIONER AND RECOMMENDATION FOR APPOINTMENT OF NEW FIDUCIARY COMMISSIONER - CARMELA M. CESARE, ESQ.

The Commission agreed to place this agenda item on the April 12, 2007 agenda for appointment of a Fiduciary Commissioner during the Quarterly Fiduciary Accounts Review.

In re: JIM ADDY, MAYOR OF HARPERS FERRY - APPOINTMENT OF DAN RISS AND CARRIE GAUTHIER TO THE MULTI-JURISDICTIONAL PLANNING COMMISSION

The Commission agreed to accept the appointments of Dan Riss and Carrie Gauthier to the Multi-Jurisdictional Planning Commission.

In re: SCHEDULING A PUBLIC HEARING ON THE MANAGEMENT STUDY

Motion by Manuel, second by F. Morgan to hold a public hearing to hear comments on the Management Study. Motion carried.

In re: PUTTING MANAGEMENT STUDY WITH ALL ENCLOSURES ONLINE

The Commission discussed the Management Study and putting it online. The County Administrator informed the Commission that the Management Study is currently online. Ms. Birnbach informed the Commission that she would email the County Administrator any charts or documents that are not currently online so they could be posted.

In re: SET MEETING WITH SARAH BIRNBACH TO DISCUSS CHANGES TO MANAGEMENT PLANS MADE BY LEGAL STAFF

The Commission agreed to schedule a meeting with Sheila Birnbach on March 29th, 2007 to discuss the changes to the Management Study.

In re: HOW TO REVIEW/TAKE ACTION ON OTHER RECOMMENDATION FROM MANAGEMENT STUDY, FOR INSTANCE BELOW

a. ESTABLISHING JEFFERSON IT COMPUTER AND SOFTWARE MAINTENANCE PROGRAM

b. CREATING A JEFFERSON COUNTY HUMAN RESOURCES OFFICE

The Commission discussed the possibility of establishing a Human Resources Office. The Commission directed that the County Administrator contact all elected officials and ask them if they would use the Human Resources Office if implemented.

The Commission agreed to place the agenda item of creating a Jefferson County IT computer and software maintenance program under review.

In re: AMENITIES FOR COUNTY COMMISSION MEETING ROOM

Commissioner Corliss requested that a coat rack be placed in the County Commission meeting room. The County Administrator informed the Commission that this matter is being looked at and that there have been catalogs requested with historic coat racks in it. Commissioner F. Morgan agreed to bring in wall hanging brass coat hooks in at no charge to be placed in the County Commission meeting room.

In re: UPGRADE COUNTY MEETING ROOM SOUND SYSTEM

The County Administrator informed the Commission that the sound system had been approved a few weeks ago and that they are awaiting the microphones for the sound system.

In re: COUNTY COURT HOUSE INSURANCE COST

Commissioner Corliss discussed the Court House Insurance and requested that the Court House insurance be increased. Currently the Court House is insured at 2.5 million and contents at 1.2 million. The County Administrator said that she would contact BRIM and request an increase in the amount of insurance to the Court House.

In re: MOTION TO INCLUDE MARK SCHIAVONE AS A PARTICIPANT IN OUR BUDGET DELIBERATIONS

The Commission agreed to have Mark Schiavone participate in the budget deliberations and to include Kirk Davis when Capital Improvements and construction is discussed.

In re: MONTHLY MEETING; COUNTY COMMISSION DEPARTMENT HEADS

The Commission discusses holding a meeting with the County Commission Department Heads quarterly and to start the first meeting after the budget deliberations. For the record, Sheila Birnbach was present and commented on the meetings with the County Commission Department Heads and she supports that concept.

In re: CHARLES TOWN MASS ANNEXATION PLAN: LEGAL QUESTIONS

This agenda item was discussed under the appointment with James B. Crawford - Charles Town Annexation continued.

In re: REQUEST FOR PAUL RACO, IN NEW CAPACITY AS FACILITIES PLANNER, TO CONDUCT STUDY OF ALL OPTIONS FOR PROVISION OF AMBULANCE SERVICES IN THE COUNTY

The Commission agreed to place this agenda item on next week's agenda.

In re: REQUEST PAUL RACO, AS FACILITIES PLANNER, TO REPORT ON THE AFFECT TO COUNTY SERVICES OF PROPOSED ANNEXATIONS AND THE SPLIT OF RESPONSIBILITIES BETWEEN THE COUNTY AND CITY

The Commission agreed to place this agenda item on next week's agenda.

The Commission took a 10 minute break at 3:00 p.m.

In re: DEPARTMENT OF PLANNING, ZONING AND ENGINEERING STAFF - REQUEST TO ADDRESS THE COMMISSION FOR CLARIFICATION ON THE REORGANIZATION

The Commission discussed the request from the Department of Planning, Zoning and Engineering Staff to address the Commission for clarification on the reorganization. Motion by Manuel to allow the staff to address the Commission right now. The motion failed due to the lack of a second.

