

For “in-person” meetings, persons who are not on the agenda but wish to address the governing body must register to speak at least 15 minutes prior to the start of the meeting. For virtual meetings, the Mayor will canvas attendees for those wishing to speak. Time limits will be imposed. Requests for copies of documents related to agenda items must be made in writing at least 24 hours in advance of the meeting, not during the meeting. NOTE: Council members are elected to represent citizens of the Corporation of Shepherdstown, please contact them regarding any questions or comments you may have about the agenda items. This Council follows Robert’s Rules of Order (Revised).

TOWN COUNCIL MEETING AGENDA

Tuesday, July 13, 2021

6:30 p.m.

Community Club

102 East German Street

If you have been vaccinated, mask wearing is optional.

If you have not been vaccinated, please wear a mask.

1. Call to order

2. Approval of Town Council Meeting Minutes of June 8, 2021

3. Public Comment Period

a. Persons who have registered to address Town Council.

4. Visitors

- a. Dr. Wimer – Jefferson County Foundation
- b. Katie Thompson/Mark Cucuzzella – Freedom’s Run
- c. Ken Lowe – Shepherdstown Elementary School
- d. Nancy Strine – Home Consortium

5. Public Hearings

- a. Consideration of and action on first reading of a Bond Ordinance authorizing the issuance of the Corporation of Shepherdstown Water Revenue Bonds, Series 2021, in an original aggregate principal amount not to exceed \$1,250,000 to finance costs of the acquisition, construction and equipping of certain additions, betterments and

improvements to the waterworks system of the Corporation of Shepherdstown, including without limitation the renovation and improvement of the water treatment plant and related facilities.

6. Unfinished Business

7. Old Business

- a. Website redesign update – [Draft RFP](#)

8. New Business

9. Mayor's Report

10. Reports of Committees

A. Finance Committee

1. Meeting minutes of June 2021
2. Financial Reporting
3. Recommendations: NONE

B. Parking Committee

1. No June meeting
2. Recommendations: NONE

C. Police Committee

1. No June meeting
2. Recommendations: NONE
3. Police Officer interviews

D. Public Works Committee

1. Meeting minutes of June 2021 – not available
2. Recommendations: NONE

E. Parks and Recreation Committee

1. Meeting minutes of June 2021 – not available
2. Recommendations: NONE

F. Grants Committee

1. Meeting minutes of June 2021
2. Recommendations:
 - a. Appointment of new member

11. Report of Commissions and Boards

A. Tree Commission

1. Meeting minutes of June 2021
2. Recommendations: NONE

B. Water and Sanitary Board

1. Meeting minutes of June 2021
2. Recommendations: NONE

C. Historic Landmarks Commission

1. Meeting minutes of June 2021
2. Recommendations: NONE

D. Planning Commission

1. Meeting minutes of June 2021- not available at this time
2. Recommendations: NONE

E. Board of Appeals

Shepherdstown Town Council Meeting Minutes
Tuesday, June 8, 2021
Zoom Meeting
6:30 p.m.
DRAFT

Present: Jim Auxer (Mayor), Lori Robertson (Recorder), Chris Stroeck, Marty Amerikaner, Jenny Haynes and Jim Ford.

Absent: Cheryl Roberts

Staff: Town Clerk Amy Boyd, Public Works Director Frank Welch, Chief Mike King, and Zoning Officer Andy Beall.

Visitors: Elise Baach, Tabitha Johnston, Peggy McKowen, Toni Milbourne, Austin Slater, Stacy Tabb, Chris Cafiero, Marshall DeMerritt, Philip Baker-Shenk, and Greg Welter.

Agenda Items 1 and 2-Call to order/approval of Town Council Minutes (vote required):

Call to order by Mayor Auxer at 6:30 pm.

Approval of the Town Council Meeting Minutes of May 11, 2021

J. Ford- move to approve the Town Council Meeting Minutes of May 11, 2021. Second by C. Stroeck. No objections noted.

Agenda Item 3 – Public Comment Period:

- a. Persons who have registered to address Town Council.

Agenda Item 4 - Visitors:

Visitor's comments, if any, are logged in under the specific agenda items.

Agenda Item 5 – Public Hearings:

- a. None

Agenda Item 6 – Unfinished Business:

- a. CATF – suspension of open container ordinance
P. McKowen requested the suspension of the open container ordinance.
L. Robertson – move to suspend the open container ordinance for 7/9, 7/16, 7/23, & 7/30. Second by C. Stroeck. No objections noted.

Agenda Item 7 – Old Business:

- a. Email list –
M. Amerikaner – there are 480 subscriptions to date. Amy Boyd and Marty will continue to decide on the content.
- b. Website redesign update – Draft REP
J. Ford – a few changes have been made and has been sent to Chazz (town attorney) for review.
- c. Shepherdstown Welcome Center – opened Friday, May 28th and open from 10 a.m. – 4 p.m. All is going well.
- d. Shepherdstown Remote Worker Program – no new information since their visit two weeks ago.

Agenda Item 8 – New Business:

- a. Committee Reports
 - 1. Police Committee – Chief King – Residential parking permits will now have the option to renew up to 3 years. Metered parking stickers up to one year. There is a plan to put the photos with a brief bio of the full-time officers on the website.
 - 2. Public Works – A. Beall - LED lights – an LED task force will look at the LED design layout for the town. They will look at uniformity to replace the current lights. Test lights are forthcoming. C. Stroeck noted that public works, council, or the public has made no decision on the lights. Options are still being looked at, and then will ask for feedback that will lead to a decision. M. Amerikaner suggested the email blast could help.

3. Mayor – nothing new regarding Rt. 45 project. There will be a meeting June 15 at the community Club regarding the Rt. 45 project.

Agenda Item 9 – Mayor’s Report:

- a. Train concerns –

The Mayor has received two letters expressing concern regarding the length of the trains and the trains stopping on the tracks blocking the roads, thus blocking emergency access. The mayor will write a letter. He has also reached out to the other mayor's for support.

Chief King – Norfolk/Southern has increased its number of cars – they can be up to 3-miles long. The law states that a road may not be blocked for longer than 10-minutes unless it's an emergency. Once the trains stop for an emergency, railroad personnel must walk the length of the train to visually inspect it before clearing it to resume. Sometimes trains have to slow down in order to pass each other. There is an app that shows what is in each train car.

M. DeMerritt, with the Shepherdstown Fire Department – they do have emergency teams and can respond to HAZMAT incidents. Rest assured that the SFD would find a way to reach any issues that arise. The SFD supports a letter to the railroad as a public safety concern.

P. Baker-Shenk – supports the letter. He is concerned for the residents, the Shepherdstown Day Care Center, etc.

- b. In person meetings – will resume for the July meeting.

M. Amerikaner – can we have a special meeting/retreat for the council to speak about priorities, investment, and/or developments in/and around town.

Mayor – he would have to run this idea by Chazz (town attorney). There would be no motions.

Mayor – started to speak about Rockwool – C. Stroeck asked that he be put in the Zoom waiting room during the discussion.

A. Boyd did that.

The Mayor stated he would forward our 2018 Resolution to Jefferson County Foundation.

A. Boyd let C. Stroeck back on the Zoom call.

The Mayor received a late email last night from Shepherdstown Fire department from Denny Baron asking to carry the very large American Flag down German Street on the 4th of July. D. Baron came in today to fill out the Event Request Form that the Mayor will approve. German St. will be closed from 11 a.m. – 11:30 a.m.

Mayor – the mask banners will be taken down.

Lori Robertson – 480 Bike Path – there will be a conference call with the Department of Transportation tomorrow at 9 a.m. All engineering plans have been submitted to DOT.

M. Amerikaner – asked about the \$800,000 coming to Shepherdstown. Mayor – no details yet – the Mayor will keep us abreast.

Agenda Item 10 – Reports of Committees:

A. Finance Committee:

1. No May meeting
2. Finance Reporting:
3. Recommendations
 - a. None

B. Parking Committee:

1. Meeting of June 2021 – not available at this time
2. Recommendations: None

C. Police Committee:

1. Meeting minutes of June 2021
2. Recommendations: None

D. Parks and Recreation Committee:

1. Meeting minutes of May 2021
2. Recommendations:
 - A. None

E. Public Works Committee:

1. Meeting minutes of May 2021
2. Recommendations:
 - None

F. Path Advisory Committee

1. No meeting in May 2021
2. Recommendations:
 - a. None

G. Grant Committee

1. Meeting minutes of May 2021

Agenda item 11 – Report of Commissions, Authority and Boards:

A. Historic Landmarks Commission:

1. Meeting minutes of May 2021 – not available at this time
2. Recommendations:
 - a. None

B. Planning Commission:

1. Meeting minutes of May 2021 – not available at this time
2. Recommendations:
 - a. None

C. Tree Commission

1. Meeting minutes of May 2021
2. Recommendations: None

D. Water and Sanitary Board:

- 1 – Meeting minutes of May 2021
- 2 – Recommendations:

a. None

E. Board of Appeals

1. No meeting scheduled

Mayor Auxer - if there are no objections, the meeting is adjourned at 7:20 p.m. Second by L. Robertson. No objections noted.

Draft Minutes respectfully submitted by L. Robertson, Recorder for the Corporation of Shepherdstown.

Jefferson County Foundation, Inc.

May 17, 2021

Michael Regan, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue
Washington, DC 20460
VIA Email to Regan.Michael@epa.gov

RE: Request to Take Immediate Action to Stop Construction and Postpone Operation of the Rockwool Mineral Wool Production Facility in Ranson, West Virginia (Permit No. R14-0037, Plant ID No. 0037-00108)

Dear Administrator Regan,

I am writing on behalf of the Jefferson County Foundation (JCF)¹ to request that EPA use the authority provided under the Clean Air Act (CAA or Act) to immediately stop the construction and postpone the operation of the Rockwool Mineral Wool Production Facility (Rockwool), owned by Roxul USA, Inc. (Roxul), in Ranson, West Virginia, until the West Virginia Department of Environmental Protection (WVDEP) has issued a prevention of significant deterioration (PSD) permit that accurately reflects Rockwool's CAA requirements.

Immediate action is required because in 2020, two years after WVDEP issued the Rockwool PSD permit and while Roxul was engaged in its ongoing construction of the facility, WVDEP allowed Roxul to make a major change in the operation of Rockwool – switching the primary fuel source for the largest emission unit at the facility – without any analysis of the continued validity of the permit terms in light of that change and without reopening the permit for public comment. As EPA has clearly stated, “[p]ermits with conditions that do not reflect a source’s planned mode of operation are sham permits, are void *ab initio*, and cannot shield a source from the requirement to undergo preconstruction review.”² While Roxul did seek some preconstruction review in this matter, it did not seek preconstruction review for its planned operations. The only permit review was based on operation with a different primary fuel source and thus the resulting permit does not reflect its planned mode of operation. This fundamental flaw should

¹ Jefferson County Foundation is a 501(c)(3) non-profit organization that works strategically to address long-term issues facing the Eastern Panhandle of West Virginia. JCF supports and promotes effective and accountable government, sustainable development, environmental justice, and the protection of health, heritage, and the environment in the Eastern Panhandle.

² See Exhibit A, Applicability of New Source Review Circumvention Guidance to 3M – Maplewood, Minnesota (June 23, 1993) at 1, also available at <https://www.epa.gov/sites/production/files/2015-07/documents/maplewood.pdf>.

be corrected before Rockwool begins operation. JCF's attempts to raise these issues to WVDEP have been unsuccessful, so we are now bringing them to you.

We can certainly raise these issues again during Rockwool's eventual title V permitting process; however, that process is unlikely to take place for at least two years, if not more.³ Instead, it is highly appropriate and consistent with EPA's mission and authority to act now to ensure that the health of the citizens of Jefferson County and the surrounding region, as well as air quality in the area, are protected to the extent required by the Act. Taking action now is also appropriate and fair for all stakeholders as it avoids a situation in which Roxul would be required to add different or additional emission controls at some point in the future to bring the facility into compliance with CAA requirements.

EPA can work directly with WVDEP to resolve these air permitting issues given the cooperative federalism inherent in the CAA, but the Act also provides additional authority with which EPA can provide the necessary oversight of PSD permitting if those attempts fail. CAA § 167 provides that "[t]he Administrator shall...take such measures...as necessary to prevent the construction or modification of a major emitting facility which does not conform to the requirements of [the Act's PSD provisions]."⁴ Likewise, § 113 provides that "[w]hen, on the basis of any available information, the Administrator finds that a State is not acting in compliance with any requirement or prohibition of the [the Act] relating to the construction of new sources," the Administrator may issue an order prohibiting construction of the source, issue an administrative penalty order, or bring a civil enforcement action in the federal District Court.⁵ The U.S. Supreme Court has found that both of these provisions provide EPA with the authority to oversee PSD permitting under approved state permitting programs and to take action when PSD permits fail to comply with CAA permitting requirements.⁶ As explained in more detail below, the facts surrounding the current PSD permit for and planned operation of the Rockwool facility demonstrate a violation of CAA's PSD permitting requirements such that EPA can and should act consistent with its CAA authority.⁷

³ EPA regulations require sources with PSD permits to apply for a Title V permit within 12 months of beginning operation, 40 C.F.R. § 70.5(a)(1)(ii), and the CAA requires permitting authorities to act on a complete application within 18 months, 42 U.S.C. § 7661b(c). We note that Roxul initially applied for a Title V permit for its mineral wool facility in Byhalia, Mississippi, in June 2015, but the state did not issue a proposed permit for public comment until April 22, 2021, almost six years later. See Exhibit Q, Public Notice - Mississippi Environmental Quality Permit Board (April 22, 2021) (notice of initial Title V Operating Permit for Roxul USA, Inc. d/b/a ROCKWOOL, located at 4594 Cayce Road in Byhalia, MS) and https://www.mdeg.ms.gov/wp-content/uploads/2021/04/Roxul-USA_PUBLIC-Updated-Title-V-Application_March2021.pdf (Title V Operating Permit application for Roxul's Byhalia facility).

⁴ 42 U.S.C. § 7477.

⁵ 42 U.S.C. § 7413(a)(5).

⁶ *Alaska Department of Environmental Conservation vs. EPA*, 540 U.S. 461, 497 (2004) (finding that EPA properly used its authority under CAA sections 113 and 167 to block construction of a new major pollutant emitting facility that had a PSD permit from the state permitting authority when EPA found the BACT determination in the underlying PSD permit to be unreasonable under the CAA).

⁷ See Exhibit B, Guidance On Enforcement of Prevention of Significant Deterioration Requirements Under the Clean Air Act (December 14, 1983) at 4 (noting that Section 167 is "a particularly effective enforcement tool against an

While WVDEP issued a PSD permit for construction of Rockwool on April 30, 2018 (Permit No. R14-0037, Plant ID No. 0037-00108),⁸ the current permit does not accurately reflect the planned operation of the facility and the resulting emission controls necessary under the Act. Specifically, the emission limits for the melting furnace (and many other parameters) in the current permit appear to be premised on utilizing coal as the primary combustion fuel in the Melting Furnace, as explained below. However, on March 4, 2020, Roxul informed WVDEP that it planned to startup operation of the Rockwool facility using only natural gas in the melting furnace,⁹ and on March 11, 2020, WVDEP simply acknowledged the planned change and noted that all permit terms remained in effect.¹⁰

Burning coal and burning natural gas result in fundamentally different pollutant emission profiles, and there is nothing in the current PSD permit or the record created by WVDEP demonstrating that the control technologies being installed at the facility, and the resulting emission limits in the current permit, meet CAA requirements for an operation primarily fueled by natural gas. The Act's PSD permitting program was enacted, in part, to ensure that economic growth – such as building a new production facility like Rockwool – “will occur in a manner consistent with the preservation of existing clean air resources” and that any permit for construction of a new source of emissions in an area “is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decision making process.”¹¹ To do so, Congress required such a source to have a permit *before* the source was constructed that required installation of the best controls for the emissions that would ultimately result from it.¹² Those objectives are thwarted if an applicant can apply for a permit based on a specific operating scenario and then change it completely before operation without any evaluation of the permit or public participation regarding those changes.¹³ Those problems are exacerbated here, as the current coal-based limits would allow the applicant to potentially meet those limits without using *any* controls, much less the best controls available, while operating with natural gas. While we acknowledge that the planned change in primary combustion fuel from coal to natural gas is likely to result in lower emissions from the Rockwool facility than initially anticipated, the fact remains that this

owner or operator that ...is constructing in a manner not consistent with a validly issued permit”), *also available at* <https://www.epa.gov/sites/production/files/2015-07/documents/partc.pdf>.

⁸ See Exhibit C, Rockwool Final Prevention of Significant Deterioration Permit (“Final PSD Permit”; April 30, 2018), *also available at* https://dep.wv.gov/dag/Documents/April%202018%20Permits%20and%20Evals/037-00108_PERM_R14-0037.pdf.

⁹ See Exhibit D, Letter from Rockwool Group to West Virginia Department of Environmental Protection (March 2, 2020).

¹⁰ See Exhibit E, Letter from West Virginia Department of Environmental Protection to Roxul USA, Inc. (March 11, 2020).

¹¹ 42 U.S.C §§ 7470(3) and (5).

¹² 42 U.S.C § 7475(4).

¹³ In general, we note that the permitting issues presented here regarding the Rockwool facility are unique. They involve representations made and analyses relied upon during a facility's initial permitting process and changes announced during the initial construction that fundamentally change its planned operation, raising questions regarding the validity of the original PSD permit before *any* operations have begun. Thus, this case does not involve the modification of an “existing” stationary source that has already been operating, which can present different concerns for the integrity of the PSD permitting program.

is a new facility, and once it begins operation, pollutant emissions in the area *will* increase from their current levels. The Act requires that when a new facility is constructed under a PSD permit, the facility must have a permit that subjects it to the *best* available control technologies for each regulated pollutant it emits in order to preserve air quality in the area.¹⁴ All available evidence suggests that this is not happening at the Rockwool facility.

In addition to the PSD permit deficiencies created by a failure to address the fundamental change in operation at the Rockwool facility, the planned operational change also highlights problems with the WVDEP permitting process and Rockwool PSD permit overall, as explained below. Roxul and WVDEP failed to comply with the Clean Air Act in determining that such a significant operational change could proceed without reopening the existing PSD permit, undertaking new analysis, and allowing the public to participate in that process. This failure is especially troublesome given the high level of community interest in WVDEP's permitting of the Rockwool facility following issuance of the original PSD permit on April 30, 2018. A full examination of the permitting record also shows that the current PSD permit appears to contain many other potentially problematic terms and underlying analyses that could be improved and/or better explained if WVDEP were to re-open the Rockwool PSD permitting process. As this letter focuses on the inherent CAA deficiencies created by the more recent change in primary fuel source, we only briefly raise these other potential permit problems below, but JCF would be pleased to provide EPA a fuller presentation of these concerns beyond the information provided today.

BACT Determinations for the Rockwool Melting Furnace Must Be Revised to Reflect Primary Use of Natural Gas Before Initial Operations Begin

Before presenting our more detailed arguments showing that the planned change to the primary fuel source at Rockwool's under-construction melting furnace requires a new BACT analysis, it is important to understand the PSD program's best available control technology (BACT) requirement, as well as the publicly available information regarding the basic operation of Rockwool's melting furnace and how the BACT limits for that furnace were established in the current PSD permit.

