

The regular monthly meeting of the Beverly Town Council was held Monday, March 11, 2019, at 6:30 pm in the council chambers of the Beverly Town Hall. The meeting was called to order by Mayor Cindy Karelis. Those present were Recorder Barbara Smith, councilmembers, Connie Pingley, Matt Lewis, Becky Weese and Rodney Cooper. Tena Pritt was absent. Visitors included Zac Campbell from Pickering Associates, Kenny Weese, David Sturdivant, Donnie Pritt, Troy Ware, Barbara McCreary, Nina and Becky Arbogast, Cory Weese, Andy Burns, David Simmons, Blaine Emery, AMF, David Kesling, Mark Scott, Dave Harper and Rob Chenoweth, town attorney.

Becky Arbogast, candidate for council, said she had lots of new ideas for Beverly. Barbara McCreary presented a request from Joan Pitts, Chairman of the ON TRAC Design Committee for a total of \$800 for flowers and Christmas decorations.

Zac Campbell from Pickering Associates said he came to answer any questions council had about the Armstrong cost share on the water line work involved during the Armstrong expansion. He explained the work has made the Beverly line system better, allowing Scotts Lake residents to continue to receive water in case the water was shut off at Armstrong. He explained if the town repays the \$18,500 that benefits the town water system to Scotts Lake to the Randolph County Development Authority, the money will come off of what Armstrong will owe the authority. More work is needed and wanted for the project but plans can't proceed till Beverly decides. Blaine Emery explained the County Development Authority actually owns the Armstrong building which it leases to Armstrong. They just signed a 20 year lease, meaning jobs will be kept in Randolph County that much longer.

Mark Scott, County Commissioner, felt upset because he expected the item would be on the agenda and an answer would be given tonight. Armstrong not only provides several hundred jobs but helps the community in monetary services. Mr. Emery said the cost share is only the materials; the labor cost was picked up by Armstrong.

Minutes from the meeting of February 11, 2019 were read and approved. Minutes from the meeting of February 25, 2019 were read and approved.

#### UTILITY BOARD STATUS

A motion was made to go into executive session by Mrs. Weese and seconded by Mr. Lewis. No action was taken. A motion to come out of executive session was made by Mr. Cooper and seconded by Mr. Lewis. No action was done.

A motion was made again to go into executive session to discuss the upcoming trial with Brad Reed by Mrs. Weese and seconded by Mrs. Pingley. Updates were given. A motion was made to come out of executive session by Mrs. Pingley and seconded by Mr. Lewis.

PERSONNEL BOARD ORDINANCE

The Personnel Board Ordinance was tabled till next meeting.

MANOR SIDEWALK

The DOH owns 20 feet from the center of road where the sidewalk to the Manor needs built. The property either belongs to Sherri Elliott or Jeff Riggleman. Will be discussed at next meeting.

MARSTILLER HOUSE DEMOLITION – IPMC UPDATES

Jeremy Metheny sent a text stating he should start demolition on the Marstiller house last Friday or Saturday. Council decided to wait till after this weekend to consider hiring another demolition company to give him a chance to get it done.

The DOH is checking boundary lines on the Barnes property and will get back to the Mayor.

The Brad Reed trail is scheduled for March 28<sup>th</sup>.

GASOLINE PURCHASES

Recorder Smith provided council with a letter from the Ethics Commission that stated in their opinion it is permissible for the Utility Board to purchase gasoline from Ms. Smith's private business, even if the purchases exceed \$1000 per calendar year. Ms. Smith wanted the council to be aware she had not done anything unethical. Mayor Karelis asked that a copy of the letter from the Ethics Commission be put in the minute's book or kept on file at the office in case there was ever a question on the issue again.

IMPC – NEXT NOV'S

A motion was made by Mrs. Weese to have a NOV sent to Thelma Lewis in regards to unlicensed cars parked on her property. Motion seconded by Mr. Lewis with all in favor. Jim Britton will serve the notice. A couple other residents were mentioned that had a lot of garbage bags piled up, letters may be sent to them asking for disposal.

COUNCIL MEMBER ON BEVERLY HISTORICAL LANDMARKS COMMISSION

Mayor Karelis asked if any council member would like to be a representative from the council on the Landmarks Commission. No interest was found at this time.

2019-2020 BUDGET PREPARATION/REVIEW

Members were given 2018-19 Town Budget with proposed changes for the 2019-2020 year budget. Some discussion was held and they were asked to review for discussion at the next meeting.