Motion by Surkamp, second by R. Morgan to notify the staff and to have them place their concerns in writing and that they would be included in the Commission agenda packet. Commissioner Surkamp withdrew his motion.

Motion by Surkamp, second by F. Morgan to notify the staff that their concerns be directed to the Transition Team. The County Administrator informed the Commission that the staff have already called and requested appointments on next week's agenda. Commissioner Surkamp withdrew his motion.

Motion by R. Morgan, second by Surkamp to allow 1 spokesperson from the staff of the Department of the Planning, Zoning and Engineering appear before the Commission next week. Motion carried.

In re: EXTENSION OF GREEN INFRASTRUCTURE WORK WITH FRESHWATER INSTITUTE
The Commission discussed the extension of the Green Infrastructure work with the Freshwater Institute and agreed to discuss this agenda item during budget deliberations.

In re: DISCUSS APPROPRIATENESS OF IMMEDIATE REPEAL OF JEFFERSON COUNTY ZONING AND LAND DEVELOPMENT ORDINANCE CHAPTERS 6, 7, AND 8 AMENDING TITLE OF ORDINANCE TO CONFORM TO CHANGE

Commissioner F. Morgan discussed the appropriateness of immediate repeal of the Jefferson County Zoning and Land Development Ordinance Chapters 6, 7, and 8 amending Title of Ordinance to conform to change. The Commission agreed to have Stephanie Grove, Assistant Prosecuting Attorney and James Casimiro, Assistant Prosecuting Attorney review this agenda item and give a report to the Commission on their findings.

In re: DISCUSS FORMATION OF MPA WITH JEFFERSON COUNTY AND MUNICIPALITIES OF BOLIVAR, HARPERS AND SHEPHERDSTOWN
This agenda item was taken care of previously.

In re: COMMISSION REPORTS
Commissioner Corliss reported on the Region 9 meeting he attended.

In re: COUNTY ADMINISTRATOR REPORTS AND INFORMATION
Leslie Smith, County Administrator informed the Commission that John Sidor called asking for the schedule of the Commissioners that are on the Long Range Planner Committee so he can set up times for interviews. Commissioners Manuel, Corliss and Surkamp agreed to be available on March 26th, 2007 for interviews.

In re: PUBLIC COMMENT
Fred Blackmer commented on actions taken by the Commission today.

The Commission received the following information:

Meeting scheduled with Tammy DeFazio on March 21, 2007, at 1:00 p.m.

Certificate of Valuation and Assessed Values for Calculating Reduced (Rolled Back) Levy Rates received.

Meeting minutes received for the Special Meeting of the Planning Commission held on January 30, 2007.

Memorandums received from the Department of Impact Fees concerning transfers of funds.

Impact Fee Status Report received for February 2007.

Correspondence received from JCCEP concerning Paul Burke.

Correspondence received from the Division of Highways concerning highway projects.

Status report of County capital construction projects received.

Correspondence received from Tim Barr concerning budget hearings.

2007 state training schedule received from the West Virginia Division of Homeland Security and Emergency Management.

Correspondence received from Action Audits, LLC concerning WI-FI networks.

Correspondence received from Comcast concerning rate adjustments.

Copy of Senate Concurrent Resolution No. 10 received.

Information on air quality received from Tom Christoffel.

Legislative information received from the County Commissioners' Association.

Legislative information received from the Association of Counties.

Copy of a newspaper article received from the County Commissioners' Association concerning the ATV bill.

Information received from the Association of Counties concerning Synfuel Tax distribution.

Information received concerning the Spring 2007 Local Government Leadership academy scheduled for April 14th - 15th, 2007

Weekly settlement report for the Charles Town Races received from the West Virginia Lottery.

The Commission received the following correspondences:

Correspondence received from Christy Huddle concerning the draft zoning and draft subdivision ordinances.

Correspondence received from Citizens of the Blue Ridge Act concerning a proposed Blue Ridge Mountain Overlay District.

Upon rising, the Commission recessed until Thursday morning next beginning at 9:30 o'clock a.m.

Frances B. Morgan
 FRANCES B. MORGAN, COMMISSION PRESIDENT

REGULAR TERM:

State of West Virginia, County of Jefferson, to-wit:

At a Regular Term of the County Commission of said County and State continued and held at the Jefferson County Courthouse thereof on Thursday, March 15, 2007 beginning at 9:30 o'clock a.m.