The CAA BACT Requirement

The CAA specifies that a new major stationary source of emissions required to have a PSD permit, such as Rockwool, be subject to the BACT for each regulated pollutant it emits, where BACT is defined as:

An emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this chapter emitted from, or which results from, any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is

¹⁴ 42 U.S.C §§ 7475(a)(4).

achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant.¹⁵

As EPA has explained, the analysis required to determine the BACT limit “is a site-specific, pollutant-specific determination that results in the selection of emissions limits representing application of air pollution control technologies or methods appropriate for the facility in question.”¹⁶ While neither the CAA nor EPA regulations require a specific type of analysis to determine BACT emission limits, EPA has long advised that conducting a top-down BACT analysis will ensure compliance with the Act’s BACT requirement.¹⁷ In fact, the BACT limits in Rockwool’s PSD permit are based on a top-down analysis contained in Roxul’s PSD application.¹⁸ The top-down analysis is comprised of the following five steps:

- Step 1: Identify all available control technologies.
- Step 2: Eliminate technically infeasible options.
- Step 3: Rank remaining control technologies.
- Step 4: Evaluate most effective controls and document results.
- Step 5: Select the BACT.¹⁹

In conducting a top-down BACT analysis, EPA has specified that “the permitting authority must evaluate the amount of emissions reductions that each available emissions-reducing technology or technique would achieve...to establish a numeric emissions limitation *that reflects the maximum degree of reduction achievable* for each pollutant subject to BACT through the application of the selected technology or technique.”²⁰

With regard to the issue at the heart of the current problem with the Rockwool PSD permit – use of different combustion fuels – the CAA requires consideration of “clean fuels” in determining BACT.²¹ Accordingly, cleaner fuels than those proposed for use by the applicant should be included as an available control technology in step 1 of the BACT analysis. The only reason to not include use of cleaner fuels as a combustion source in the BACT analysis in step 1

¹⁵ 42 U.S.C §§ 7475(a)(4) and 7479(3)(emphasis added).

¹⁶ *In re Palmdale Energy LLC*, 17 E.A.D. 620, 652 (EAB 2018), citing *In re N. Mich. Univ.*, 14 E.A.D. 283, 291 (EAB 2009).

¹⁷ PSD and Title V Permitting Guidance for Greenhouse Gases (“GHG Permitting Guidance”; March 2011), available at <https://www.epa.gov/sites/production/files/2015-12/documents/ghgpermittingguidance.pdf>.

We note that this letter generally cites the GHG Permitting Guidance for general PSD and BACT principles, not just those associated with GHG permitting. In the GHG Permitting Guidance, EPA explained it that it summarized and updated many of the PSD permitting concepts originally set forth in the Draft New Source Review Workshop Manual (October 1990) and other EPA guidance documents and court cases, *see id.* at 19-20, and EPA provided a general overview of each step of the BACT analysis before providing GHG-specific information.

¹⁸ See Exhibit F, West Virginia Department of Environmental Protection Final Determination for the Construction of Roxul USA’s RAN Facility (“Final Determination”; April 30, 2018) at 4.

¹⁹ See GHG Permitting Guidance at 18.

²⁰ See GHG Permitting Guidance at 17 (emphasis added).

²¹ 42 U.S.C § 7479(3).

is if the record clearly shows that doing so would fundamentally redefine the source.²² Likewise, clean fuels can be excluded as technically infeasible at step 2 if the analysis shows “based on physical, chemical, or engineering principles, that technical difficulties would preclude the successful use of the control option on the emissions unit under review.”²³ Overall, EPA has stressed that “permitting authorities should ensure that the BACT requirements contained in the final PSD permit are supported and justified by the information and analysis presented in a thorough and complete permit record,” and “should clearly explain the reasons for selection or rejection of possible control and emissions reductions options.”²⁴

The Rockwool PSD Permit and BACT Analysis

Turning to the BACT analysis and emission limits in the current Rockwool PSD permit, we first note that it is difficult to determine the exact nature of the Rockwool operation permitted by WVDEP based on the publicly available information. In issuing the permit, WVDEP generally adopted the information and BACT analyses contained in Roxul’s PSD application.²⁵ This is problematic because many important parts of the PSD Application were withheld as Confidential Business Information (CBI),²⁶ including portions of the process description for the

²² See GHG Permitting Guidance at 27. See also *Friends of Buckingham v. State Air Pollution Control Board*, 947 F.3d 68, 92 (4th Cir. 2020) (vacating and remanding a state-issued CAA permit, where the permitting authority did not provide an adequate rationale for invoking the redefining the source doctrine to remove a control technology from consideration); *In re Desert Rock Energy Company*, 14 E.A.D. 484, 538 (EAB 2009) (emphasizing that a successful redefining the source argument to exclude a technology from BACT must be based on a strong underlying administrative record); *Sierra Club v. EPA*, 499 F.3d 653, 658 (7th Cir. 2007) (upholding removal of lower-sulfur coal as a clean fuel in step 1 of the BACT analysis where the record supported the determination that the purpose of the plant was to burn coal from an adjacent mine).

²³ See GHG Permitting Guidance at 33.

²⁴ See GHG Permitting Guidance at 20, citing *In re Knauf Fiber Glass, GmbH*, 8 E.A.D. 121, 131 (EAB 1999) (“The BACT analysis is one of the most critical elements of the PSD permitting process. As such, it should be well documented in the administrative record.”) and *In re Steel Dynamics, Inc.*, 9 E.A.D. 165, 224-25 (EAB 2000) (remanding BACT limitation where permit issuer failed to provide adequate explanation for why limits deviated from those of other facilities).

²⁵ See Exhibit F, Final Determination at 4 (explaining that WVDEP determined the information and BACT determinations in the Roxul PSD application were “appropriate and reasonable,” and instead of copying the analysis into the Preliminary Determination for the proposed permit, WVDEP simply provided a summary table of the resulting BACT technologies and referred to the application’s BACT analysis).

²⁶ See Exhibit G, West Virginia Department of Environmental Protection Preliminary Determination/Fact Sheet for the Construction of Roxul USA, Inc.’s RAN Facility (“Preliminary Determination”; March 18, 2018) at 2 (describing Roxul’s CBI claims), also available at

[https://dep.wv.gov/daq/Documents/March%202018%20Drafts%20and%20IPR/R14-0037 Preliminary Determination.pdf](https://dep.wv.gov/daq/Documents/March%202018%20Drafts%20and%20IPR/R14-0037%20Preliminary%20Determination.pdf), and

Exhibit H, Roxul Prevention of Significant Deterioration Application (“Roxul PSD Application”; November 20, 2017) at PDF pages 2-3 (listing all sections withheld as CBI), also available at

[https://dep.wv.gov/daq/Documents/November%202017%20Applications/037-00108 APPL R14-0037.pdf](https://dep.wv.gov/daq/Documents/November%202017%20Applications/037-00108%20APPL%20R14-0037.pdf). Note that the single PDF of the Roxul PSD Application that WVDEP made available on its website is a 632 page PDF that is a combination of many separate documents. Accordingly, for reference in this document, we cite to the page within the whole PDF file (as displayed in the top margin of Exhibit H), which may differ from page numbers included on the individual pages within it. For ease of reference, JCF has also included a copy of Exhibit H at <https://bit.ly/3otmxxpJ>.

Melting Furnace,²⁷ all information regarding the raw materials processed in the furnace,²⁸ the emission factors used to determine many of the emissions from the furnace's operation,²⁹ and portions of the BACT analysis itself.³⁰ The CAA prohibits emissions data being claimed as confidential,³¹ and EPA's definition of emissions data clearly includes the information withheld in Roxul's PSD application because it is information "necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality)" of emissions from the Rockwool facility.³² Moreover, it is unclear how any information in the application can be withheld as CBI since the WVDEP adopted the application -- including the BACT analysis and air emission modeling that used that CBI information -- as its own in issuing the permit, as explained above. Thus, in relying on information that was specifically withheld in the record, WVDEP did not fully explain its rationale in issuing the permit, as it is required to do.³³

However, from the information that is available, it appears that combustion of fuel in a melting furnace to produce mineral wool is very different from combustion of fuel in a boiler used to create heat and energy, for example to generate electricity. The information WVDEP issued with the proposed PSD permit describes the melting furnace as an open-top cupola in which various raw materials are heated and melted into a molten liquid, which then flows out the furnace to a spinning chamber to be spun at high speed to create fibers, which are then coated with binders, collected, and further processed to produce mineral wool insulation.³⁴ With regard to heating the Melting Furnace, which is denoted as emission unit IMF01 in the Rockwool PSD permit, WVDEP summarized the process as follows:

During start-up, a 5.10 mmBtu/hr natural gas-fired Preheat Burner (IMF24) is used to warm the Melting Furnace baghouses to prevent condensation. ...The Preheat Burner will operate for approximately two hours prior to the Melting Furnace startup. Once to temperature, the coal/pet coke and raw materials will then be added to the furnace to begin the melting process.³⁵

This statement seems to imply that combustion of natural gas is done in the separately identified and permitted burner used only for preheating the furnace and coal is used for

²⁷ See Exhibit H, Roxul PSD Application at PDF page 17 (two large blank spaces at the start of the 2.1.3 Melting description).

²⁸ See Exhibit H, Roxul PSD Application at PDF page 3 (all Raw Material Safety Data Sheets and related information).

²⁹ See Exhibit G, Preliminary Determination at page 15 (describing nature of melting furnace emissions information withheld).

³⁰ See Exhibit H, Roxul PSD Application at PDF page 520 (blank portion in Step 4 of the Melting Furnace BACT analysis for CO & VOC emissions).

³¹ 42 U.S.C. § 7414(c).

³² 40 CFR § 2.301(a)(2)(i)(A).

³³ See, e.g., *Friends of Buckingham*, 947 F.3d at 85 ("We vacate and remand for further of reliance on the redefining the source doctrine, and/or why electric turbines are not required to be considered in Virginia's BACT analysis of the Compressor Station.").

³⁴ See Exhibit G, Preliminary Determination at 4-12.

³⁵ See Exhibit G, Preliminary Determination at 7.

primary operation of the furnace while melting raw materials. However, the exact use of fuels in the melting furnace during primary operation is unclear. For example, the BACT analysis for GHG emissions in Roxul's permit application states that "[c]oal and natural gas are the predominant fuels that will be used in the melting furnace," but later in the same paragraph touts the use of coal as a combustion fuel and says "[n]atural gas, the fuel that results in the lowest GHG emissions, is the primary fuel *used elsewhere* in the plant."³⁶ Many other factors regarding the combustion fuel(s) for the Melting Furnace are unclear based on the permit record, such as:

- whether coal or natural gas will only be used for combustion when the other fuel is not used, or whether they will be combusted together in a mixture, and if so, the primary mixture that would be used;
- whether the preheat burners will be used when natural gas is used for combustion of raw material in the Melting Furnace or whether there are separate natural gas burners used for that purpose;³⁷ and
- whether the coal is added directly to the furnace with the raw materials and/or burned in separate burners located in the furnace.³⁸

With regard to the last point, since all specific information on the raw materials used in the process was withheld as CBI and only a list of example raw materials was provided in various permit documents, it is also not clear whether coal itself could also be a raw material used to create mineral wool.

Looking more closely at the available information, the actual substance of the BACT analysis for the melting furnace and the permit as a whole seem to reflect an operation in which coal is used as the primary combustion fuel in the melting furnace. For example:

- The melting furnace is not included in the list of Rockwool emission sources that "utilize natural-gas fired burners" and which were grouped together for determining the GHG BACT limit;³⁹
- In the GHG BACT analysis for the Melting Furnace, Roxul stated that natural gas "is the primary fuel *used elsewhere* in the plant;"⁴⁰
- In step 1 of the NO_x BACT analysis for the Melting Furnace, potential control options did not include Low-NO_x and Ultra Low-NO_x natural gas burners, while the NO_x BACT

³⁶ See Exhibit H, Roxul PSD Application at PDF page 573-574 (emphasis added).

³⁷ Compare Exhibit G, Preliminary Determination at 7 (denoting different identification numbers for preheat burners (IMF24) and melting furnace (IMF01)) with *id.* (stating that the melting furnace "has different burners utilizing various fuels (coal, natural gas, and oxygen injection)").

³⁸ See Exhibit G, Preliminary Determination at 7 (stating "the coal/pet coke and raw materials will then be added to the furnace" but also that the melting furnace "has different burners utilizing various fuels (coal, natural gas, and oxygen injection)").

³⁹ See Exhibit H, Roxul PSD Application at PDF page 556, § D.9.5.

⁴⁰ See Exhibit H, Roxul PSD Application at PDF page 552, § D.9.4 (emphasis added).

analyses for all other natural gas-fired units at the facility included consideration of these controls;⁴¹ and

- Other BACT analyses result in technologies that are primarily related to control of emissions from coal, such as PM control via baghouses and SO₂ control via sorbent injection.⁴²

Finally, the PSD permit includes a number of plant processes and resulting emission limits that are directly related to handling and storing large quantities of milled coal to be used in the melting furnace, as well as additional processes for preparing unmilled coal for combustion if milled coal cannot be trucked to the facility.⁴³ It is not clear why Roxul would create such an extensive infrastructure for coal use if it was not to be used as the primary combustion fuel at the Rockwool facility.

While the permitting record lacked important information regarding the operation of the Rockwool facility – information that would be important to determining if the BACT limits were appropriate – WVDEP still accepted the selected technologies and emission rates in Roxul's PSD application "as BACT" in the proposed and final permit, explaining that they "were based on a reasonable top-down BACT Analysis as presented in [Roxul's] permit application R14-0037."⁴⁴ In the end, the Melting Furnace portion of the Final Permit contains a table of BACT emission limits and simply states that the furnace must comply with the those limits and technologies, but neither the permit terms nor the limits contain any explicit fuel-related provisions.⁴⁵

BACT Determinations for the Melting Furnace Must Be Revised to Reflect Primary Use of Natural Gas

As explained above, neither the final PSD permit nor WVDEP's supporting documents state a specific fuel type or fuel mix that would be used for primary combustion of the melting furnace, nor does Roxul's BACT analysis contain that information.⁴⁶ But the examination of the record as summarized above indicates that the Melting Furnace BACT limits were based on the use of coal as the primary combustion fuel during the processing of raw materials, and not on a primary (or even significant) use of natural gas. Against this backdrop, in March of 2020, Roxul

⁴¹ Compare Exhibit H, Roxul PSD Permit at PDF page 201 (analysis of NO_x BACT Step 1 for the D.3.4 Melting Furnace), with *id.* at PDF pages 535 and 543 (analysis of NO_x BACT Step 1 for the D.8.4 Rockfon Building Heater, Natural Gas Boiler 1, and Natural Gas Boiler 2, and D.8.11 Pre-Heat Burner).

⁴² See Exhibit C, Final PSD Permit at 31-32, section 4.1.4.a (Melting Furnace emission limits).

⁴³ See Exhibit G, Preliminary Determination at 6-7 (describing the Coal/Coke Material Handling and the Coal Milling operations, and listing all of the associated emission units related to those operations) and resulting BACT summary at 34 (material handling) and 36 (coal milling), and Exhibit C, Final PSD Permit, *generally* (including various emission limits and other permit terms relating to the Coal Feed Tank and Coal Milling).

⁴⁴ See Exhibit G, Preliminary Determination at 37 and Exhibit F, WVDEP Final Determination at 4.

⁴⁵ See Exhibit C, Final PSD Permit at 30-32, section 4.1.4.a (BACT provisions for the melting furnace).

⁴⁶ If any information withheld as CBI includes the specific fuel content information used to inform the BACT analysis, it must also be released as it represents emissions data. See 40 CFR 2.301(a)(2)(i)(A) (defining CAA emission data to include the "[i]nformation necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission" from a source).

used a one-page letter to inform WVDEP that Rockwool would operate the melting furnace “using only natural gas, as allowed under Permit No. R14-0037.”⁴⁷ The letter explains that Rockwool had “determined it was technically feasible to conduct Melt Furnace operations entirely on natural gas” and that the change would reduce the emissions of air pollutants from the facility.⁴⁸ Roxul notes that the change would require “a minor adjustment in use of raw materials” that would “result in no change in emissions.”⁴⁹ Roxul did not provide citations to the specific portions of the permit that they asserted allowed these changes, nor did they provide any additional information or analysis to support their conclusions regarding emission changes that would result. Roxul also asked to retain all of the coal-fired provisions of the PSD permit to allow Rockwool the option of “reverting back to coal” if needed.⁵⁰

Despite this apparently significant change in operations at the facility and lack of information in Roxul’s letter, WVDEP allowed that change to proceed without any explanation or analysis of its own and noted that the current permit terms would still apply to the changed operations.⁵¹ It is not clear how allowing such a fundamental change in operation for a source still under construction without reconsideration of the permit emission limits complies with the Act’s PSD requirements, including BACT. Nothing in the Act’s PSD program authorizes a source to apply to construct one type of facility but then operate a different one. Neither Roxul or WVDEP made any attempt to show that the control technologies and resulting emission limits contained in the permit would still represent BACT for the melting furnace if it began operation fired exclusively by natural gas. And it is not possible to make an independent determination given the paucity of information in the Roxul and WVDEP March letters. If Rockwool had to make physical changes to the Melting Furnace to allow for exclusive natural gas combustion, a new permitting action should be required.⁵² Without understanding the basic operating parameters of the Melting Furnace as permitted in the current permit and comparing that to how Rockwool now plans to operate (and any changes required to do so), it is impossible to determine whether the BACT control technologies and emission limits contained in the current permit will control emissions to *maximum degree* once operations begin, as required by the Act.⁵³

Roxul did not identify a specific term in the existing permit that allows Rockwool’s Melting Furnace to burn exclusively natural gas. In fact, comparison to other natural gas-related aspects of the permit indicate that natural gas was not considered as a primary combustion fuel

⁴⁷ See Exhibit D, Letter from Rockwool Group to West Virginia Department of Environmental Protection (March 2, 2020).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ See Exhibit E, Letter from West Virginia Department of Environmental Protection to Roxul USA, Inc. (March 11, 2020).

⁵² See *In re Indeck-Elwood LLC*, 13 E.A.D. 126, 148 (EAB 2006) (finding that “allowing for construction of a facility that is physically different than the one permitted, and which may potentially have different emission characteristics” is more than an administrative permit change to a PSD permit, which should be reopened to allow for public comment on the change).

⁵³ 42 U.S.C §§ 7475(a)(4) and 7479(3).

for the Melting Furnace. For example, natural gas simply is not specifically identified in any of the Melting Furnace permit terms, while all other emission sources that were identified as burning natural gas included a specific permit condition indicating which type of natural gas that had to be used, i.e. pipeline-quality natural gas (or PNG).⁵⁴ Moreover, if the Melting Furnace was permitted to burn natural gas, it should have been included in the list of natural-gas fired burners in the GHG BACT analysis and to which the resulting GHG emission limit applies, but it was not.⁵⁵

Instead of providing WVDEP with the specific permit terms that allow Rockwool to switch to exclusive natural gas firing, Roxul's March 4, 2020 letter stated that "[n]either the permit application nor the permit specifies the amount of each fuel that is to be combusted in the Melt Furnace."⁵⁶ This statement represents the fatal flaw in both the current PSD permit and the assumption of Roxul and WVDEP that this planned change in operation can proceed without any changes to current permit.