RETAINER AGREEMENT – WVU COLLEGE OF LAW

A motion was made by Mr. Cooper to sign a Retainer Agreement between the WVU College of Law Land Use and Sustainable Development Clinic and the Town of Beverly. Motion seconded by Mr. Lewis, with

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all in favor. The Clinic will help rewrite the compressive plan and include the correct information about the Beverly Manor being within town limits.

2019 MOUNTAIN STATE LAND USE ACADEMY MAY 14-15

The Mountain State Land Use Academy Convention will be held May 14-15 at Canaan Valley. A motion was made by Mrs. Weese to pay the \$100.00 fee for Mayor Karelis and Mrs. Pingley to attend the Land Use Academy at Canaan Valley. Mr. Cooper seconded with all in favor.

CHAMPIONS FOR CHILDREN EVENT

A Champions for Children Event in Tucker County was discussed but died for lack of interest.

WATER AND SEWER BOARD MEMBERS

Members for the Water and Sewer Boards were tabled until the status of the two boards can be determined.

84 LUMBER CREDIT AGREEMENT

A credit agreement between the town and 84 Lumber was deemed not necessary at this time.

INVOICES

A motion was made by Mrs. Pingley to pay the monthly invoices in the amount of \$10,481.65. Motion seconded by Mr. Lewis with all in favor.

The Zoning Board will meet March 27<sup>th</sup> at 11:00 to discuss minor changes in the residential zone and the Beverly Manor.

Motion made to adjourn by Mrs. Weese and seconded by Mr. Lewis. Meeting adjourned at 8:49 pm.

  
MAYOR: CINDY KARELIS

  
RECORDER: BARBARA SMITH

## RETAINER AGREEMENT

THIS RETAINER AGREEMENT ("Agreement") is between the West Virginia University College of Law Land Use and Sustainable Development Clinic ("LUSDC") and the Town of Beverly, West Virginia ("Client") on January 29, 2019. This Agreement establishes an attorney-client relationship solely between the LUSDC and Client.

### **SCOPE OF THE AGREEMENT**

1. If Client is not a business entity or has not yet formed a business entity at the time this Agreement is signed, then this Agreement is entered into between the LUSDC and the person signing.
2. If Client is a business entity, this Agreement does not establish an attorney-client relationship between the LUSDC and any of the owners, directors, officers, employees, or agents of Client.
3. Any legal services to be performed by the LUSDC on behalf of any owners, directors, officers, employees, or agents of Client, must be the subject of a separate retainer agreement. Representation can occur only if
  - a. The representation is not adverse to the interests of Client as a business entity; and
  - b. Client consents to the representation. Consent may be given by:
    - i. An appropriate official of Client other than the individual who is to be represented, or
    - ii. The unanimous vote of the shareholders, members, directors, or owners of Client.

### **AUTHORITY TO REPRESENT / SCOPE OF SERVICES**

4. Client seeks representation and legal services and agrees to representation and legal services by the LUSDC, and the LUSDC agrees to represent and provide legal services ("Representation and Services") for Client in connection with the drafting of a zoning ordinance for the Town of Beverly, West Virginia.
5. The LUSDC will render its Representation and Services to Client without charge, which includes LUSDC staff time, travel, telephone charges, and office overhead. However, the LUSDC will not be responsible for paying any other out-of-pocket costs or fees necessary to provide Representation and Services, which includes but is not limited to development of maps and the hiring of other professional services or consultants in connection with this Matter. Client authorizes the LUSDC to take any steps that, in its discretion, are reasonably necessary or appropriate to protect Client's interests in this Matter.
6. Client authorizes law students in the LUSDC to work on and take the lead in investigating factual and legal issues, drafting documents, communicating with Client, and all tasks, as well as any other students of the LUSDC or faculty members of the West Virginia University College of Law, to assist in this Matter. A licensed attorney or attorneys shall at all times

indy.  
sorry this is  
late. It got  
lost... on my desk!  
Congrats again on the  
award... you're doing great!  
- Erica

supervise the law student(s) working on this Matter. The licensed attorney's or attorneys' supervision shall be consistent with applicable law and rules of professional conduct.

7. The LUSDC agrees to take action as may be necessary, in the LUSDC's professional judgment, to further the interests of the Client in connection with this Matter. These actions include, but are not limited to, legal advice, research, drafting documents for a transactional matter, on-site visits, and recording documents with the appropriate government agency. **At no point may the LUSDC represent Client in litigation or take any action or participate in any action that moves this Matter towards litigation.** The LUSDC's services to Client under this Agreement are limited to those that LUSDC agrees to in paragraph (4), or in a subsequent written amendment to this Agreement signed by both parties.
8. The LUSDC shall terminate the Representation and Services upon the completion of this Matter or upon the failure to consummate this Agreement. Any further representation must be the subject of a new retainer agreement. If, in the absence of a new retainer agreement, the LUSDC provides further services, the terms of this Agreement will continue in effect.