PRESENT: Frances B. Morgan, President
 James Surkamp, A.M.S. (Rusty) Morgan, III;
 Gregory A. Corliss, Dale Mannel; Commissioners

IN RE: PLEDGE OF ALLEGIANCE
 Commissioner R. Morgan conducted the Pledge of Allegiance

IN RE: APPROVAL OF MINUTES
 Motion by R. Morgan, second by Mannel to dispense with the reading of the minutes for the regular meeting held on Thursday, March 8, 2007 and to approve the minutes as amended. Motion carried.

IN RE: APPROVAL OF PURCHASE ORDERS
 Motion by Mannel, second by R. Morgan to approve the following Purchase Orders for the week of March 15, 2007 totaling \$120,270.89: 42771, 43615, 43707, 43744, 43772, 43793, 43794, 43703, 43743, 43745, 43746, 43531, 43532, 43533, 43748 and 43750. Motion carried.

IN RE: APPROVAL OF ACCOUNTS PAYABLE
 Motion by R. Morgan, second by Mannel to approve the Accounts Payable for the week of March 15, 2007 totaling \$214,309.68 as presented by the County Clerk and reviewed by the County Commission. Motion carried.

Check	Dept	Vendor Name	PO #	AMT W/PO	AMT W/O PO	Amount
51916	425	ALLEGHENY POWER				
51917	412	AT&T			\$862.60	\$862.60
51917	424	AT&T			\$2.31	\$2.31
51918	425	ARCH WIRELESS			\$0.25	\$0.25
51919	712	KIMBERLY BURKE	42917	\$175.90		\$175.90
51920	430	B-K			\$180.00	\$180.00
51921	711	AMERIGAS	40895	\$171.00		\$171.00
51922	425	BOLAND			\$208.26	\$208.26
51922	425	BOLAND	42528	\$385.00		\$385.00
51923	425	BK SECURITY & HOME AUTOMATION	43473	\$593.00		\$593.00
51924	401	CASTO & HARRIS	43735	\$174.59		\$174.59
51925	439	COUNTRY ROAD TIRE & AUTO	43708	\$73.60		\$73.60
51926	439	CREAMERS	43729	\$420.43		\$420.43
51926	439	CREAMERS	43730	\$37.74		\$37.74
51926	700	CREAMERS	43731	\$638.15		\$638.15

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

CHARLESTON

NEW VISION PROPERTIES II, INC.,
a West Virginia Corporation;
MICHAEL C. GOODE, SR., and
SYLVIA D. GOODE, husband and wife;
JOHN J. GERVASI and **LINDA S.**
GERVASI, husband and wife,

PETITIONERS

VS.

**IN MANDAMUS UPON
ORIGINAL JURISDICTION**

**THE COUNTY COMMISSION OF
JEFFERSON COUNTY,** a public body
corporate of the State of West Virginia;
and
FRANCES B. MORGAN, President and
Member; **ARCHIBALD M.S. MORGAN,**
III, Member; **C. DALE MANUEL,** Member;
JAMES T. SURKAMP, Member; and
GREGORY A. CORLISS, Member,
and
JENNIFER MAGHAN, Clerk, County
Commission of Jefferson County,

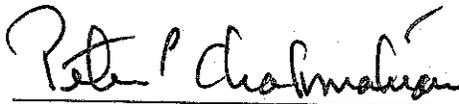
RESPONDENTS

MEMORANDUM OF PERSONS TO BE SERVED

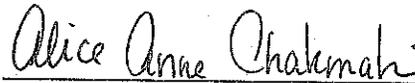
The rule to show cause should be served upon the County Commission of Jefferson County, West Virginia, Jefferson County Court House, 100 East Washington Street, Charles Town, WV. 25414; Frances Morgan, President and Member, County Commission of Jefferson County, 1373 Summit Point Road, Summit Point, WV 25446; A.M.S. Morgan, III, Member, County Commission of Jefferson County, P.O. Box 130, Rippon, WV 25441; Gregory A. Corliss, Member, County Commission of Jefferson County, 948 Daniels Road, Shenandoah Junction, WV 25442; C. Dale Manuel, Member, County Commission of Jefferson County, 75 Porter Way, Charles Town, WV 25414; James T. Surkamp, Member, County Commission of Jefferson County, P.O. Box 1035, Shepherdstown, WV 25443; Jennifer Maghan, Clerk, County Commission of Jefferson County, Jefferson County Court House, 100 East Washington Street,

Charles Town, WV 25414; and Honorable Michael D. Thompson, Prosecuting Attorney of Jefferson County, West Virginia, Jefferson County Judicial Center, 110 North George Street, 3rd Floor, Charles Town, WV 25414

**New Vision Properties II, Inc;
Michael C. Goode, Sr., and Sylvia D.
Goode; John J. Gervasi and Linda D. Gervasi
By Counsel**



**Peter L. Chakmakian
WV State Bar I.D. # 687
Attorney for Petitioners
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Charles Town, WV 25414
(304) 725-9797**



**Alice Anne Chakmakian
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