On one hand, if the permit allows use of either coal or natural gas as the primary fuel, the current PSD permit limits are improperly premised on the primary use of coal burning, as shown above. Instead, the original BACT analysis should have analyzed primary use of both fuels in the analysis, which Roxul did not do. EPA has consistently advised that if an emission source can be fired by more than one fuel – as Roxul claims here – the BACT analysis must consider burning both fuels as the primary combustion source.⁵⁷ The only exception to conducting a full analysis of both fuel types is if the record clearly shows that doing so would fundamentally redefine the source.⁵⁸ Roxul made no such claim regarding natural gas in any part of the BACT analyses for the Melting Furnace.⁵⁹ And even if they did make a redefining the

⁵⁴ Compare Exhibit C, Final PSD Permit at 30-32, § 4.1.4.a (simply noting that the Melting Furnace shall not exceed the BACT emission limits and shall utilize the BACT technologies identified in the accompanying table, which includes no indication of fuel type) with *id.* at 29, § 4.1.3.a (Coal Mill Burner - specifying use of "pipeline-quality natural gas (PNG)"), 4.1.7.c (Rockfon line ovens - same), 45, § 4.1.8.a (Fuel Burning Units - same), and 50, § 4.1.11.c(1) (Product marking burners - same).

⁵⁵ See Exhibit H, Roxul PSD Application at PDF page 577-578.

⁵⁶ Exhibit D, Letter from Rockwool Group to West Virginia Department of Environmental Protection (March 2, 2020).

⁵⁷ See *In the Matter of Cash Creek Generating, LLC*, Order (EPA Administrator, Dec. 15, 2009), available at https://www.epa.gov/sites/production/files/2015-08/documents/cashcreek_response2008.pdf (finding PSD permit inadequate where the facility could burn both natural gas and syngas, but permitting authority did not show why natural gas could not be used as the primary fuel); See Exhibit I, *In the Matter of Hibbings Taconite Company*, Order (EPA Administrator, July 19, 1989), also available at <https://www.epa.gov/sites/production/files/2015-07/documents/taconite.pdf> (finding that when facility had the ability to burn natural gas and had been doing so, primary burning of natural gas could only be excluded as a viable control strategy in the BACT analysis with a sufficient explanation, which could not rely on an argument that it would result in a fundamental change to the facility since the fuel was already being used).

⁵⁸ GHG Permitting Guidance at 27. See also *id.* at 28 (where an applicant is already using a fuel in one aspect of its design, greater utilization of that fuel should be listed at step 1 of the BACT analysis, "unless it can be demonstrated that such an option would disrupt the applicant's basic business purpose for the proposed facility").

⁵⁹ We note that Roxul did seem to argue that considering use of other cleaner fuels (such as biomass) would redefine the source and thus be a basis for excluding consideration of them at step 1 (not available) and step 2 (not feasible) of the Melting Furnace GHG BACT analysis. See Exhibit H, Roxul PSD Application at PDF page 574.

source argument to exclude any consideration of natural gas as a primary combustion fuel for the melting furnace in the original PSD permitting process, the switch described in their March 2020 letter to WVDEP would be an acknowledgement that they are planning to operate that furnace as a fundamentally different emission source, which would require a new permitting process.

On the other hand, if the current permit limits are correct, then the permit only allows the primary use of coal – either in its entirety or in a mixture with natural gas – as the combustion fuel in the melting furnace and does not allow the primary (or exclusive) use of natural gas.⁶⁰ Accordingly, the existing permit must be re-opened and revised or a whole new permitting process completed to allow primary (or exclusive) firing by natural gas during Rockwool's Melting Furnace operations. Moreover, if the current permit limits are premised on the ability to use a mix of coal and natural gas fuel for combustion in the melting furnace, then the existing emission limits are based on the specific mix of those fuels that was used in determining the emission and control calculations in the BACT analysis such that burning a different mix would require changes to that analysis and the permit terms. When a fuel mixture is considered in determining BACT, the analysis should address a range of different fuel mixes (including from primarily one type to primarily the other), with selection of BACT as that mix that results in the best emission control based on the various fuel mixes considered, and the particular fuel mix should be specified in the permit.⁶¹ The Roxul BACT analysis adopted by WVDEP did not conduct any analysis of this type. In this case, nothing in the available record demonstrates that Roxul did any BACT analysis that relied on any specific mix of fuels, much less on the primary burning of natural gas, in the Melting Furnace. Nor did Roxul's BACT analysis attempt to explain why doing so would redefine the source⁶² or be technically

⁶⁰ See Exhibit H, Roxul PSD Application at PDF page 552, § D.9.4 (noting that with regard to the Melting Furnace, natural gas is the "*primary fuel used elsewhere* in the plant" (emphasis added)).

⁶¹ See Guidance for Determining Best Available Control Technology for Reducing Carbon Dioxide Emissions From Bioenergy Production ("Biomass BACT Guidance"; March 2011) at 15-16 ("In cases where a permit applicant proposes to co-fire or combine biomass fuels with another primary fuel type, the list of BACT options [in step 1] should include the option of utilizing both types of primary fuels in different combinations...[Unless] the permit applicant is unable to demonstrate that a different allocation of primary fuels would fundamentally redefine the proposed source, the options at Step 1 should include varying allocations of the two primary fuels if the proportional allocation of fuels has the potential to affect the amount of GHGs emitted from the facility or the net atmospheric GHG concentrations."), available at <https://www.epa.gov/sites/production/files/2015-12/documents/bioenergyguidance.pdf>, and *In re N. Mich. Univ.*, 14 E.A.D. at 295-303 (finding PSD permit inadequate where the permitting authority examined a number of different wood and fossil fuel mixtures in the BACT clean fuels analysis but failed to justify selection of BACT as burning the combination with the lowest wood content).

⁶² See n. 58, *supra*, noting that Roxul's GHG BACT analysis for the Melting Furnace did argue that the use of "lower carbon fuels" would redefine the source, but they did not explain why and they did not clearly state that such a claim included the primary burning of natural gas. Regardless, there is no such redefining the source claim made in the BACT analysis for all other pollutants emitted from the Melting Furnace. See generally Exhibit H, Roxul PSD Application at PDF pages 500-532 (Melting Furnace BACT analysis for non-GHG pollutants).

infeasible in step 2 of the BACT analysis,⁶³ arguments that would be difficult to support since Roxul claims the Melting Furnace was permitted to – and can – burn primarily natural gas.

The CAA's requirement that PSD permits contain BACT limits that represent the best, or maximum, degree of emissions control for a particular emission source means that Roxul cannot have it both ways – undertaking a BACT analysis that assumed primary coal combustion to create BACT limits that allowed higher levels of emissions, while also stating that the permit itself did not specify a primary fuel source. The CAA permit issued to allow for construction of a new facility should reflect its planned operation, otherwise it is a sham permit.⁶⁴ and Roxul cannot be allowed to reflect one type of operation in its PSD application and resulting permit limits and then, while the permitted facility is still under construction, argue that the permit allows a fundamental switch in those operations. Burning natural gas results in significantly fewer emissions than burning coal,⁶⁵ so if Roxul is allowed to make this change without reopening the PSD to adjust the BACT limits, it is likely that they could easily meet the current BACT emission limits without applying *any* emission controls, much less the *best* controls for natural gas-fired combustion sources as the CAA's BACT provisions require.

On this point, we note that the Melting Furnace NOx and SO2 BACT limits in the current permit are based on a 30-day rolling average. Thus, under the current permit, the Rockwool facility with the ability to burn primarily coal and primarily natural gas under the same emission limit could exceed those limits while burning coal for many days within that period and avoid a violation of the permit by burning natural gas for a shorter period of time to make up the difference. In other words, the permit does not come close to ensuring BACT on a continuous basis, as required by the Act.⁶⁶

Accordingly, there is sufficient information available to determine that the current PSD permit does not comply with the Clean Air Act with regard to Roxul's planned operations of the melting furnace as a primarily natural gas-fired unit. We also note that there is nothing requiring Roxul to primarily burn natural gas in the Melting Furnace. Roxul can burn coal at any

⁶³ While Roxul's later letter describing the change to burn entirely natural gas at the Melting Furnace said that it was now "technically feasible" to do so, its PSD Permit Application does not include any claims that burning primarily natural gas is technically infeasible in the Melting Furnace BACT analysis. See Exhibit H, Roxul PSD Application at PDF pages 510-527 (Melting Furnace BACT analysis for non-GHG pollutants) and 573-575 (Melting Furnace GHG BACT analysis at Step 2).

⁶⁴ See Exhibit A, Applicability of New Source Review Circumvention Guidance to 3M – Maplewood, Minnesota (June 23, 1993) at 1, and *In re Indeck-Elwood LLC*, 13 E.A.D. at 148 (finding that "construction of a facility that is physically different than the one permitted" should result in a reopening of the PSD public comment period).

⁶⁵ Energy Information Administration, *Natural Gas Explained* (September 24, 2020), available at <https://www.eia.gov/energyexplained/natural-gas/natural-gas-and-the-environment.php> ("Burning natural gas for energy results in fewer emissions of nearly all types of air pollutants and carbon dioxide (CO2) than burning coal or petroleum products to produce an equal amount of energy.").

⁶⁶ 42 U.S.C. §§ 7602 (k) (defining a CAA "emissions limitation" to be a requirement "which limits...emissions of air pollutants on a continuous basis") and 7479(3) (defining BACT as an "emission limitation"). See also *In the Matter of Southwestern Electric Power Company, H.W. Pirkey Power Plant*, Order (Feb. 3, 2016), at 8 ("EPA has consistently stated that a BACT limitation must apply at all times") and cases cited therein, available at https://www.epa.gov/sites/production/files/2016-02/documents/pirkey_response2014.pdf.

time in the future and specifically explained that it “wishes to retain the sources associated with the use of coal-fired operations, in the event operations require reverting back to coal.”⁶⁷ Making the operation change to burning natural gas will only be enforceable if the permit is re-opened and natural gas firing is made an explicit permit term. The Melting Furnace BACT issue must be resolved and the PSD permit updated to ensure that the Rockwool facility begins operating with emission controls that provide the level of protection for the citizens of and air quality in Jefferson County and surrounding region required by the Act.

The Permitting Process Must Be Re-opened to Allow Public Input on the Facility Changes

The CAA deficiencies highlighted above are compounded by the perfunctory way in which WVDEP and Roxul addressed these planned operational changes, including the complete lack of public involvement in the process. One reason it is difficult to fully assess the nature of the change in Rockwool’s operations is that the entirety of the publicly available permitting information regarding it is the one-page Roxul letter sent to WVDEP on March 4, 2020. As explained above, that letter contains no citations to specific permit provisions, nor does it include any specific information or analysis to support the claims made within it.⁶⁸ And in response, WVDEP simply said “The Division of Air Quality (DAQ) confirms that on March 4, 2020, we received your letter that provided information on Roxul’s plans to operate the Melting Furnace using only natural gas and without the use of coal. Please note that all applicable conditions in the permit remain in effect.”⁶⁹ Nothing in the PSD permitting process or the permit itself contemplated operation of the facility primarily, much less entirely, on natural gas. Accordingly, we do not understand how WVDEP could simply acknowledge this fundamental change without requiring more information and reopening the permit process.

The lack of information provided in the Roxul letter is more concerning when compared to public statements Rockwool made about the change in its operations. For example, on July 30, 2020, Rockwool’s Facebook page also announced the change in operations to burn natural gas and explained that the facility could do so because of “the highly advanced, proprietary, fuel-flexible melting technology” being deployed there and that “no one else in our industry has this capability.”⁷⁰ From this post, it is unclear whether the “new technology” that allowed for the change to entirely natural gas combustion was the technology addressed in the existing PSD permit or whether Roxul was using a new technology not contemplated at the time of permitting. In either case, this information indicates that the permit should have been re-opened because either the original permit should have at least analyzed – if not selected – BACT emission limits (and other required analyses) based on burning of natural gas in the

⁶⁷ See Exhibit D, Letter from Rockwool Group to West Virginia Department of Environmental Protection (March 2, 2020).

⁶⁸ *Id.*

⁶⁹ See Exhibit E, Letter from West Virginia Department of Environmental Protection to Roxul USA, Inc. (March 11, 2020).

⁷⁰ See Exhibit J, Rockwool Ransom Community Facebook Page Post (July 31, 2020).

melting furnace, or the facility was changing in a way that did not reflect the operations analyzed and authorized by its permit.⁷¹

However, WVDEP did not reopen the permit and did not share this information on its public page regarding the Rockwool facility.⁷² When the Jefferson County Foundation learned of this change months, JCF sent a letter to WVDEP asking it to reopen the PSD permitting process to adjust the BACT limits to reflect the use of natural gas and correct other deficiencies.⁷³ In response, WVDEP sent a letter to JCF just thirteen days later explaining that after “internal review and consultation with [EPA],” Rockwool’s 2018 PSD permit “is and remains valid for the construction and proposed operation of the facility” and noted that “no Administrative Updates...have been issued, or are warranted by” the issues raised in JCF’s letter, including the change to burning primarily natural gas.⁷⁴ This unexplained reliance on internal discussions simply does not provide a meaningful response to public concerns about this permitting process. JCF’s attempts to understand the nature of the referenced EPA consultation have also failed to reveal why a fundamental change in the operations of the Roxul facility currently under construction could be allowed to proceed without any revisions to the existing permit.⁷⁵

It should be noted that West Virginia’s permitting rules do not allow permits to be changed without public comment if they result in a physical change or a change in the method of operation at the facility.⁷⁶ As noted above, it is unclear if Roxul’s announced change at the

⁷¹ See discussion *supra*. For example, we note that there was no consideration of whether natural gas combustion will be sufficient to maintain the temperatures assumed in the NOx BACT analysis and the limits established for the selected NOx controls.

⁷² See Exhibit K, WVDEP Information About The Rockwool Facility In Jefferson County, West Virginia (as of May 3, 2021), available at <https://dep.wv.gov/news/Pages/RockwoolInformation.aspx> (noting it was last modified on January 11, 2019 and not containing the March 2020 exchange of letters in the Air Permitting section).

⁷³ See Exhibit L, Letter from Jefferson County Foundation to West Virginia Department of Environmental Protection (July 29, 2020). NOTE: Exhibits B – M to this July 29 JCF letter are not included as attachments to this current letter but can be supplied upon request.

⁷⁴ See Exhibit M, Letter from West Virginia Department of Environmental Protection to Jefferson County Foundation (August 5, 2020).

⁷⁵ See Exhibit N, Copies of three documents JCF received in response to Freedom of Information Act requests to EPA regarding the Rockwool planned fuel change, none of which explain the basis of EPA Region 3’s support of WVDEP’s approach with regard to that change:

- (1) A calendar entry/email showing that a meeting between EPA Region 3 and WVDEP to discuss JCF’s July 29, 2020 letter was scheduled and then cancelled with direction that WVDEP would issue any response.
- (2) A summary regarding the Rockwool fuel change issue that contains two key inaccuracies: (a) it says there was a “permit change that removed the option of Rockwool burning coal in its Melting Furnace,” there was no permit change, only statements from Roxul regarding their plan to burn natural gas; and (b) it notes there was “significant public interest” at the time WVDEP issued the PSD permit, but public interest only came after the original PSD permitting process.
- (3) A response to a reporter inquiry that simply notes EPA reviewed the permit and the JCF letter and “found WVDEP’s conclusion that the proposed operation of the Melt Furnace using only natural gas is allowable under Permit No. R14-0037 to be reasonable.”

⁷⁶ 45 C.S.R. §§ 13- 4.1.d (only Class I administrative changes may proceed without public comment) and 4.2.a.4 (stating Class I administrative changes do not include those that involve a physical change or a change in the method of operation at the facility), available at <https://dep.wv.gov/daq/planning/Documents/45-13.pdf>.

Rockwool facility requires a physical change to deploy their new proprietary technology, but it is clearly a change in the operation of the facility – the existing PSD permit does not contain conditions reflecting a melting furnace fueled entirely by natural gas *and*, by Roxul’s own admission, the change will require unexplained adjustments to the raw materials used in the operations.⁷⁷ Moreover, as explained fully above, the changes here represent a significantly different process and facility than was analyzed and permitted by the existing PSD permit, which should require a new PSD permit – with a corresponding public comment process – under West Virginia’s rules.⁷⁸ However, WVDEP’s March 11 Response to Roxul and August 11 response to JCF indicate that they do not think any change of the permit is needed, much less one that required public process. Based on the scant information that is available, the permitting process should be reopened so that Roxul can provide full information about the operation and resulting emissions from the melting furnace when operated exclusively by natural gas, include that new operational design as an enforceable term in the permit, conduct a full BACT analysis to determine if any changes to the permit emission limits are needed, and also provide the analysis required to support continued coal combustion in the future.

The lack of a public process resulting from this change at the Rockwool facility is also frustrating given the intense public interest from the surrounding community. At the time the original PSD permit was issued, JCF and other members of the public were generally unaware of the planned Rockwell facility and the various environmental impacts it would bring.⁷⁹ While WVDEP had provided the required public notice of the proposed permit in the local newspaper, the public either did not see it or did not understand the nature of the facility and its potential environmental impacts, which is understandable given the information in the public record withheld as CBI. However, after the PSD permit was issued and more information regarding the facility came to light, many people in the community started to express concern.⁸⁰ Of particular concern are potential impacts on the Jefferson County residents most closely situated to the Rockwood site, which includes some of the most disproportionately impacted populations in the state.⁸¹ In fact, North Jefferson Elementary School, a Title 1 school in which 56% of

⁷⁷ See Exhibit D, Letter from Rockwool Group to West Virginia Department of Environmental Protection (March 2, 2020). We also note that Roxul appears to have fundamentally misrepresented to WVDEP (and the public, including EPA) during the PSD permitting process that the Rockwool melting furnace was the same as that already operating at their similar facility in Byhalia, Mississippi. In fact, as implied in their more recent Facebook post, n. 68 *supra*, it appears to be a new type of melting furnace employing a new and novel technology. See Exhibit J, Rockwool Ransom Community Facebook Page Post (July 31, 2020) (explaining that the ability to “convert to natural gas is the result of the highly advanced, proprietary, fuel-flexible melting technology” being deployed).

⁷⁸ See 45 C.S.R. § 13-5 (regarding the preconstruction permitting requirements of new or modified stationary sources).

⁷⁹ See Exhibit F, Final Determination at 3 (summarizing comments from EPA Region 3 on the proposed permit and noting that no other public comments were received).

⁸⁰ See Exhibit K, WVDEP Information About The Rockwool Facility In Jefferson County, West Virginia (as of May 3, 2021) at the “Additional Documentation” section (containing a list of inquiries from various community groups and local government officials between July 2018 and March 2019 raising various environmental concerns about the facility and WVDEP’s permitting of it).

⁸¹ See Exhibit O, EJSCREEN Report (Version 2020), for a 1 mile Ring Centered at 39.377540,-77.878440 [the location denoted on Rockwool’s final PSD permit]. This report denotes that the one mile area surrounding the facility has among the highest proportion of people of color, people lacking a high school education, and children under the

students are economically disadvantaged, is located within a half mile of the Rockwool facility.⁸² The immediate community and people throughout Jefferson County and the surrounding area deserve a fulsome, open, and transparent CAA permitting process to ensure the Rockwool facility is addressing emissions at a stringency required by the Clean Air Act.

As WVDEP provided a total of five (5) substantive sentences in responding to both the Roxul and JCF letters regarding the planned primarily fuel switch, we cannot assess the validity of their analysis in concluding that no changes to Rockwool's existing PSD permit are needed to accommodate the planned switch to burn entirely on natural gas. However, in light of the extensive information provided by JCF in this request regarding potential permitting deficiencies created by this planned change in operation, we believe WVDEP incorrectly found that the current PSD permit meets the CAA requirements for the planned operation of the Rockwool facility. WVDEP should be required to re-open the existing permit to modify Melting Furnace provisions to accurately reflect and address the pollutant emissions resulting from the new operation or undertake a new PSD permitting process, either of which would require an opportunity for JCF and other members of the public to participate in the process.