#### **AUTHORITY TO BIND**

9. Client designates the Mayor of the Town of Beverly ("Designated Representative") as the individual who has the legal power and authority to bind Client.
10. Client authorizes the LUSDC to rely upon the acts and directions of the Designated Representative as the binding acts and direction of the Client.
11. Upon termination or withdrawal of the Designated Representative's legal power and authority to bind Client, the Designated Representative shall provide written notice to the LUSDC of such termination or withdrawal. The LUSDC is entitled to rely upon the Designated Representative's legal power and authority to bind Client until actual receipt of such written notice.

#### **CLIENT INFORMATION**

12. Client agrees to promptly provide all information and documents, which are either requested or helpful to assisting the Representation and Services, and to attend all scheduled meetings.

Client consents to the release of all information regarding its legal issue(s) or legal matter(s), as related to the Representation and Services and this Matter, to all students and faculty supervisors of the LUSDC.

#### **TERMS OF PROPOSED REPRESENTATION**

14. Client may terminate the LUSDC's Representation and Services in this Matter for any reason by providing the LUSDC with written notice of termination.
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15. Client understands that the law allows the LUSDC to decline Representation and Services or to withdraw as counsel for Client and terminate Representation and Services in this Matter for any reason consistent with the West Virginia Rules of Professional Conduct by providing Client with written notice of termination. Some examples of appropriate reasons for declining or terminating Representation and Services by the LUSDC include:
- a. The representation will result in violation of the West Virginia Rules of Professional Conduct or other law;
  - b. Withdrawal can be accomplished without material adverse effect on the interests of Client;
  - c. Client persists in a course of action involving the LUSDC's Representation and Services that the LUSDC reasonably believes is criminal or fraudulent;
  - d. Client has used the LUSDC's Representation and Services to perpetuate a crime or fraud;
  - e. Client insists upon taking action that the LUSDC considers repugnant or with which the LUSDC has a fundamental disagreement;
  - f. Client fails substantially to fulfill an obligation to or renders Representation and Services unreasonably difficult for the LUSDC and has been given reasonable warning that the LUSDC will withdraw unless the obligation is fulfilled;
  - g. The representation and Services will result in an unreasonable financial burden on the LUSDC or the LUSDC experiences a sharp decrease or loss of funding, which jeopardizes continued operation of the LUSDC.
16. Client understands that if this Matter is not closed by the time the students complete their LUSDC course, the LUSDC may transfer this Matter to other LUSDC students or lawyer.
17. Client further understands that some delay in processing this Matter may occur during the summer months or during times of academic recess.
18. Client understands that it may be helpful to the LUSDC and its students to make videotape or voice recordings ("Recordings") of some or all of Client's interviews to permit discussion of this Matter to the entire LUSDC staff. Client understands that any Recordings of interviews will be used for educational purposes and Representation and Services only and that the Recordings will not be made available to persons other than students and faculty in the LUSDC. Client does ✓ / does not        consent to Recordings. (Place initials of the executing representative in appropriate space.)
19. Client authorizes the students and faculty of the LUSDC to investigate all facts relating to this Matter. Client specifically consents to the release by any person or agency of information or records relating to it or its history.

#### OTHER PROVISIONS

20. The LUSDC shall represent Client diligently, faithfully, and competently.

21. In order to minimize out-of-pocket costs, it may be necessary for Client to assist the LUSDC in gathering and sorting information for use in the LUSDC's Representation and Services for Client. In each instance, Client agrees to provide such assistance, on such schedule, as may be necessary.
22. This Agreement constitutes the entire agreement between the parties for legal Representation and Services relating to the above-described Matter, and it supersedes any and all prior or contemporaneous understandings or agreements.
23. This Agreement may be supplemented, modified, or amended only by mutual agreement of the parties. No supplement, modification, and/or amendment of this Agreement shall be binding unless it is in writing and signed by all parties.
24. If any provision of this Agreement is held invalid or unenforceable, its invalidity or unenforceability will not affect any other provisions of this Agreement, and this Agreement will be construed and enforced as if such provision had not been included.
25. This Agreement may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constituting one and the same agreement.
26. The persons signing this Agreement each warrant to the other that they are authorized by their respective organizations to do so and that they have secured all approvals necessary to discharge their obligations pursuant to this contract.