Other Permit Concerns

Having highlighted multiple issues regarding the BACT analysis and permit terms regarding emissions from the Melting Furnace in Rockwool's current PSD permit, it should come as no surprise that JCF (and others) have identified a number of other concerns with that permit. If the Rockwool PSD permit is re-opened or a new permit is issued to address the intended change to natural gas firing of the melting furnace, these other issues should also be addressed either through revised terms or a more thorough explanation of their foundation in the permitting analysis. We have listed a number of these concerns below so that EPA may understand the full extent of potential issues that could, and should, be addressed by any future action you, WVDEP, or Roxul may take.

In general, since the emissions from the Melting Furnace and associated emissions to address coal handling appear to represent a significant portion of the total emissions from the facility, any changes that result from new BACT requirements to address primary (or exclusive) firing by natural gas will necessitate a re-examination of the air quality analysis and air dispersion modeling for the entire facility. However, if that type of broad re-analysis is not conducted, the following deficiencies in the current permit should also be examined.

- To the extent any existing air dispersion modeling relies on information, including emission factors, that was withheld as CBI, that information should be released and the modeling put forward for public comment.

age of 5 in West Virginia, and ranks above the 50 percentile statewide for all air pollution-related environmental indicators.

⁸² See <https://www.usnews.com/education/k12/west-virginia/north-jefferson-elementary-220074>.

- Air dispersion modeling should be redone using air monitoring from more representative, closer proximity monitors, as required by EPA guidelines.⁸³ For PM2.5 and SO2 monitoring data, Roxul relied on data from a monitor that is not approved for use in PSD modeling, and for NO2 monitoring data, Roxul relied on a faraway monitor when there are closer monitors within the same Metropolitan Statistical Area as Jefferson County.
- Air dispersion modeling should be redone without use of the large exclusionary boundary included in the original analysis, which removed a number of nearby emission sources from the analysis.
- Air dispersion modeling should be redone using a finer reception grid, similar to that used by other PSD permit applicants in West Virginia. The grids used in Roxul's analysis avoided inclusion of important community sites in the receptor modeling.
- Air quality modeling and emission limit analysis should include reasonably discernable start-up, shut-down, and malfunction (SSM) emissions. Roxul based all modeling and emission estimates on fully optimized, steady state emissions, even though SSM events will occur on a regular basis.⁸⁴
- To the extent air dispersion modeling, emission limits, or other permit terms and related analyses relied on emission data taken from the Roxul Mineral Wool facility in Byhalia, Mississippi, they should be redone to address the change in operations. Rockwool's July 31, 2020 Facebook post claimed that no other facility in the industry has the capability to burn only natural gas, so we must assume the Byhalia plant relied primarily upon coal firing, thus removing it as a good comparison for emission estimation purposes. Instead, Roxul should rely on natural gas emission factors from AP 42⁸⁵

JCF has previously provided WVDEP with information regarding the permitting issues listed above, and we have attached those documents to this letter for your convenience.⁸⁶ We also encourage you to review correspondence from other community groups, individuals, and local government officials contained on the WVDEP webpage regarding the Rockwool facility and the

⁸³ See generally *Clean Air Act Permit Modeling Guidance*, available at <https://www.epa.gov/scram/clean-air-act-permit-modeling-guidance>.

⁸⁴ See Exhibit H, Roxul PSD Application at PDF page 462 (noting that "[t]ransient operations, such as startup and shutdown, related to scheduled maintenance occur once a week"). The use of fully optimized, steady state emissions in the modeling is also inconsistent with the 30-day rolling averages of many emission limits in the Rockwool permit, since those long averaging periods could allow the facility to exceed emission limits for significant portions of the averaging period but then reduce production or switch to natural gas for the time needed to meet the 30-day limit.

⁸⁵ EPA, *AP-42: Compilation of Air Emission Factors*, Vol.1, 1.4 (Natural Gas Combustion), available at <https://www3.epa.gov/ttn/chief/ap42/ch01/>.

⁸⁶ See Exhibit L, Letter from Jefferson County Foundation to West Virginia Department of Environmental Protection (July 29, 2020), and Exhibit P, Memorandum from Jefferson County Foundation to West Virginia Department of Environmental Protection (July 9, 2020).

WVDEP on-line file for this permit.⁸⁷ While we touch upon these issues lightly in this letter, JCF would be happy to provide EPA a fuller assessment of these concerns.

If the Rockwool PSD permit is re-opened or a new permit is issued to address the intended fuel switch, these concerns listed above should also be addressed to ensure the entire facility is permitted as required by the CAA.⁸⁸

Conclusion

We believe EPA is in the best position to resolve the Rockwool PSD permitting issues we have identified above in a timely manner, and that such resolution is needed to ensure the Rockwool facility operates in compliance with the CAA from the outset of operations. We encourage you to engage with WVDEP to re-open the existing permit (or undertake a new permitting process) to analyze and incorporate the melting furnace fuel change in an enforceable PSD permit and to include public participation in that process. If those efforts should fail, we ask you to take action under the enforcement provisions of the CAA as this is exactly the situation sections 167 and 113 were intended to address – where construction of the improperly permitted facility is ongoing and the state permitting authority refuses to reopen the permit to address the problems.⁸⁹

We are also contemplating bringing a citizen enforcement action under CAA § 304 to address the PSD permitting deficiencies at the facility, but the time and resources needed for such a suit make it unlikely that the necessary permitting changes and more stringent emission limits would be in place until well after operations begin. Likewise, attempting to address these issues in the eventual title V permitting process would only delay the resolution of these important permitting issues while allowing Rockwool to operate for more than a year with a deficient permit and the resulting pollutant emissions.

JCF seeks to protect air quality throughout Jefferson County and the surrounding area, especially in the disproportionately impacted communities nearest the facility, by ensuring that Rockwool begins operations with a permit that controls pollution emissions to the maximum extent as required by the Clean Air Act. While we and others in the community were encouraged by Roxul's decision to burn primarily natural gas instead of coal at the melting furnace, we do not think it is unreasonable to request that PSD permit include emission limits reflecting the CAA-required best available controls for pollutants resulting from a natural-gas fired melting furnace, that this change in fuel type be enforceable in the PSD permit, and that

⁸⁷ See <https://dep.wv.gov/news/Pages/RockwoolInformation.aspx> (WVDEP Information About The Rockwool Facility In Jefferson County, West Virginia) and <https://documents.dep.wv.gov/AppXtender> (WVDEP file for Rockwool permitting; access using DEP for the Username & Password, then select PERMITSAIR – New Query – PRIMARY ID 037-00108 for the Rockwool files).

⁸⁸ To the extent Roxul and WVDEP refuse to reopen the permit for comment and/or conduct any such additional analysis, they should explain their decision to do so in the permit record.

⁸⁹ See, e.g., *Alaska Department of Environmental Conservation vs. EPA*, 540 U.S. 461; Exhibit B, Guidance On Enforcement of Prevention of Significant Deterioration Requirements Under the Clean Air Act.

the public be allowed to participate in that process. Accordingly, we ask EPA to engage with WVDEP to address the melting furnace fuel change in a public process and to use its authority under the Clean Air Act, including under sections 167 and 113 if needed, to ensure this happens.

We ask that you work quickly to assess EPA's potential action in this matter. While Rockwool construction is on-going, it is our understanding that they plan to conduct preliminary operational testing soon and could begin full operation in June, and it would be in everyone's interest if the plant possessed a PSD permit fully compliant with the Clean Air Act before it begins full operation. To assist in your efforts, JCF would be happy to set up a time to discuss these issues with you or others at EPA, or to participate in any conversations you might have with WVDEP regarding this matter. Please reach out to me at 304-582-7064 if you would like to arrange such a meeting.

Jefferson County Foundation looks forward to EPA's prompt action in this matter.

Sincerely,

Christine L Wimer

Dr. Christine Wimer

President, Jefferson County Foundation

Cc (via email):

Lawrence Starfield, Acting Assistant Administrator, Office of Enforcement and Compliance Assurance, at Starfield.Lawrence@epa.gov

Joseph Goffman, Acting Assistant Administrator, Office of Air and Radiation, at Goffman.Joseph@epa.gov

Diana Esher, Acting Regional Administrator, Region 3, at Esher.Diana@epa.gov

Karen Melvin, Director, Region 3 Enforcement and Compliance Assurance Division, at Melvin.Karen@epa.gov

Cristina Fernandez, Director, Region 3 Air and Radiation Division, at Fernandez.Cristina@epa.gov

Harold Ward, WVDEP Cabinet Secretary, at Harold.D.Ward@wv.gov

Laura Crowder, Director, WVDEP Division of Air Quality, at Laura.M.Crowder@wv.gov

Kristi M. Smith, Smith Environmental Law (Counsel to JCF), at Kristi@SmithEnvironmentalLaw.com



west virginia department of environmental protection

Division of Air Quality
601 57th Street, SE
Charleston, WV 25304
(304) 926-0475

Austin Caperton, Cabinet Secretary
dep.wv.gov

March 11, 2020

Mr. Ken Cammarato, Vice President and General Counsel
Roxul USA, Inc. (Roxul)
665 Northport Avenue
Ranson, WV 25430

RE: Roxul USA, Inc.
Ranson Facility
Permit Number: R14-0037
Plant ID Number: 037-00180

Dear Mr. Cammarato:

The Division of Air Quality (DAQ) confirms that on March 4, 2020, we received your letter that provided information on Roxul's plans to operate the Melt Furnace using only natural gas and without the use of coal. Please note that all applicable conditions in the permit remain in effect.

Should you have any questions, please Mr. Joe Kessler at (304) 414-1271.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura M. Crowder".

Laura M. Crowder
Director, Division of Air Quality



MAR - 4 2020

March 2, 2020

Director Laura Crowder
West Virginia Department of Environmental Protection
Division of Air Quality
601 57th Street, SE
Charleston, West Virginia, 25304

RE: ROCKWOOL Mineral Wool Production Facility – Ranson, West Virginia
Facility ID: 037-00180 – Permit No: R14-0037

Dear Director Crowder:

Roxul USA, Inc. dba ROCKWOOL makes notification to the West Virginia Department of Environmental Protection, Division of Air Quality (WVDAQ) that it plans to operate the Melt Furnace using only natural gas, as allowed under Permit No. R14-0037.

ROCKWOOL's air permit authorizes the use of both natural gas and coal-fired burners in the Melt Furnace, identified as emission point ID IMF01. Neither the permit application nor the permit specifies the amount of each fuel that is to be combusted in the Melt Furnace.

ROCKWOOL has determined that it is technically feasible to conduct Melt Furnace operations entirely on natural gas. The utilization of natural gas as the only fuel input does not impact the heat input capacity, in MMBtu/hour, of the Melt Furnace. In order to fire entirely on natural gas, a minor adjustment in the use of raw materials that are authorized by the permit is required. The adjustment in use of raw materials will result in no change in emissions. The stack parameters used to demonstrate compliance in the air dispersion modeling will not be impacted by the fuel change.

The change to firing only on natural gas will be a reduction in regulated air pollutants, as authorized under Permit No. R14-0037. At this time, ROCKWOOL wishes to retain the sources associated with the use of coal-fired operations, in the event operations require reverting back to coal. After successful startup on natural gas, ROCKWOOL may remove coal sources from the air permit, which will provide a further reduction of regulated emissions.

ROCKWOOL is planning to startup operations entirely on natural gas and makes this notification to WVDAQ to keep the agency informed of expected facility operations.

If you have any questions concerning this letter, please contact me further at ken.cammarato@rockwool.com or at 662-851-4734 if you wish to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ken Cammarato', is written over a horizontal line.

Ken Cammarato
Vice President and General Counsel

Part of the ROCKWOOL Group
665 Northport Avenue
Ranson, WV 25430

Jefferson County Foundation, Inc.

July 1, 2021

VIA E-MAIL

Shepherdstown Town Council
104 North King Street
Shepherdstown WV, 25443

RE: Jefferson County Foundation Presentation to the Town Council July 2021

Dear Mayor and Council Members,

We hope you are all well.

Please find attached materials that may help in following the presentation of the Foundation during the meeting. Information can also be found on our website at jeffersoncountyfoundation.org. We hope this information is helpful. Please feel free to contact us in advance if you have questions on any of these materials.

Best regards,



Dr. Christine Wimer
President

NOTICE: The applicant must be present at the Town Council Meeting when this application will be reviewed. The application will be tabled if the applicant is not present. No exceptions.

Corporation of Shepherdstown



Event/Park Request Form

Applications and fees are due at least ninety (90) days prior to the event unless otherwise noted.

Any form of advertising of this event, prior to approval by Town Council, is done at applicant's own risk.

Please read and complete entire application. An incomplete application may result in denial or delay of request. The Corporation of Shepherdstown reserves the right to approve or deny any event request.

Organization:	Freedom's Run
Contact Name:	Katie Thompson
Mailing Address:	3979 Kabletown Rd
City, State, Zip:	Charles Town, WV 25414
E-mail Address:	katie.lee.nolan@gmail.com
Daytime Phone:	(540) 877-5291
Evening Phone:	
Cell Phone:	

1.) Name and Complete Description of Event including location if other than one of our Parks: attach on separate sheet if necessary	Freedom's Run: Half Marathon, 10K & 5K			
	King Street King Street			
2.) Has this event been held in Shepherdstown in the past?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
	If yes, on a separate sheet, please provide event dates (last three years) and describe any scheduling conflicts with other events that occurred in prior years or potential conflicts for the current requested event			
3.) Is this a "one-time" event?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
4.) Date and Time of Event:	From: To:			
10 / 16 / 21	8:00 am am pm 10:30 am pm			
4a.) Set Up Time	5:00am			
4b.) Tear Down Time	2:00pm			
5.) Park Requested, if applicable:	<input type="checkbox"/> Bane-Harris \$100	<input type="checkbox"/> Cullison \$100	<input type="checkbox"/> Rumsey \$500	<input type="checkbox"/> Viola-Devonshire \$100
6.) Are street closures requested?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No or <input type="checkbox"/> Close North King Street (in front of Town Hall)			
	If yes, please provide, on the attached map, streets that need to be closed. If having a parade, provide parade route. Alleys must be kept open. (No Exceptions)			

~~King Street~~ King Street by midway field

NOTICE: The applicant must be present at the Town Council Meeting when this application will be reviewed. The application will be tabled if the applicant is not present. No exceptions.

7.) Is event open to the public?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
8.) What are the parking arrangements? Please explain.	Shepherd University	
9.) Will entertainment be involved? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, give details including complete list of vendors and contact information.	Any entertainment must be approved by the Town Council. <input type="checkbox"/> Live Band <input type="checkbox"/> DJ <input type="checkbox"/> Radio/CD <input type="checkbox"/> Other: Player: _____	
10.) Will other equipment be used? (i.e. generator, tents, inflatables, etc.) If yes, give details.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No All equipment will be contained on Midway Field	
11.) Are you a non-profit organization? If yes, provide certification of non-profit status.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
12.) Will vendors be at the event? If yes, give details including complete list of vendors and contact information.	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No 2118 2118	
13.) Will event participants be charged a fee? If yes, what is the cost?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No \$15 - \$85	
14.) Will admission be charged for the event? If yes, what is the cost?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Cost	
15.) Number of people expected to attend:	<input type="checkbox"/> less than 50 <input type="checkbox"/> 51-100 <input type="checkbox"/> 101-150 <input checked="" type="checkbox"/> more than 150	
16.) Name & contact info. for two (2) people with authority that will be present at event.	Name: Katie Thompson Phone: (910) 877-5291 Name: Mark Cocuzella Phone: (304) 268-8813	
17.) Check any Town assistance needed:	<input type="checkbox"/> Electric <input checked="" type="checkbox"/> Police <input type="checkbox"/> Public Works <input checked="" type="checkbox"/> Recycling <input type="checkbox"/> Other	
18.) Will alcoholic beverages be served? If yes, the Shepherdstown Open Container Ordinance must be suspended by action of the Town Council for this day's event.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, you must contact the WV Alcohol Beverage Control Commission to obtain a "one day" license.	
19.) How will this event benefit Shepherdstown?	Thousands of visitors	

Requirements:

- All event requests must be applied for at least 90 days prior to the event date.
- For park events, notification of the event must be provided, in writing, to all neighbors within two blocks of the event location (a copy of this notification must be provided to the Town)
- If this is a parade, walk or run, give details including map of route to be taken.
- General liability insurance coverage of no less than one million dollars (\$1,000,000) reflecting the Corporation of Shepherdstown as additionally insured.
- If assistance from the Police or Public Works Department is needed for the event, you will be responsible for contacting the respective departments.
- Payment of costs incurred during the event must be paid within one week following the event (i.e. Assistance from the Police Department or Public Works Department).
- All required information must be submitted at least two weeks prior to the Town Council meeting.

NOTICE: The applicant must be present at the Town Council Meeting when this application will be reviewed. The application will be tabled if the applicant is not present. No exceptions.

Corporation of Shepherdstown

It is hereby agreed and understood that King Street is reserved, as specified, for the use of the above named organization and/or individual. The Facility reserved is subject to inspection by any authorized representative of the Corporation of Shepherdstown in order to assure proper use of Town property. This permit must be in the possession of the organization and/or individual to whom it is issued ~~and shown upon request to any authorized Town Official.~~

The organization and/or individual assumes personal liability and responsibility for any and all costs of cleanup of the premises, loss, breakage, damage to or removal of Town property and further assumes liability and responsibility for the conduct and good order of the group and its invitees and guests.

~~The organization and/or individual shall be responsible for any and all loss, damage or injury to any and all personal property and if or its agents, representatives, invitees or guests, may bring to, store at, or leave at the facility, and shall indemnify and hold harmless the Corporation of Shepherdstown and any department, agent, official and/or employee thereof for any personal injury incurred during, or as a result of such use. The organization and/or individual further agrees to abide by all procedures, policies, and rules governing use of the above named facility.~~

☒ I have read and agree to these responsibilities.

Signature of Organization and/or Individual: _____

Date: 6-7-21

~~Any individual applying for this permit must be the signature of a parent or guardian who shall assume any and all responsibility and liability as set forth above and the person signing must be in attendance at the rental event.~~

Parent/Guardian: _____

Date: _____

Printed Name: _____

Phone: _____

PLEASE NOTE APPROVAL IS REQUIRED FOR USE OF THE PARK FACILITIES. Once approved, this permit will be issued.

FOR OFFICE USE ONLY	
Rental Fee: \$ _____	<input type="checkbox"/> Cash
Date Paid: _____	<input type="checkbox"/> Check
<input type="checkbox"/> Approved	<input type="checkbox"/> Denied
Approved by: _____	Comments: _____
Title: _____	_____
Date: _____	_____

Sta

N

Sharpsburg

Shepherdstown

Anietam

Moler
Crossroads

Dargan

nandoah
junction

Appalachian National
Scenic Trail

Gapland

Burkittsville

Yarrowsburg

Garretts Mill

Rosemont

Sandy Hook

Bolivar

Halltown

Brunswick

Harpers Ferry National
Historical Park

Canal



65

Sharpsburg

Forge Hill
Estates

34

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Estates

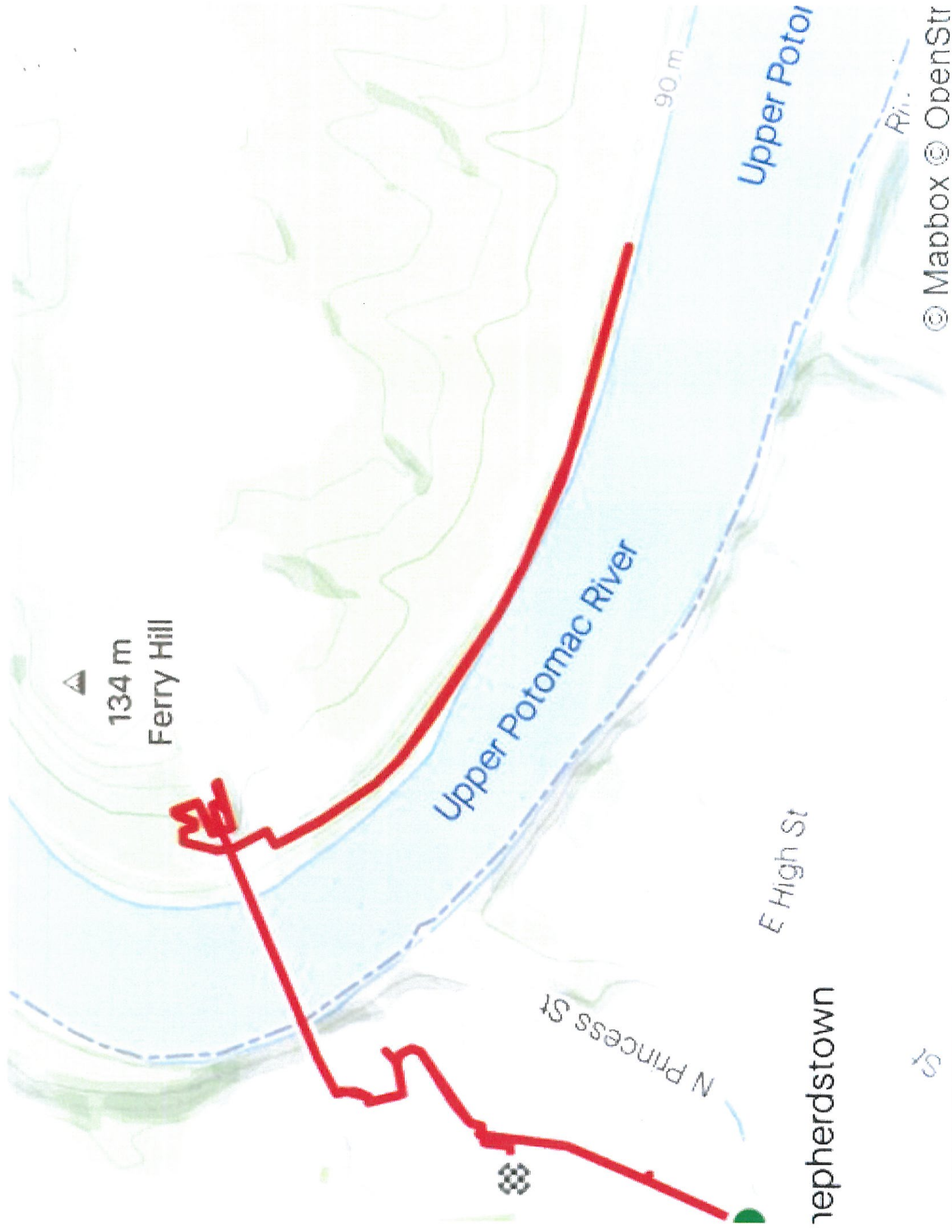
34

Shepherdstown

230

© Mapbox © OpenStreetM





The 12th Annual Freedom's Run is scheduled to take place October 16, 2021. This document is designed to help guide not only EAHEC (our non-profit lead agency), the NPS, and local governments through best practices, but also the runners. Keeping open communication and following local and national disease trends and guidance will be essential in hosting a safe event.

These two sites you can drill down by county what is happening with the virus as far as how it relates to your overall population. We will keep our eyes on this as the time gets closer to see if there are any areas of the country that we need to discourage participants from coming.

<https://globalepidemics.org/key-metrics-for-covid-suppression/>

<https://coronavirus.1point3acres.com/>

We will also monitor the WV and MD Governor page for any change in local risk and guidance

<https://governor.wv.gov/>

<https://governor.maryland.gov/>

Some general guidelines for the event if required by local health agencies or NPS guidance:

- Masks or face covering for all participants at the start and finish
- Participants must wear masks or face covering when passing other runners, and when entering aid stations
- No congregating at the start or finish – to mitigate this we will be offering staggered starts
- Masks or face covering for volunteers at aid stations
- No congregating celebration/awards ceremony at the finish
- Strict participation limits
- Hand sanitizer available at all aid stations
- Process entries on a "wait list" status to ensure we are only accepting appropriate number of participants into the race.
- Mandatory for runners to self-report to the race director any new onset COVID-like symptoms (fever, cough, loss of taste/smell, etc.) and/or exposure. Full refund will be **given to runners who self-report prior to or on race day.**

Based on the extremely low prevalence of outdoor transmission and the majority of our population receiving the vaccine CDC guidance has changed dramatically over the last couple months.

Currently very large events with 10s of 1000s of entries such as the NYC Marathon, Boston Marathon, Chicago Marathon, London Marathon, and Marine Corps Marathon are being held in the fall with far less number restriction and precautions. We be side on the side of caution.

Waivers: Our waiver has been updated

Or this:

"The novel coronavirus, COVID-19, has been declared a worldwide pandemic by the World Health Organization. COVID-19 is extremely contagious and is believed to spread mainly from person-to-person contact. As a result, federal, state, and local governments and federal and state health agencies recommend social distancing and have, in many locations, prohibited the congregation of groups of people. Freedom's Run (FR) - through Eastern Area Health Education Center - has put in place

preventative measures to reduce the spread of COVID-19; however, FR cannot guarantee that you or you will not become infected with COVID-19. Further, attending the FR could increase your risk and your risk of contracting COVID-19. By signing this agreement, I acknowledge the contagious nature of COVID-19 and voluntarily assume the risk that I may be exposed to or infected by COVID-19 by attending FR and that such exposure or infection may result in personal injury, illness, permanent disability, and death. I understand that the risk of becoming exposed to or infected by COVID-19 at FR may result from the actions, omissions, or negligence of myself and others, including, but not limited to, FR employees and affiliates, volunteers, The National Park Service, Shepherd University, and program participants and their families. I voluntarily agree to assume all of the foregoing risks and accept sole responsibility for any injury to my myself (including, but not limited to, personal injury, disability, and death), illness, damage, loss, claim, liability, or expense, of any kind, that I may experience or incur in connection with my attendance at FR or participation in FR ("Claims"). On my behalf, and on behalf, I hereby release, covenant not to sue, discharge, and hold harmless FR, its employees, agents, and representatives, of and from the Claims, including all liabilities, claims, actions, damages, costs or expenses of any kind arising out of or relating thereto. I understand and agree that this release includes any Claims based on the actions, omissions, or negligence of the FR, its employees, agents, and representatives, whether a COVID-19 infection occurs before, during, or after participation in any FR event.

Furthermore, we ask that participants voluntarily cease participation in the program if they:

- Test positive for the virus;*
- Experience COVID-19 related symptoms; and/or,*
- Have had a recent known exposure to someone who has tested positive.*

Emails: We will email participants, monthly with any updates. Even if there are no updates, just to ensure we are still doing best practices and keeping an eye on virus numbers and guidance in our community and surrounding areas.

Packet Pick Up:

This will be barebones; folks pick up their bibs and leave. We would no longer offer exhibits from other vendors. Participants would need to socially distance, and understand that might mean waiting outside in the inclement weather. All volunteers would wear masks, place bibs, and any other race swag on table and participant will grab from the table. Volunteer will quickly disinfect the table. This will ensure no human contact takes place during the exchange.

Race Day:

Marathon Shuttles:

This will depend on local and state guidelines, but we will keep in close communication with River Riders to ensure we are following the guidelines set in place for that time.

Starts and Numbers:

Start/Finish

Races will have entry caps as per agreements with NPS. Safe spacing and masking will be encouraged

Marathon (Harpers Ferry): 250 participants

Start : 7:30am

Half Marathon: Shepherdstown

Start : 8:30am 750 participants

10K :

Start : 8:45am 200 participants

5K:

Start : 9:00am 300 participants

*** These times are subject to change ***

Aid Stations:

Volunteers at aid stations will be required to wear masks as local guidance requires. We will provide double to triple the amount of tables typically provided at an aid station to mitigate congestion of runners all waiting to receive water. Volunteers will fill cups and place them spread out amongst the tables, runners will be instructed to run to an "empty" table (a table without other runners). They will be instructed to grab and go. Gels will be spaced out along the table as well.

Cyclist Marshals:

Maintaining social distancing will be an important aspect to the safety of the race. In order to achieve this, we will have cyclists throughout the course, instructing runners to maintain proper/ safe distancing of 6f. If a runner refuses to cooperate, the cyclist has the right to pull the runner's bib number, and ask to discontinue with the race. Runners will be instructed this is an important safety concern, and to respect all cyclists and volunteers, failure to do so could lead to disqualification of the race.

Porta-Potties:

With sanitation concerns, here are suggestions from RRCA which we will implement.

- Provide sanitation options like hand sanitizer right outside each porta potty door.
- Ensure that each porta-potty is stocked with hand sanitizer.
- Lower the ratio of runners per porta-potty to limit lines and account for increased time for sanitization.

- Increase the physical footprint by adding some space between port-a-potties to keep lines spaced out. Cluster only a few porta-potties together.
- Provide hand sanitizer and hand-washing stations outside of each port-a-potty
- Keep a volunteer(s) on-site to monitor and restock supplies continuously.

PPE and other COVID-19 Precaution Considerations for Volunteers and Staff:

All staff and volunteers should wear masks at all times as local guidance requires.

Food Handling (suggestions from RRCA)

- We will likely eliminate food entirely (TBD per guidance at race time). Grab and go pizza and apples as we have done in past might still be safe and possible

Post Race Festivities

- We will not host our usual post race party at the Bavarian but visitors can dine and explore the town according to local guidance at the time.

References:

<https://www.rrca.org/news-articles/news-archives/2020/05/03/looking-forward-guidelines-for-races>

<https://www.rrca.org/news-articles/news-archives/2020/03/15/advice-for-rrca-members-running-coaches-and-club-leaders>

<https://www.rrca.org/our-programs-services/services/covid-19-information-resources>

<https://www.osha.gov/shpguidelines/hazard-prevention.html#ai1>

**HOUSING CONSORTIUM COOPERATION AGREEMENT
BY AND BETWEEN
THE CITY OF MARTINSBURG
AND
THE COUNTIES OF BERKELEY, JEFFERSON AND MORGAN
WEST VIRGINIA**

This **three-year AGREEMENT** is entered into between the City of Martinsburg (hereinafter referred to as "City"); and the Berkeley County Commission for and on behalf of Berkeley County, a political subdivision of the State of West Virginia; the Jefferson County Commission for and on behalf of Jefferson County, a political subdivision of the State of West Virginia; and the Morgan County Commission for and on behalf of Morgan County, a political subdivision of the State of West Virginia (hereinafter referred to as "Counties"), and the incorporated communities contained in each of the above said Counties.

WHEREAS, Title II of the National Affordable Housing Act of 1990 provides for the creation of the HOME Investment Partnerships Program (hereinafter referred to as "HOME"); and

WHEREAS, the HOME regulations established by the U.S. Department of Housing and Urban Development (HUD) at 24 CFR Part 92 authorizes units of general local government to enter into Housing Consortium Cooperation Agreements for a three-year period and allows for annual recertification of Consortiums; and

WHEREAS, the City and Counties have determined that obtaining funding under the HOME Program as part of a Consortium Participating Jurisdiction will increase their ability to provide affordable housing for their low-income constituencies.

NOW THEREFORE, the parties to this **AGREEMENT** do hereby agree as follows:

SECTION I – DEFINITIONS:

The definitions contained in 24 CFR Part 92, Subpart A., paragraph 92.2 are incorporated herein by reference and made a part hereof, and the terms defined in this section have the meanings given them:

- A. "Act" means Title II, of the Cranston-Gonzalez National Affordable Housing Act of 1990 (Pub. Law 101-625), (42 U.S.C. 12721)
- B. "Consolidated Plan" means the comprehensive planning and application document as set forth in 24 CFR Part 91 and encompasses a local government's housing needs, with a focus on affordable housing for low income families.

- C. "HOME Program" means a procedure established for the use of funds made available from HUD through the Act to carry out multi-year housing strategies through acquisition, rehabilitation and new construction of housing, tenant-based rental assistance, and homebuyer assistance.
- D. "HUD" means the United States Department of Housing and Urban Development.
- E. "Regulations" means 24 CFR Part 92 HOME Investment in Affordable Housing implementing regulations as issued by HUD.
- F. "Member" means a unit of local government which is a signatory to this Agreement and therefore a member of the Consortium for the purpose of carrying out eligible activities under 24 CFR Part 92, (which is the City of Martinsburg, Berkeley County, Jefferson County, and Morgan County).
- G. "Representative Member" means the unit of local government designated hereafter as the one member to act in a representative capacity for all members for the purposes of this agreement. The Representative Member, which is the City of Martinsburg, will be delegated the overall responsibility for ensuring that the Consortium's HOME Program is carried out in compliance with the requirements of 24 CFR Part 92 and will be responsible for the requirements concerning the Consolidated Plan (CP).
- H. "IDIS" means the Integrated Disbursement and Information System (IDIS), HUD's on-line system for draws and reporting for the HOME Program, or any other system that HUD may implement in its place.

SECTION II – PURPOSE:

This Agreement is to form a **CONSORTIUM** of four (4) units of general local government geographically located for designation as a **PARTICIPATING JURISDICTION** under the **ACT**, said **PARTICIPATING JURISDICTION** to be known and hereinafter may be referred to as the Eastern Panhandle HOME Consortium of West Virginia.

The signatory parties agree to cooperate in undertaking, or assisting in undertaking housing assistance activities under the HOME Investment Partnerships Program in compliance with HUD regulations and the local Consolidated Plan of the member jurisdictions.

SECTION III- GENERAL PROVISIONS

- A. The members agree to cooperate in undertaking or to assist in undertaking housing assistance activities in compliance with the applicable Consolidated Plan and the HOME Program.

- B. The members agree to undertake the development of a Consolidated Plan for each year covered by this Agreement.
- C. The members agree to take affirmative action to further fair housing in their jurisdictions. Such actions may include planning, education and outreach, and enforcement.

SECTION IV – ADMINISTRATION:

- A. The City and the Counties, including the incorporated communities in each County, mutually agree that the City of Martinsburg shall act as the Representative Member for all participants in the Eastern Panhandle HOME Consortium for the purposes of the Act.
- B. The City and the Counties, including the incorporated communities in each County, mutually agree that the City of Martinsburg, in its role as Representative Member, is granted the overall responsibility for ensuring that the Eastern Panhandle HOME Consortium's Program is carried out in compliance with the requirements of the HOME Program.
- C. The City and the Counties, including the incorporated communities in each County, shall participate jointly in the development of the Eastern Panhandle HOME Consortium's HOME Program. The Consortium will form a council known as the Eastern Panhandle HOME Consortium Council. Each Member of the Consortium will appoint three (3) representatives to the Council. The City and the Counties will mutually agree and appoint a Chairperson of the Council, who will be in addition to the number of representatives appointed by the Member Jurisdictions.
- E. The HOME Consortium Council will define a strategy and programs in sufficient detail to accommodate the collective and individual needs and priorities of any and all of the Members constituting the Eastern Panhandle HOME Consortium. The Members shall review and approve the strategy and programs for the annual use of HOME funds, as well as, have the opportunity to review and approve any program changes or amendments prior to action being taken by the Representative Member's governing body.
- F. The City and Counties, including the incorporated communities in each County, shall be entitled to the amount of HOME Program funding based on its percentage of the low/moderate income population of the entire Consortium Area, as established by U.S. Census data of the total allocation to the Eastern Panhandle HOME Consortium. Members of the Consortium may elect to combine their allocations to carry out collaborative HOME activities. Any funds allocated to Members but remaining unobligated fifteen (15) months after the initial allocation date will be recaptured and redistributed by the HOME Consortium Council. Any funds recaptured will be offered to the other Members

for reprogramming for eligible activities in accordance with the HOME Program Regulations. The final decision for distribution of these funds will be made by the HOME Consortium Council. If any party terminates this agreement in whole or in part, all work completed and uncompleted on this project will become the property of the remaining parties to this agreement, and the disposition or completion of uncompleted work on the project will become the responsibility of the remaining parties, pursuant to the conditions of this paragraph. Ownership of all personal property acquired by virtue of the execution of or performance under this agreement is vested in the parties, pursuant to the pro-rata share of funds allocated to them, but the parties shall not take legal title to any real property, including, but not limited to, easements.

- G. Nothing in this Agreement will preclude the ability of the City or Counties, including the incorporated communities in each County, either individually or jointly in applying for financial assistance under the State of West Virginia HOME Program. Furthermore, it is expressly agreed and understood that any specific projects eligible for HOME funding may be submitted to the HOME Consortium Council by any Consortium Member, any participating municipality located in Member Counties, any authority, and/or nonprofit housing agency for funding under the Consortium's annual HOME entitlement funds.
- I. Each Member is responsible for submitting in a timely manner to the Representative Member all information necessary for participation in the Eastern Panhandle HOME Consortium as defined in the Regulations. This includes all information necessary for the Consolidated Plan, the Program Description, Certifications, written agreements with sub-recipients and performance reports. The Counties of Berkeley, Jefferson and Morgan will submit this documentation to the City of Martinsburg in order to insure a coordinated effort.
- J. Each Member shall be responsible for any required matching funds for specific eligible projects as determined by HUD submitted by that particular member. However, this does not limit the use of excessive local match from one HOME Member to another, if agreed to by the HOME Consortium Council and the Member which has the excess local match.
- K. Each Member shall be responsible for the following:
 - 1. Appoint three (3) representatives to the Eastern Panhandle HOME Consortium Council.
 - 2. Fill vacancies on the Consortium Council in a timely manner and ensure the attendance of their appointments at meetings.
 - 3. Provide information required for the preparation of revisions to the existing Five -Year Consolidated Plan.
 - 4. Conduct an annual housing needs public hearing for the use of HOME funds.

5. Adopt by resolution and renew annually the participation in the Eastern Panhandle HOME Consortium.
 6. Be responsible for determining local housing needs and the use of HOME funds to address those needs.
 7. Provide an annual description of proposed project activities in accordance with the annual budget and distribution of funds.
 8. Provide documentation for matching funds or donations to the HOME Program.
 9. Maintain files and documentation for compliance with Federal regulations and make these files available for review and monitoring by HUD and/or the Representative Member.
 10. Prepare, process and forward requisitions of funds to the Representative Member.
 11. Review and approve any amendment to the Cooperation Agreement.
- L. The Representative Member shall be responsible for the overall administration of the HOME Program and meeting the Federal guidelines. In particular the following are the duties and responsibilities:
1. Provide staff to manage the program.
 2. Revise the existing Five-Year Consolidated Plan to include the HOME Program and statistical information on the other consortium members.
 3. Prepare and submit all required notices, plans, performance reports, and documentation as required by HUD.
 4. Ensure that the program and activities are in compliance with the Federal regulations.
 5. Provide the other members with guidelines and policies of the program.
 6. Hold a public hearing on the annual HOME Program and adopt the budgets and activities outlines by the HOME Consortium Council.
 7. Assist the other Consortium members in meeting the Citizen Participation requirements of HUD.
 8. Review and approve all project funding agreements for each activity.
 9. Monitor the other members for compliance with the Federal regulations.
 10. Prepare an environmental review record for the HOME Program and secure the release of funds from HUD for program activities.
 11. Provide guidance and assistance to the other members to ensure compliance with the Federal labor standards.
 12. Prepare and execute all written agreement with sub-recipients and contractors to receive HOME funds.
 13. Maintain files on each project activity for monitoring by HUD.
 14. Prepare and maintain the HOME match log as required by HUD.
 15. Prepare the annual Consolidated Annual Performance Evaluation Report (CAPER) for annual submission to HUD.
 16. Establish and maintain a local HOME fund account including Federal drawdowns and program income.