**Town of Beverly**

By: Cindy Karelis  
Its: Mayor  
Date: March 14, 2019

**WVU College of Law, Land Use &  
Sustainable Development Law Clinic**

By: Joseph Rich  
Its: Lead Land Use Atty  
Date: March 27, 2019



STATE OF WEST VIRGINIA  
WEST VIRGINIA ETHICS COMMISSION  
210 BROOKS STREET, SUITE 300  
CHARLESTON WV 25301-1804  
(304) 558-0664 - FAX (304) 558-2169  
[ethics@wv.gov](mailto:ethics@wv.gov) [www.ethics.wv.gov](http://www.ethics.wv.gov)

March 1, 2019

Barbara Smith  
Recorder  
Town of Beverly  
270 Main Street  
Beverly, WV 26253

Dear Recorder Smith:

You have asked whether the Town of Beverly and/or the Town of Beverly Utility Board may purchase gasoline from your private business. My response follows.

**Question No. 1:** May the Town of Beverly purchase gasoline from your private business if the purchases do not exceed \$1,000 in a calendar year?

**Answer:** The Town of Beverly may purchase gasoline from your business if:

- You are not involved in the Town's decision to purchase gasoline from your business or approving payments for the purchases;
- The Town's purchases from your business do not exceed \$1,000 in a calendar year, and
- When matters come before Town Council regarding purchases from or payments to your business, you recuse yourself from the discussions and vote.

For recusal to be proper, you must physically remove yourself from the room during the period, fully disclose your interests, and recuse yourself from voting on the issue. The recusal shall also be reflected in the meeting minutes. It is necessary for you to disclose your interest and leave the room even if you, in your capacity as Recorder, do not normally vote.

If the Town of Beverly wants to purchase more than \$1,000 of gasoline from your business in a calendar year, then it must first request and receive a Contract Exemption from the

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Ethics Commission. You or another Town official may contact us if you need additional information about the Contract Exemption process.

**Question No. 2:** May the Town of Beverly Utility Board purchase gasoline from your private business if the purchases are more than \$1,000 in a calendar year?

**Answer No. 2:** Based upon the information you have provided to me, and additional information I have acquired, it is my understanding that the relevant facts are as follows:

- The Utility Board has its own Board whose members are appointed by City Council. You do not vote on the appointments.
- The Utility Board has its own bank account which is separate from the Town's banking account(s). You are not authorized to sign checks on behalf of the Utility Board.
- The Utility Board does not have to get the approval of Town Council to make purchases.
- The Utility Board is comprised of the Sanitary Board and the Water Board. No Town records can be found that show that the Town ever formally approved the merging of the Sewer Board and the Water Board into one body to be known as the "Utility Board." It appears undisputed, however, that the Town formed, by separate ordinances, the Sanitary Board and the Water Board and that each Board was charged with managing its own operations and finances.
- The Mayor serves on the Utility Board, but you do not serve on the Utility Board or attend its meetings.
- You, in your capacity as Recorder, must perform the duties of the office of Mayor when the Mayor is unable due to illness or absence to perform the duties of his or her office. Even though you have this legal duty, historically you have never been called upon to serve on the Utility Board or take other action regarding the operation of the Utility Board in the Mayor's absence.

Based upon the facts presented, as the Town of Beverly Utility Board, along with the Mayor in her capacity as Chairperson of the Board, oversees the day-to-day operations of the Board and decisions of the Board regarding the purchase of goods, including gasoline, it is the opinion of Ethics Commission staff that you do not exercise authority or control over Utility Board contracts. It is therefore permissible for the Utility Board to purchase gasoline from your private business, even if the purchases exceed \$1,000 per calendar year.

If in the future you are required to serve on the Utility Board because the Mayor is absent, then please contact us for further advice at that time.

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**Conclusion:** In rendering this advice, I have reviewed W. Va. Code § 6B-2-5(d), and I have relied upon Advisory Opinions 1997-31 and 2015-05, which I am enclosing.

The staff advice rendered herein is based upon the facts provided. If all material facts have not been provided, or if new facts arise, you should contact the Ethics Commission for further advice as it may alter the analysis and render this advice invalid. This opinion is limited to the analysis of whether the Ethics Act would be violated by your proposed conduct. The Commission is without authority to determine whether other laws or rules, including the policies of the government agency by which you are employed or serve, prohibit or otherwise restrict your proposed conduct.

Please contact me if you require anything further.

Sincerely,

A handwritten signature in cursive script that reads "Theresa M. Kirk".

Theresa M. Kirk  
Staff Attorney

Enclosure