17. Process Federal drawdowns of funds from the U.S. Treasury for project activities through the IDIS system.
18. Process payment requisitions and requests for funds from the other consortium members for project activities.
19. Prepare an annual budget showing the distribution of HOME funds to each Consortium member.
20. Prepare quarterly reports on expenditures, commitment of funds, and remaining balances for each consortium member and their project activities.
21. Contract for an annual audit of the HOME Program by an outside independent auditing firm.
22. Supervise the closeout of annual grants with HUD.

M. The HOME Consortium Council shall be formed to oversee the program and provide guidance on the use of funds. The specific duties and responsibilities of the Consortium Council is as follows:

1. Each member of the HOME Consortium shall have three (3) representatives to the Consortium Council.
2. Provide guidance and direction in promoting and affirmatively further fair housing in the Eastern Panhandle.
3. Define an overall strategy and programs based on the needs of the Consortium members.
4. Establish priorities for the use of HOME funds.
5. Approve the allocation and distribution of funds among the Consortium members based on the low- and moderate-income population of each member as a percentage of the Eastern Panhandle's total low- and moderate-income population.
6. Reallocate funds that are uncommitted or unobligated after fifteen (15) months after the approval by HUD of the annual HOME grants.
7. Ensure that any required matching funds are provided by the Members or from the non-federal funds portion of HOME assisted projects.
8. Review and approve any amendments to the Cooperation Agreement.
9. Review and approve documentation submitted by non-profit organizations for designation as a local Community Housing Development Organization (CHDO).
10. Monitor and recertify annually any CHDO's.
11. Adopt and assure compliance with affirmative marketing policies and procedures.
12. Approve the annual consolidated Action Plan in regard to the use of HOME funds.

N. In accordance with Section 91.402 of the Consolidated Plan Final Rule, the City of Martinsburg has a Program year that begins on July 1st and ends on June 30th each year, the HOME funds will also have the same program year start date.

SECTION IV- AFFIRMATIVE MARKETING POLICIES AND PROCEDURES:

A. Statement of Policy -

In accordance with the Eastern Panhandle HOME Consortium's, commitment of non-discrimination and equal opportunity in housing, the Consortium hereby establishes procedures to affirmatively market units assisted under the HOME Investment Partnerships Program. These procedures are intended to further the objectives of Title VIII of the Civil Rights Act of 1988 and Executive Order 11063. In addition, the Consortium will abide by and establish a minority outreach program in accordance with 24 CFR 92.350 (a)(5).

The Consortium believes that individuals of similar economic levels in the same housing market area should have available to them a like range of housing choices regardless of their race, color, religion, sex, familial status, disability or national origin. Individuals eligible for public housing assistance or who have minor children should have available to them, a like range of housing choices.

The Consortium will carry out this policy through affirmative marketing procedures designed for the HOME Investment Partnerships Program.

- B. The Consortium will inform the public, potential tenants and owners about its Fair Housing and Affirmative Marketing Policies.

SECTION V – TERMS OF THE AGREEMENT:

- A. This agreement shall be in effect for a period of one fiscal year, subject to annual renewal for any additional period of time needed to complete all phases of the project, each of which annual renewal periods shall be limited to one fiscal year; provided that, in addition to the right of non-renewal, all parties hereto shall have the right to terminate this agreement on any 12-month anniversary of the date of this agreement by giving to the other parties 30 days' written notice of such termination. It is the City's the Counties' intentions to remain members of the Consortium for the period necessary to carry out all activities that will be funded from the three **Federal Fiscal Years 2022, 2023, and 2024** provided that the Consortium qualifies as a participating jurisdiction under the Home Investment Partnerships Program, by approval of annual renewals of this agreement, and subject to said renewals will take necessary steps to provide budget allocations for funding purposes.
- B. Prior to the adoption of any amendment to this agreement, partial or complete termination of this agreement including the incorporation of changes necessary to meet the requirements for a subsequent three (3) year consortium designation period, the members agree to submit to the U.S. Dept. of HUD any revisions for its approval.

- C. This agreement covers the designation period of the **Federal Fiscal Years of 2022, 2023, and 2024** which the Consortium is to qualify to receive HOME funds. This agreement may automatically be renewed for participation in successive three (3) year designation periods for HOME Entitlement funds by the U.S. Dept. of HUD. In order to qualify for automatic renewal by HUD, the Representative Member must notify each participating unit of general local government of its right not to participate for the successive three (3) year designation periods. This notification must be submitted to each participating unit of general local government by the date specified in the U.S. Dept. of HUD Consortia designation notices.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement this _____ day of _____, 2021.

CITY OF MARTINSBURG, West Virginia

Harriet E. Johnson
Mayor

Attest: _____
Gena L. Long, City Recorder

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement this
_____ day of _____, 2021

BERKELEY COUNTY COUNCIL
For and on behalf of Berkeley County, a political
Subdivision of the State of West Virginia

Signature

Title

Attest: _____

Including the incorporated area of the Town of Hedgesville, Berkeley County, West
Virginia.

Including the incorporated area of the Town of Hedgesville, Berkeley County, West Virginia.

BERKELEY COUNTY INCORPORATED AREA:

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement this _____ day of _____, 2021

TOWN OF HEDGESVILLE

For and on behalf of the municipality of Hedgesville,
a political subdivision of the State of West Virginia

Signature

Title

Attest: _____

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement this

_____ day of _____, 2021

JEFFERSON COUNTY COMMISSION
For and on behalf of Jefferson County, a political
Subdivision of the State of West Virginia

Signature

Title

Attest: _____

Including the incorporated areas of the Town of Bolivar, City of Charles Town, Town of Harpers Ferry, City of Ranson, and Corporation of Shepherdstown, Jefferson County, West Virginia.

Including the incorporated areas of the Town of Bolivar, City of Charles Town, Town of Harpers Ferry, City of Ranson, and Corporation of Shepherdstown, Jefferson County, West Virginia.

JEFFERSON COUNTY INCORPORATED AREA:

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement this _____ day of _____, 2021

TOWN OF BOLIVAR

For and on behalf of the municipality of Bolivar, a political subdivision of the State of West Virginia

Signature

Title

Attest: _____

Including the incorporated areas of the Town of Bolivar, City of Charles Town, Town of Harpers Ferry, City of Ranson, and Corporation of Shepherdstown, Jefferson County, West Virginia.

JEFFERSON COUNTY INCORPORATED AREA:

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement this _____ day of _____, 2021

CITY OF CHARLES TOWN

For and on behalf of the municipality of Charles Town,
a political subdivision of the State of West Virginia

Signature

Title

Attest: _____

Including the incorporated areas of the Town of Bolivar, City of Charles Town, Town of Harpers Ferry, City of Ranson, and Corporation of Shepherdstown, Jefferson County, West Virginia.

JEFFERSON COUNTY INCORPORATED AREA:

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement this _____ day of _____, 2021

TOWN OF HARPERS FERRY

For and on behalf of the municipality of Harpers Ferry
a political subdivision of the State of West Virginia

Signature

Title

Attest: _____

Including the incorporated areas of the Town of Bolivar, City of Charles Town, Town of Harpers Ferry, City of Ranson, and Corporation of Shepherdstown, Jefferson County, West Virginia

JEFFERSON COUNTY INCORPORATED AREA:

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement this _____ day of _____, 2021

City of Ranson

For and on behalf of the municipality of Ranson, a political subdivision of the State of West Virginia

Signature

Title

Attest: _____

Including the incorporated areas of the Town of Bolivar, City of Charles Town, Town of Harpers Ferry, City of Ranson, and Corporation of Shepherdstown, Jefferson County, West Virginia

JEFFERSON COUNTY INCORPORATED AREA:

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement this _____ day of _____, 2021

Corporation of Shepherdstown

For and on behalf of the municipality of
Shepherdstown, a political subdivision of the State of
West Virginia

Signature

Title

Attest: _____

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement this
_____ day of _____, 2021

MORGAN COUNTY COMMISSION
for and on behalf of Morgan County, a political
subdivision of the State of West Virginia

Signature

Title

Including the incorporated areas of the Town of Bath and the Town of Paw Paw,
Morgan County, West Virginia.

Including the incorporated areas of the Town of Bath and the Town of Paw Paw, Morgan County, West Virginia.

MORGAN COUNTY INCORPORATED AREA:

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement this _____ day of _____, 2021

TOWN OF BATH

For and on behalf of the municipality of Bath, a political subdivision of the State of West Virginia

Signature

Title

Including the incorporated areas of the Town of Bath and the Town of Paw Paw, Morgan County, West Virginia.

MORGAN COUNTY INCORPORATED AREA:

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement this _____ day of _____, 2021

TOWN OF PAW PAW

For and on behalf of the municipality of Paw Paw,
a political subdivision of the State of West Virginia

Signature

Title

Attest: _____

RESOLUTION

A RESOLUTION OF THE CORPORATION OF SHEPHERDSTOWN OF JEFFERSON COUNTY, WEST VIRGINIA AUTHORIZING PARTICIPATION IN THE EASTERN PANHANDLE HOME CONSORTIUM OF WEST VIRGINIA FOR THE PERIOD OF JULY 1, 2021 TO JUNE 30, 2024.

WHEREAS, TITLE II of the National Affordable Housing Act of 1990 provides for the creation of the HOME Investment Partnership Program (hereinafter referred to as "HOME"); and

WHEREAS, the HOME regulations promulgated by the U.S. Department of Housing and Urban Development (HUD) under 24 CFR Part 92 authorizes units of general local government to enter into Housing Consortium Cooperation Agreements; and

WHEREAS, there is a need throughout the Eastern Panhandle of West Virginia to provide affordable housing for the low-and-moderate income residents; and

WHEREAS, the City of Martinsburg, County of Berkeley, Town of Hedgesville, County of Jefferson, Town of Bolivar, City of Charles Town, Town of Harpers Ferry, City of Ranson, Corporation of Shepherdstown, County of Morgan, Town of Bath, Town of Paw Paw, West Virginia, have formed a Consortium that has been designated as a Participating Jurisdiction under the HOME Program, thereby entitling the Consortium to seek annual funding; and

WHEREAS, the Eastern Panhandle HOME Consortium is required to seek designation as a HOME Consortium Agreement for the period FY 2022, FY 2023, and FY 2024 in order to seek annual funding; and

WHEREAS, the Corporation of Shepherdstown entered into a three (3) year Housing Consortium Cooperation Agreement; and

WHEREAS, the Corporation of Shepherdstown recognizes the need to obtain funding for affordable housing and has identified the HOME Program as a source of funds to meet this need.

NOW, THEREFORE, BE IT RESOLVED BY THE CORPORATION of SHEPHERDSTOWN, WEST VIRGINIA THAT:

1. The Corporation of Shepherdstown will cooperate with the City of Martinsburg, County of Berkeley, Town of Hedgesville, County of Jefferson, Town of Bolivar, City of Charles Town, Town of Harpers Ferry, City of Ranson, Corporation of

Shepherdstown, County of Morgan, Town of Bath, Town of Paw Paw, West Virginia, in a Consortium for participation in the HOME Program; and

2. The **Mayor** of the **Corporation of Shepherdstown** is hereby authorized to enter into a Cooperation Agreement for the period of July 1, 2021 to June 30, 2024 with the other members which form the Eastern Panhandle HOME Consortium of West Virginia; and
3. A copy of this resolution is to be submitted in the request to US. Department of Housing and Urban Development to approve funding of the Eastern Panhandle HOME Consortium of West Virginia for the above Fiscal Year 2022 HOME Investment Partnership Program.

Adopted this _____ day of _____, 2021.

BY:

Arthur Auxer, III Mayor

ATTEST:

Lori Robertson, Town Recorder

Eastern Panhandle HOME Consortium of West Virginia HOMEBUYER ASSISTANCE PROGRAM

WHAT IS HAP? A homebuyer assistance program (HAP) for first time homebuyers in Berkeley, Jefferson, and Morgan Counties and the City of Martinsburg.

HAP provides income-eligible buyers with a deferred no-interest loan for downpayment and closing costs. The loan is forgiven if the buyer remains in the home for the term of the loan. The amount of the HAP loan depends on the buyer's need for assistance – it provides the gap funding to make the loan affordable to the buyer - the first mortgage payment is not more than 30% of monthly household income.

The funding source for the HAP program is the federal HOME Investment Partnership Program. All HOME regulations apply to the HAP program.

WHO CAN USE HAP?

- FIRST TIME HOMEBUYERS
- INCOME UNDER LIMITS BY HOUSEHOLD SIZE
- **SALE PRICE WITHIN MAXIMUM LIMITS** (next page)
- HOUSE MUST PASS CODE INSPECTION



HOW DOES HAP WORK?

- BE PREQUALIFIED BY A MORTGAGE LENDER
- COMPLETE HOMEBUYER EDUCATION
- BORROW UP TO \$14,500 FOR DOWNPAYMENT AND CLOSING COSTS
- THIS IS GAP FINANCING
- HAP LOAN TERMS ARE 5 YEARS - NO MONTHLY PAYMENT ON HAP LOAN
- ZERO INTEREST LOAN WITH NO REPAYMENT IF BUYER REMAINS IN THE HOME
- Applicant must provide at least \$500 of their own funds toward the purchase and include documented proof as part of the loan application

INCOME LIMITS BY HOUSEHOLD SIZE (eff. August 3, 2020)

Berkeley County – all persons in household

1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons	7 Persons	8 Persons
\$41,650	\$47,600	\$53,550	\$59,450	\$64,250	\$69,000	\$73,750	\$78,500

Jefferson County – all persons in household

1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons	7 Persons	8 Persons
\$53,050	\$60,600	\$68,200	\$75,750	\$81,850	\$87,900	\$93,950	\$100,000

Morgan County – all persons in household

1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons	7 Persons	8 Persons
\$35,600	\$40,750	\$45,850	\$50,900	\$55,000	\$59,050	\$63,150	\$67,200

FOR COMPLETE PROGRAM GUIDELINES & APPLICATIONS CONTACT
Nancy Strine, COMMUNITY DEVELOPMENT AT (304) 264-2131 EXT 278 OR
nstrine@cityofmartinsburg.org

HAP PROGRAM REQUIREMENTS

Applicants Must:

- **Have a pre-qualification letter from a mortgage lender** listing loan amount, rate and term. Only fixed-rate mortgages are allowed.
- **Complete homebuyer education** through an approved housing counseling program and obtain a certificate of completion. Contact Telamon at 304-263-0916 or Partnership for Affordable Housing at 304-725-6189 to register for a class.
- **Complete the Pre-application for a HAP Certificate of Eligibility.** The Certificate is valid for six months. This is not a reservation of HAP funds or a loan commitment.

Finding a Home / Reservation of HAP Funds:

Homebuyer finds a suitable home within Berkeley County, the City of Martinsburg, Jefferson County or Morgan County. **Maximum Sales Prices as of April 2020:** Berkeley - **\$185,000 existing/ \$238,000 new** homes; Jefferson County - **\$221,000 existing/ \$293,000 new** homes; Morgan **\$159, 000 existing/\$238,000 new** homes.

- The amount of HOME HAP funds is determined by the amount needed to qualify the purchaser with a first mortgage payment (Principal, Interest, Taxes and Homeowners Insurance) that does not exceed 30% of household's monthly income and total debt to income ratio of 40%.
- **HAP funds will be reserved** only after eligible applicant (s) execute a sales contract on the home. Funds are reserved for 90 days on a first-come first-served basis.
- All household members and income must be included in determining income eligibility (NOT only the borrower on the mortgage loan).
- **The homebuyer must provide at least \$500 of their own funds toward the purchase.**
- **The program will conduct a HAP property maintenance code inspection.** Property must meet local property codes. Repairs must be made prior to closing. There is no charge for the inspection.
- The HOME Administrator will review and approve eligible applicant (s) for the Homebuyer Assistance Program funds and then reserve the funds.

The HOME Administrator will provide all HAP loan agreement documents needed to secure the funds and ensure compliance with HOME program regulations and other federal requirements.

For more information call Nancy Strine, HOME Administrator
City of Martinsburg Community Development Department
(304) 264-2131 x 278 or email nstrine@cityofmartinsburg.org

EQUAL HOUSING OPPORTUNITY

**CORPORATION OF SHEPHERDSTOWN
WATER REVENUE BONDS
SERIES 2021**

BOND ORDINANCE

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**CORPORATION OF SHEPHERDSTOWN
WATER REVENUE BONDS
SERIES 2021**

BOND ORDINANCE

ORDINANCE AUTHORIZING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATERWORKS SYSTEM OF THE CORPORATION OF SHEPHERDSTOWN, INCLUDING CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATER TREATMENT PLANT, AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CORPORATION OF SHEPHERDSTOWN OF WATER REVENUE BONDS, SERIES 2021, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$1,250,000.00); DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE SERIES 2021 BONDS; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES OF AND SECURITIES FOR THE HOLDERS OF THE SERIES 2021 BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; AND PROVIDING WHEN THIS ORDINANCE SHALL TAKE EFFECT

BE IT ENACTED AND ORDAINED BY THE COUNCIL OF THE CORPORATION OF SHEPHERDSTOWN:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any order, ordinance or resolution supplemental hereto or amendatory hereof, the “Bond Legislation”) is enacted pursuant to the provisions of Chapter 8, Article 19 of the Code of West Virginia, 1931, as amended (the “Act”), and other applicable provisions of law.

Section 1.02. Findings and Determinations. It is hereby found, determined and declared that:

A. The Corporation of Shepherdstown (the “Issuer”) is a municipal corporation and political subdivision of the State of West Virginia in Jefferson County of said State.

B. The Issuer presently owns and operates a public waterworks system. It is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired, constructed and equipped certain additions, betterments and improvements to the Issuer’s existing waterworks system, including the additions, betterments and improvements to the water treatment plant described in Exhibit A hereto (collectively, the “Project”) (the Issuer’s existing waterworks system, the Project and any further additions, extensions, betterments and improvements thereto are herein called the “System”) in accordance with the plans and specifications prepared by Ghosh Engineers, Consulting Engineers, Inc., which plans and specifications have heretofore been filed with the Issuer.

C. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all the costs of the operation and maintenance of the System, the principal of and interest on the Series 2021 Bonds and all Sinking Funds, Reserve Accounts and other payments provided for herein, all as such terms are hereinafter defined.

D. It is further deemed necessary for the Issuer to issue its Water Revenue Bonds, Series 2021 (the “Series 2021 Bonds”) in the aggregate principal amount of not more than \$1,250,000, to permanently finance the costs of acquisition, construction and equipping of the Project. Said costs shall be deemed to include, but not be limited to, the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest upon the Series 2021 Bonds prior to and during construction and acquisition and for a period not exceeding 6 months after completion of construction of the Project; amounts which may be deposited in the Series 2021 Bonds Reserve Account; engineering, financing and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2021 Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the acquisition or construction of the Project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof,

provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2021 Bonds or the repayment of indebtedness incurred by the Issuer for such purposes, shall be deemed Costs of the Project, as hereinafter defined.

E. The estimated maximum cost of the acquisition and construction of the Project and the issuance of the Series 2021 Bonds is \$2,288,000, \$550,000 of which will be paid from funds of the Issuer available for such purpose, \$488,000 of which will be paid from the Depreciation Account for the System and the remainder will be obtained from the sale of the Series 2021 Bonds described above.

F. The period of usefulness of the System after completion of the Project is not less than 16 years.

G. It is in the best interest of the Issuer that its Series 2021 Bonds be issued and sold to the Purchaser (as hereinafter defined).

H. There are outstanding obligations of the Issuer which will rank on parity with the Series 2021 Bonds as to liens and sources of and security for payment, which obligations are designated and have the lien positions, together with the Series 2021 Bonds, as follows:

<u>Designation</u>	<u>Lien Position</u>
Water Revenue Bonds, Series 2003A (West Virginia DWTRF Program), dated June 13, 2003, issued in the original aggregate principal amount of \$699,459 (the "Series 2003A Bonds")	First Lien
Water Revenue Bonds, Series 2003B (West Virginia DWTRF Program), dated June 13, 2003, issued in the original aggregate principal amount of \$1,300,541 (the "Series 2003B Bonds")	First Lien
Water Revenue Bonds, Series 2012 (West Virginia Infrastructure Fund), dated July 19, 2012, issued in the original aggregate principal amount of \$4,000,000 (the "Series 2012 Bonds")	First Lien
Water Revenue Bonds, Series 2017, dated June 15, 2017, issued in the original aggregate principal amount of \$2,650,000 (the "Series 2017 Bonds" and together with the Series 2003A Bonds, the Series 2003B Bonds and the	First Lien

Series 2012 Bonds, the “Prior Bonds”)

The Series 2021 Bonds

First Lien

I. The Series 2021 Bonds shall be issued on a parity with the Prior Bonds with respect to liens, pledge and source of and security for payment and in all other respects. Prior to the issuance of the Series 2021 Bonds, the Issuer will obtain (a) a certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met, and (b) the written consent of the registered owner of the Series 2003A Bonds, the Series 2003B Bonds and the Series 2012 Bonds to the issuance of the Series 2021 Bonds on a parity with the Prior Bonds. Except for the Prior Bonds the Issuer has no other bonds, notes, or other obligations secured by or payable from revenues or assets of the System.

J. The Issuer has complied with all requirements of West Virginia law relating to authorization of the planning, development, design, acquisition, construction and operation of the Project and the System and issuance of the Series 2021 Bonds or will have so complied prior to issuance of any thereof, including, among other things, either the approval of the Project and the obtaining of a Certificate of Public Convenience and Necessity from the Public Service Commission of West Virginia (the “PSC”) by final order, the time for rehearing and appeal of which has expired prior to the issuance of the Series 2021 Bonds or has been waived by all necessary parties or a determination that such approval and certificate of the PSC are not required.

K. The Issuer will not permit, at any time, any of the proceeds of the Series 2021 Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Series 2021 Bonds from the treatment afforded by Section 103(a) of the Internal Revenue Code of 1986, as amended (the “Code”).

L. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2021 Bonds.

M. The Series 2021 Bonds will not be federally guaranteed within the meaning of the Code.

N. All things necessary to make the Series 2021 Bonds, when authenticated by the Registrar and issued as in this Ordinance provided, the valid, binding and legal special obligations of the Issuer according to the import thereof, and to validly pledge and assign those funds pledged hereby to the payment of the principal of and interest on the Series 2021 Bonds, will be timely done and duly performed.

O. The adoption of this Ordinance, the acquisition, construction and equipping of the Project, the financing of the Costs of the of the Project with proceeds of the Series 2021 Bonds and the execution and issuance of the Series 2021 Bonds, subject to the terms thereof, will not result in any breach of, or constitute default under, any instrument to which the Issuer is a party or by which it may be bound or affected.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2021 Bonds by those who shall be the registered owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the registered owners of any and all of such Bonds, as the case may be, all which shall be of equal rank and without preference, priority or distinction between any one Bond of a series and any other Bonds of the same series by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. The following terms shall have the following meanings herein unless the context expressly requires otherwise:

“Act” means Chapter 8, Article 19 of the Code of West Virginia, 1931, as amended and in effect on the date of enactment hereof.

“Authorized Officer” means the Mayor of the Issuer or any other officer of the Issuer duly appointed by the Governing Body.

“Bond Counsel” shall mean any law firm having a national reputation in the field of municipal law whose opinions are generally accepted by purchasers of municipal bonds, appointed by the Issuer, and shall initially mean Bowles Rice LLP, Charleston, West Virginia.

“Bond Legislation,” “Ordinance,” “Bond Ordinance” or “Local Act” means this Bond Ordinance and all orders, ordinances and resolutions supplemental hereto or amendatory hereof.

“Bond Register” means the books of the Issuer maintained by the Registrar for the registration and transfer of Bonds.

“Bond Registrar” means Jefferson Security Bank or other entity designated as such by the Issuer and its successors and assigns.

“Bond Year” means for the first year the 12 month period beginning on the Closing Date and continuing to the first anniversary of the Closing Date and thereafter beginning on the day after the anniversary date of the Closing Date and ending on the anniversary date of the Closing Date in the following year.

“Bondholder,” “Holder of the Bonds,” “Holder,” “Registered Owner” or any similar term whenever used herein with respect to an outstanding Bond or Bonds, means the person in whose name such Bond is registered.

“Bonds” means, collectively, the Series 2021 Bonds, the Prior Bonds and, where appropriate, any bonds on a parity with the Series 2021 Bonds authorized to be issued hereunder or by another resolution of the Issuer.

“Business Day” means any day other than a Saturday, Sunday or a day on which national banking association or West Virginia banking corporations are authorized by law to remain closed.

“Certificate of Determinations” means the Certificate of Determinations to be executed by the Mayor in connection with the Series 2021 Bonds as further provided in the Supplemental Resolution.

“Closing Date” means the date upon which there is an exchange of the Series 2021 Bonds for an advance of more than a de minimis amount of the principal of the Series 2021 Bonds by the Purchaser.

“Code” means the Internal Revenue Code of 1986, as amended, and the Regulations promulgated thereunder or under any prior code.

“Commission” means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia that succeeds to the functions of the Commission.

“Consulting Engineers” means Ghosh Engineers, Inc., Charleston, West Virginia, or any qualified engineer or firm of professional engineers, licensed by the State, who shall not be a regular, full-time employee of the State or any of its agencies, commissions or political subdivisions, that shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System in accordance with Chapter 5G, Article 1 of the Code of West Virginia, 1931, as amended.

“Costs” or “Costs of the Project” means those costs described in Section 1.02D hereof to be a part of the cost of acquisition and construction of the Project.

“Depository Bank” means Jefferson Security Bank, or any other bank or national banking association located in the State of West Virginia, eligible under the laws of the State of West Virginia to receive deposits of state and municipal funds and insured by the FDIC that may be designated as such in the Supplemental Resolution or the Certificate of Determinations, and its successors and assigns by the Issuer as Depository Bank.

“Depreciation Account” means the Depreciation Account established or continued by Section 5.01 hereof.

“Event of Default” means any occurrence or event specified in Section 9.01.

“Excess Investment Earnings” means the amount equal to the sum of:

(A) the excess of (i) the amount earned on all Nonpurpose Investments (other than investments attributable to an excess described in this subparagraph (A)), over (ii) the amount which would have been earned if such Nonpurpose Investments were invested at a rate equal to the yield on the issue, plus

(B) any income attributable to the excess described in subparagraph (A).

“FDIC” means the Federal Deposit Insurance Corporation and any successor to the functions of the FDIC.

“Fiscal Year” means each 12-month period beginning on July 1 and ending on the succeeding June 30.

“Governing Body” means the Corporation Council of the Issuer, as it may now or hereafter be constituted.

“Government Obligations” means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America.

“Gross Proceeds” means the definition that is given such term in Section 148(f)(6)(B) of the Code.

“Gross Revenues” means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that “Gross Revenues” does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined), or Tap Fees, as hereinafter defined.

“Herein,” “hereto” and similar words shall refer to this entire Bond Legislation.

“Independent Accountants” shall mean any public accountant or certified public accountant or firm of public accountants or certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

“Investment Property” shall mean any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract or investment-type property, excluding, however, obligations the interest on which is excluded from gross income, under Section 103 of the Code, for federal income tax purposes other than specified private activity bonds as defined in Section 57(a)(5)(C) of the Code.

“Issuer” means Corporation of Shepherdstown, a municipal corporation and political subdivision of the State of West Virginia in Jefferson County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

“Mayor” means the Mayor of the Issuer.

“Net Proceeds” means the face amount of the Series 2021 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds deposited in the Series 2021 Bonds Reserve Account, if any. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 2021 Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

“Net Revenues” means the balance of the Gross Revenues, remaining after deduction of Operating Expenses, as hereinafter defined.

“Operating Expenses” means the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the Costs, fees and expenses of the Depository Bank and Paying Agent (all as herein defined), payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that “Operating Expenses” does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

“Ordinance” means, collectively, this ordinance and any order or resolution of the Governing Body supplemental hereto, including without limitation the Supplemental Resolution.

“Outstanding,” when used with reference to Bonds as of any particular date, describes all Bonds theretofore and thereupon being authenticated and delivered except (i) any Bond cancelled by the Bond Registrar at or prior to said date; (ii) any Bond for the payment of which moneys, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article X and (iv) for purposes of consents or other action by a specified percentage of Bondholders, Bonds registered to the Issuer.

“Parity Bonds” means additional Bonds issued under the provisions and within the limitations prescribed by Section 7.07 hereof.

“Paying Agent” means the Commission or such other entity designated as such for the Series 2021 Bonds by the Issuer.

“Prior Bonds” means the Series 2003A Bonds, the Series 2003B Bonds, the Series 2012 Bonds and the Series 2017 Bonds.

“Prior Bonds Ordinances” means the respective ordinances, as supplemented and amended, authorizing the issuance of the Prior Bonds.

“Private Business Use” means use directly or indirectly in a trade or business carried on by a natural person, including all persons “related” to such person within the meaning of Section 144(a)(3) of the Code, or in any activity carried on by a person other than a natural person, including all persons “related” to such person within the meaning of Section 144(a)(3) of the Code, excluding, however, use by a state or local governmental unit and use as a member of the general public. All of the foregoing shall be determined in accordance with the Code, including, without limitation, giving due regard to “incidental use,” if any, of the proceeds of the issue and/or proceeds used for “qualified improvements,” if any.

“Project” means the additions, betterments and improvements to the Issuer’s existing waterworks system, including the additions, betterments and improvements described in Exhibit A hereto.

“PSC” means the Public Service Commission of West Virginia or any successors thereof.

“Purchase Price,” for the purpose of computation of the yield of the Series 2021 Bonds, has the same meaning as the term “issue price” in Section 1273(b) and 1274 of the Code, and, in general, means the initial offering price of the Series 2021 Bonds to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers), at which price a substantial amount of the Series 2021 Bonds of each maturity is sold or, if the Series 2021 Bonds are privately placed, the price paid by the first buyer of the Series 2021 Bonds or the acquisition cost of the first buyer. “Purchase Price,” for purposes of computing yield of Nonpurpose Investments, means the fair market value of the Nonpurpose Investments on the date of use of Gross Proceeds of the Series 2021 Bonds for acquisition thereof, or if later, on the date that Investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment of the Series 2021 Bonds.

“Purchaser” means Jefferson Security Bank.

“Qualified Investments” means and includes any of the following:

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;
- (c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;
- (d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;
- (e) Deposit and time accounts (including accounts evidenced by time certificates of deposit, demand or time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

(f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;

(g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

(h) The West Virginia “consolidated fund” managed by the West Virginia Board of Treasury Investments pursuant to Chapter 12, Article 6C of the West Virginia Code of 1931, as amended; and

(i) Obligations of States or political subdivisions or agencies thereof, the interest on which is exempt from federal income taxation, and which are rated at least “A” by Moody’s Investors Service, Inc. or Standard & Poor’s Corporation.

“Rebate Fund” means the fund created pursuant to Section 4.01 hereof.

“Recorder” means the Recorder of the Governing Body.

“Registered Owner,” “Bondholder,” “Holder” or any similar term means whenever used herein with respect to an outstanding Bond, the person in whose name such Bond is registered.

“Registrar” means the Bond Registrar.

“Regulations” means temporary and permanent regulations promulgated under the Code, or any predecessor thereto.

“Reserve Accounts” means the Series 2021 Bonds Reserve Account and the respective reserve accounts for the Prior Bonds.

“Revenue Fund” means the Revenue Fund established or continued by Section 5.01 hereof.

“Series 2003 Bonds” means the Series 2003A Bonds and the Series 2003B Bonds.

“Series 2003A Bonds” means the Issuer’s Water Revenue Bonds, Series 2003A (West Virginia DWTRF Program), dated June 13, 2003, issued in the original aggregate principal amount of \$699,459.

“Series 2003B Bonds” means the Issuer’s Water Revenue Bonds, Series 2003B (West Virginia DWTRF Program), dated June 13, 2003, issued in the original aggregate principal amount of \$1,300,541.

“Series 2012 Bonds” means the Issuer’s Water Revenue Bonds, Series 2012 (West Virginia Infrastructure Fund), dated July 19, 2012, issued in the original aggregate principal amount of \$4,000,000.

“Series 2017 Bonds” means the Issuer’s Water Revenue Bonds, Series 2017, dated June 15, 2017, issued in the original aggregate principal amount of \$2,650,000.

“Series 2021 Bonds” or “Series 2021 Bond” means the not to exceed \$1,250,000 in original principal amount of Water Revenue Bonds, Series 2021 authorized hereby.

“Series 2021 Bonds Construction Trust Fund” means the Series 2021 Bonds Construction Trust Fund established by Section 5.01 hereof.

“Series 2021 Bonds Reserve Account” means the Series 2021 Bonds Reserve Account established in the Series 2021 Bonds Sinking Fund pursuant to Section 5.02 hereof.

“Series 2021 Bonds Reserve Requirement” means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2021 Bonds in the then concurrent or any succeeding fiscal year.

“Series 2021 Bonds Sinking Fund” means the Series 2021 Bonds Sinking Fund established pursuant to Section 5.02 hereof.

“Sinking Funds” means the Series 2021 Bonds Sinking Fund and the respective sinking funds for the Prior Bonds.

“State” means the State of West Virginia.

“Supplemental Resolution” means any resolution or order of the Issuer supplementing or amending this Resolution.

“Surplus Revenues” means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, as further defined in Section 5.03(B) hereof.

“System” means the complete existing waterworks system now owned by the Issuer, in its entirety or any integral part thereof, and shall include the Project and any further extensions, additions, betterments and improvements thereto hereafter acquired or constructed for said waterworks system from any sources whatsoever, both within and without the Issuer.

“Tap Fees” means the fees, if any, paid by prospective customers of the System in order to connect thereto.

“Yield” means the definition given that term in Section 148(h) of the Code.

Additional terms and phrases are defined in this Resolution as they are used. Accounting terms not specifically defined herein shall be given meaning in accordance with generally accepted accounting principles.

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof,” and any similar terms refer to this Resolution; and the term “hereafter” means after the date of enactment of this Resolution.

Articles, sections and subsections mentioned by number only are the respective articles, sections and subsections of this Resolution so numbered.

ARTICLE II

AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized, ratified and affirmed the acquisition, construction and equipping of the Project, at an estimated maximum cost of \$2,288,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The foregoing Project costs, including without limitation costs associated with the issuance of the Series 2021 Bonds, shall be paid with \$550,000 from funds of the Issuer available for such purpose, \$488,000 from the Depreciation Account for the System and the remainder will be obtained from the proceeds of the Series 2021 Bonds. The proceeds of the Series 2021 Bonds hereby authorized shall be applied as provided in Article VI hereof. The Issuer has entered into or will enter into contracts for the acquisition, construction and equipping of the Project, which are in an amount and otherwise compatible with the financing plan submitted to the Purchaser.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS

Section 3.01. Authorization of Series 2021 Bonds. Subject and pursuant to the provisions hereof, the Water Revenue Bonds of the Issuer, to be known as “Water Revenue Bonds, Series 2021,” are hereby authorized to be issued in the original aggregate principal amount not to exceed \$1,250,000, the exact principal amount to be as set forth in the Series 2021 Bond executed by the Mayor, for the purpose of financing the costs of the acquisition, construction and equipping of the Project.

Section 3.02. Description of Bonds. The Series 2021 Bonds shall initially be issued in single form, No. R-1, fully registered to Jefferson Security Bank and shall be dated on the date of delivery. The Bond shall bear interest from date, payable monthly with an interest rate not to

exceed 3% per annum, with a term not to exceed sixteen (16) years from the Closing Date, the exact interest rate and term to be as set forth in the Series 2021 Bonds executed by the Mayor and shall be sold at the par value thereof. The Bond shall be subject to prepayment, at the option of the Issuer, and shall be payable as provided in the bond form hereinafter set forth.

Section 3.03. Negotiability, Registration, Transfer and Exchange of Series 2021 Bonds. The Series 2021 Bonds shall be and have all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but the Series 2021 Bonds, and the right to the principal of, and stated interest on, the Series 2021 Bonds, may only be transferred by transfer of the registration thereof upon the books required to be kept pursuant to Section 3.04 hereof, by the party in whose name it is registered, in person or by attorney duly authorized in writing, upon surrender of the applicable Series 2021 Bond for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Registrar.

Whenever a Series 2021 Bond shall be surrendered for registration of transfer, the Issuer shall execute and deliver a new bond or bonds in authorized denominations, for a like aggregate principal amount. The Registrar shall require the payment by the new owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer, but the Issuer shall pay any other expenses incurred by the Registrar with respect to such transfer.

No registration of transfer of a Series 2021 Bond shall be permitted to be made after the 15th day next preceding any installment payment date on the Series 2021 Bonds.

Section 3.04. Registrar. Jefferson Security Bank or other Registrar designated by the Issuer shall keep or cause to be kept at the office of the Registrar the Bond Register for the registration and transfer of the Series 2021 Bonds, and, upon presentation for such purpose, the Registrar shall register the Series 2021 Bond initially issued pursuant hereto and register the transfer, or cause to be registered, on such Bond Register, the transfer of the Series 2021 Bonds as hereinbefore provided.

Section 3.05. Execution of Bond. The Series 2021 Bonds shall be executed in the name of the Issuer by the Mayor and its corporate seal shall be affixed thereto and attested by the Recorder.

Section 3.06. Mutilated, Destroyed, Stolen or Lost Series 2021 Bond. In case a Series 2021 Bond shall become mutilated, destroyed, stolen or lost, the Issuer may in its discretion issue and deliver a new bond of like tenor as the Series 2021 Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Series 2021 Bond or in lieu of and substitution for the Series 2021 Bond destroyed, stolen or lost, and upon the holder of the Series 2021 Bond furnishing the Issuer proof of his ownership thereof and complying with such other reasonable regulations and conditions as the Issuer may require. The Series 2021 Bond so surrendered shall be canceled and held for the account of the Issuer. If the Series 2021 Bond shall have matured or be about to mature, instead of issuing a substitute Series 2021 Bond the Issuer may pay the same, and, if such bond be destroyed, stolen or lost, without surrender thereof.

Section 3.07. Series 2021 Bonds not to be Indebtedness of the Members of the Governing Body of the Issuer. The Series 2021 Bonds shall not be or constitute an indebtedness of the members of the Governing Body of the Issuer but shall be payable solely from the Net Revenues and from funds in the Series 2021 Bonds Reserve Account.

Section 3.08. Bonds Secured by Pledge of Net Revenues; Lien Positions with Respect to Prior Bonds; Series 2012 Bonds, Series 2017 Bonds and Series 2021 Bonds to be Secured by Gross Revenues after Payment of Series 2003 Bonds. The payment of the debt service of all the Series 2021 Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System, on a parity with the lien on the Net Revenues in favor of the Holders of the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2021 Bonds and the Prior Bonds and to make the payments into all funds and accounts either existing or hereinafter established are hereby irrevocably pledged to the payment of the principal of and interest on the Series 2021 Bonds and Prior Bonds as the same become due. In addition to the foregoing, the unexpended proceeds of the Series 2021 Bonds are hereby irrevocably pledged to the payment of the principal of and interest on the Series 2021 Bonds as the same become due. Notwithstanding the foregoing, upon the payment in full of the Series 2003 Bonds, the payment of the debt service of all of the Series 2012 Bonds, the Series 2017 Bonds and the Series 2021 Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Gross Revenues derived from the System.

Section 3.09. Form of Series 2021 Bonds. Subject to the provisions hereof, the text of the Series 2021 Bonds and the other details thereof shall be of substantially the following tenor, with such omissions, insertions and variations as may be authorized or permitted hereby or by any ordinance or resolution enacted or adopted after the date of adoption hereof and prior to the issuance thereof:

[Form of Series 2021 Bonds]

**UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CORPORATION OF SHEPHERDSTOWN
WATER REVENUE BOND
SERIES 2021**

No. R-1

\$[1,250,000]

THE CORPORATION OF SHEPHERDSTOWN, a municipal corporation and political subdivision of the State of West Virginia in Jefferson County of said State (the “Issuer”), for value received, promises to pay to the order of Jefferson Security Bank (the “Purchaser”), or its registered assigns, at Post Office Box 35, Shepherdstown, West Virginia 25443, or at such other place as the Purchaser may hereafter designate in writing, the principal sum of [ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$1.250,000.00)], plus interest on the unpaid principal balance at the rate of __% per annum. The said principal and interest shall be paid in monthly installments in the amount of \$ _____, covering principal and interest, commencing on _____, 2021, and thereafter on said corresponding day of each month except that the final installment shall be paid on _____, 203_. Every payment made hereon shall be applied first to interest computed to the effective date of the payment and then to principal.

Notwithstanding the foregoing, in the event of a Determination of Taxability, as hereinafter defined, the interest rate hereon shall be equal to the Taxable Rate, as hereinafter defined, commencing from the effective date of such Determination of Taxability. For purposes of the immediately preceding sentence, the following terms shall have the following meanings:

“Determination of Taxability” means a determination that all or any portion of the interest income on this Bond is not excludable from the gross income under Section 103 of the Code (“exempt interest”) of a holder or former holder of this Bond. The determination shall be deemed to have been made upon the occurrence of the first to occur of the following: (a) the date on which the registered owner of this Bond is notified that Bond Counsel is unable to deliver an opinion that interest on this Bond is excludable from gross income for federal income tax purposes; (b) the date on which any change in law or regulation becomes effective or on which the Internal Revenue Service (the “IRS”) issues any private ruling, technical advice or any other written communication with or to the effect that the interest income on this Bond does not qualify as exempt interest; or (c) the date on which the Issuer shall receive notice from the Purchaser in writing that the Purchaser has been notified by the Internal Revenue Service, or has been advised by the Issuer, any registered owner or former registered owner of this Bond that the Internal Revenue Service has issued a thirty-day letter or other notice which asserts that the interest on this Bond does not qualify as exempt interest.

“Taxable Rate” means _____% per annum.

INTEREST CALCULATION METHOD. [Interest on this Bond will be computed on a _____ basis. All interest payable under the Bond will be computed using this method.]

Notwithstanding any provision of this Bond to the contrary, this Bond shall evidence only the indebtedness reflected as outstanding on the Record of Advances and Payments attached hereto. Interest shall accrue only on the amount of each advance from its actual date as listed on such Record of Advances and Payments and shall cease to accrue on the amount outstanding, or portions thereof, as the same is paid, as reflected by said Record of Advances and Payments. Advances and payments shall be noted by the Purchaser hereof on the Record of Advances and Payments attached hereto as the same are made, and the grid record maintained by the Purchaser as hereinafter described shall be determinative as to such matters absent manifest error. Payments of principal shall be noted by the Purchaser hereof on the Record of Principal Payments attached hereto as the same are made, and the grid record maintained by the Purchaser as herein described shall be determinative as to such matters absent manifest error. The principal of this Bond shall be advanced by the Purchaser upon receipt from the Issuer of such requisitions and other documentation as the Purchaser may reasonably require.

The principal and interest installments on this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of Jefferson Security Bank, Post Office Box 35, Shepherdstown, West Virginia 25443, as the Registrar (as defined in the hereinafter described Bond Legislation) on the 15th day of the month next preceding a payment date, or by such other method as shall be mutually agreeable so long as the Purchaser is the registered owner hereof.

[This Bond may be redeemed prior to its stated date of maturity in whole or in part on any date at a redemption price equal to the outstanding principal amount thereof, without premium or other penalty, plus any unpaid interest accrued to the date of redemption.]

This Bond is issued (i) to finance costs of additions, betterments and improvements to the waterworks system of the Issuer, including without limitation, additions, betterments and improvements to the water treatment plant and related facilities (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. The existing water facilities of the Issuer and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 of the Code of West Virginia, 1931, as amended (the "Act"), and a Bond Ordinance duly enacted by the Issuer on _____, 2021, and put into effect passed on final reading following a public hearing held on _____, 2021, as supplemented and amended by a Supplemental Resolution adopted on _____, 2021 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other securities provided for the Bonds of this Series (the "Bonds") under the Bond Legislation.

THE BONDS ARE ON A PARITY AS TO LIENS, PLEDGE, SOURCE OF AND SECURITY FOR PAYMENT WITH THE ISSUER'S WATER REVENUE BONDS,

SERIES 2003A (WEST VIRGINIA DWTRF PROGRAM), DATED JUNE 13, 2003, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$699,459; WATER REVENUE BONDS, SERIES 2003B (WEST VIRGINIA DWTRF PROGRAM), DATED JUNE 13, 2003, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$1,300,54; WATER REVENUE BONDS, SERIES 2012 (WEST VIRGINIA INFRASTRUCTURE FUND), DATED JULY 19, 2012, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$4,000,000; AND WATER REVENUE BONDS, SERIES 2017, DATED JUNE 15, 2017, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,650,000 (COLLECTIVELY, THE “PRIOR BONDS”).

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System and from moneys in the Reserve Account created under the Bond Legislation for the Bonds (the “Series 2021 Bonds Reserve Account”), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all Bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Net Revenues, the moneys in the Series 2021 Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, for each fiscal year beginning on and after July 1, 2021, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each fiscal year equal to at least 115% of the maximum amount payable in any fiscal year for principal of and interest on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Prior Bonds. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of Jefferson Security Bank, Shepherdstown, West Virginia as registrar (the “Registrar”) by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

This Bond is, under the Act, exempt from taxation by the State of West Virginia, and the other taxing bodies of the State.

This Bond has been designated a “qualified tax-exempt obligation” within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to the payment of the Costs of the Project and the costs of issuance described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the registered owner of this Bond.

In the event all costs of the acquisition, construction, improvement and equipping of the Project and all costs of issuing the Bonds have been paid and less than \$[1,250,000] is advanced hereunder, the amount of the monthly payments required hereby shall not be diminished, but such payments shall result in the early payment of the Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, the CORPORATION OF SHEPHERDSTOWN has caused this Series 2021 Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder and has caused this Series 2021 Bond to be dated _____, 2021.

CORPORATION OF SHEPHERDSTOWN

[CORPORATE SEAL]

Attest:

Recorder

By: _____
Mayor

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2021 Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: _____, 2021.

JEFFERSON SECURITY BANK, as Registrar

By: _____
Its: Authorized Officer

RECORD OF ADVANCES AND PAYMENTS

ADVANCES

<u>Date</u>	<u>Amount</u>	<u>Initialed by (Bank Officer)</u>
_____, 2021	\$ _____	_____

RECORD OF ADVANCES AND PAYMENTS

PRINCIPAL PAYMENTS

<u>Date</u>	<u>Amount</u>	<u>Initialed by (Bank Officer)</u>
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ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____

the within Bond and does hereby irrevocably constitute and appoint
_____, Attorney to transfer the said Bond on the books kept for
registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: _____, 20__.

In the presence of:

Section 3.10. Designation of Bonds as “Qualified Tax-Exempt Obligations”. The Issuer hereby designates the Series 2021 Bonds as “qualified tax-exempt obligations” for purposes of Section 265(b)(3)(B) of the Code and covenants that the Series 2021 Bonds do not constitute private activity bonds as defined in Section 141 of the Code, and that not more than \$10,000,000 aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Code) from gross income for federal income tax purposes (excluding, however, obligations described in Section 265(b)(3)(C)(ii) of the Code), including the Series 2021 Bonds, have been or shall be issued by the Issuer, including all subordinate entities of the Issuer, during the calendar year 2021.

ARTICLE IV

[RESERVED]

ARTICLE V

FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment or Continuance of Funds and Accounts with Depository Bank. The following special funds or accounts are created (or continued if previously established) with and shall be held by the Depository Bank separate and apart from all other funds or accounts of the Depository Bank and the Issuer from each other:

- A. Revenue Fund
- B. Series 2021 Bonds Construction Trust Fund; and
- C. Rebate Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created (or continued if previously established or continued by the Prior Ordinances) with, and shall be held by, the Commission, separate and apart from all other funds or accounts of the Commission and the Issuer and from each other:

- A. Depreciation Account;
- B. Series 2003A Bonds Sinking Fund (created or continued by the Prior Ordinances);
- C. Within the Series 2003A Bonds Sinking Fund, the Series 2003A Bonds Reserve Account (created or continued by the Prior Ordinances);
- D. Series 2003B Bonds Sinking Fund (created or continued by the Prior Ordinances);
- E. Within the Series 2003B Bonds Sinking Fund, the Series 2003B Bonds Reserve Account (created or continued by the Prior Ordinances);
- F. Series 2012 Bonds Sinking Fund (created or continued by the Prior Ordinances);
- G. Within the Series 2012 Bonds Sinking Fund, the Series 2012 Bonds Reserve Account (created or continued by the Prior Ordinances);
- H. Series 2017 Bonds Sinking Fund;
- I. Within the Series 2017 Bonds Sinking Fund, the Series 2017 Bonds Reserve Account;
- J. Within the Series 2017 Bonds Sinking Fund, the Series 2017 Bonds Redemption Account;

K. Series 2021 Bonds Sinking Fund; and

L. Within the Series 2021 Bonds Sinking Fund, the Series 2021 Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds. So long as any of the Bonds shall be Outstanding and unpaid, the Issuer covenants as follows:

A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt by the Issuer in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Resolution and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner herein provided. All revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priorities:

- (1) The Issuer shall first each month transfer from the Revenue Fund and pay all current Operating Expenses of the System.
- (2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission (i) the amounts required to be transferred to the Commission with respect to the interest on the Prior Bonds, and (ii) for deposit in the Series 2021 Bonds Sinking Fund a sum equal to the amount of interest which will be due and payable on the Series 2021 Bonds on the first day of the following month.
- (3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission (i) the amounts required to be transferred to the Commission with respect to the principal of the Prior Bonds, and (ii) for deposit in the Series 2021 Bonds Sinking Fund a sum equal to the amount of principal which will be due and payable on the Series 2021 Bonds on the first day of the following month, provided, that the amount of such deposits with respect to the Series 2021 Bonds shall be reduced by the amount of any earnings credited to the Series 2021 Bonds Sinking Fund and not previously applied to reduce such deposits in accordance with the Commission's practices and procedures.

Moneys in the Series 2021 Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2021 Bonds as the same shall become due, whether by maturity or redemption prior to maturity. Pending such use, such moneys shall be invested in accordance with Article VIII.

The Issuer shall not be required to make any further payments into the Series 2021 Bonds Sinking Fund when the aggregate amount of funds in the Series 2021 Bonds Sinking Fund, including the Series 2021 Bonds Reserve Account therein, is at least equal to the aggregate principal amount of Series 2021 Bonds issued pursuant to this Resolution then

Outstanding, plus the amount of interest due or thereafter to become due on the Series 2021 Bonds then Outstanding.

The payments into the Series 2021 Bonds Sinking Fund shall be made on the first day of each month, except that, when the first day of any month shall be a Saturday, Sunday or legal holiday, then such payments shall be made on the next succeeding business day, and all such payments shall be remitted to the Bond Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Resolution.

- (4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission (i) the amounts required to be transferred to the Commission with respect to debt service reserve requirements of the Prior Bonds, and (ii) for deposit into the Series 2021 Bonds Reserve Account an amount equal to 1/120th of the Series 2021 Bonds Reserve Requirement, until the amount in the Series 2021 Bonds Reserve Account equals the Series 2021 Bonds Reserve Requirement; provided, that no further payments shall be made into the Series 2021 Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2021 Bonds Reserve Requirement .

Amounts in the Series 2021 Bonds Reserve Account shall be used only for the purpose of making payments of principal of and interest on the Series 2021 Bonds when due when amounts in the Series 2021 Bonds Sinking Fund are insufficient therefor, for prepayment of installments on the Series 2021 Bonds or for mandatory prepayment of the Series 2021 Bonds to the extent required, and for no other purpose.

All investment earnings on moneys in the Series 2021 Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall be deposited in the Revenue Fund and applied in full, first to the next ensuing installment of principal and interest due on the Series 2021 Bonds.

Any withdrawals from the Series 2021 Bonds Reserve Account which result in a reduction in the balance of the Series 2021 Bonds Reserve Account to below the then applicable requirement therefor shall be subsequently restored from the first Net Revenues available after all required payments have been made in full in the priority set forth above.

As and when additional Bonds ranking on a parity with the Series 2021 Bonds are issued, provision shall be made for additional payments into the respective sinking fund sufficient to pay the interest on such additional Parity Bonds and accomplish retirement thereof at maturity and

to accumulate a balance in the respective reserve account in an amount equal to the requirement therefor.

The Issuer shall not be required to make any further payments into the Series 2021 Bonds Reserve Account when the aggregate amount of funds therein is at least equal to the lesser of (i) Series 2021 Bonds Reserve Requirement or (ii) the aggregate principal amount of the Series 2021 Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

- (5) The Issuer shall next, on the first day of each month, from the moneys remaining in the Revenue Fund, transfer from the Revenue Fund and remit to the Commission for deposit into the Depreciation Account a sum equal to 2 1/2 % of the Gross Revenues of the immediately preceding month, less any amount transferred to any Reserve Account. All funds in the Depreciation Account shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in Qualified Investments. Moneys in the Depreciation Account shall be used first to make up deficiencies for monthly payments of the principal of and interest on the Prior Bonds and/or the Series 2021 Bonds as the same become due, and next to restore to the Reserve Accounts any sum or sums transferred therefrom, and provided that in the event there are not sufficient moneys in the Depreciation Account to make the transfer required by this sentence, such transfers shall be made on a pro rata basis. Thereafter, and provided that payments into the Reserve Accounts are current and in accordance with the foregoing provisions, withdrawals and disbursements may be made from the Depreciation Account for replacements, emergency repairs, improvements or extensions to the System.

Principal, premium, if any, and interest payments, and any payments made for the purpose of funding any reserve account, whether for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Bonds in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2021 Bonds Sinking Fund, the Series 2021 Bonds Reserve Account and the Depreciation Account created or continued hereunder, and all amounts required for said account shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein.

B. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such other period as required by law, such excess shall be considered Surplus Revenues. Surplus Revenues may be used for any lawful purpose of the System.

C. The Issuer shall remit from the Revenue Fund to the Commission, the Paying Agent or the Depository Bank, on such dates as the Commission, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay any charges and fees then due.

D. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in the Revenue Fund, the Series 2021 Bonds Construction Trust Fund and the Rebate Fund shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

E. If on any monthly payment date the Net Revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 5.03, and the Net Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

F. The Issuer shall on the first day of each month (if the first day is not a business day, then the next succeeding business day of each month), make the deposits with the Commission required by this Section 5.03 and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation. All remittances made by the Issuer to the Commission and the Depository Bank shall clearly identify the fund or account into which each amount is to be deposited.

G. The Gross Revenues of the System shall only be used for purposes of the System.

H. All Tap Fees shall be deposited by the Issuer, as received, in the Revenue Fund and may be used for any lawful purpose of the System.

ARTICLE VI

BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 6.01. Advance and Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. The proceeds of the Series 2021 Bonds shall be advanced from time to time by the Purchaser into the Series 2021 Bonds Construction Trust Fund upon receipt by the Purchaser from the Issuer of such requisitions and other documentation as the Purchaser may request and used by the Issuer for the payment of costs of the Project, including without limitation, costs of issuing the Series 2021 Bonds. Until the proceeds of the Series 2021 Bonds are disbursed by the Issuer from the Series 2021 Bonds Construction Trust Fund to pay Costs of the Project, such proceeds are hereby pledged as additional security for the Series 2021 Bonds.

ARTICLE VII

ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 2021 Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2021 Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Series 2021 Bonds or the interest thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2021 Bonds shall not be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory limitation of indebtedness but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of any Series 2021 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer, if any, to pay said Series 2021 Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Positions with Respect to Prior Bonds; Series 2012 Bonds, Series 2017 Bonds and Series 2021 Bonds to be Secured by Gross Revenues after Payment of Series 2003 Bonds. The payment of the debt service of all the Series 2021 Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System, on a parity with the lien on the Net Revenues in favor of the Holders of the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2021 Bonds and the Prior Bonds and to make the payments into all funds and accounts either existing or hereinafter established are hereby irrevocably pledged to the payment of the principal of and interest on the Series 2021 Bonds and Prior Bonds as the same become due. In addition to the foregoing, the unexpended proceeds of the Series 2021 Bonds are hereby irrevocably pledged to the payment of the principal of and interest on the Series 2021 Bonds as the same become due. Notwithstanding the foregoing, upon the payment in full of the Series 2003 Bonds, the payment of the debt service of all of the Series 2012 Bonds, the Series 2017 Bonds and the Series 2021 Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Gross Revenues derived from the System.

Section 7.04. Initial Schedule of Rates and Charges. Prior to the issuance of the Series 2021 Bonds, the Issuer shall establish a schedule of rates and charges that (i) meets the requirements of the Prior Bonds Ordinances to have the Series 2021 Bonds issued on a parity with the Prior Bonds, and (ii) meets the requirements of Section 7.09 hereof, and shall obtain any and all approvals of such rates and charges required by State law and have taken any other action required to establish and impose such rates and charges with all requisite appeal periods having expired without successful appeal. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the Ordinance enacted by the Issuer on January 12, 2021, and are hereby ratified, and which rates are incorporated herein by reference as a part hereof.

So long as any of the Series 2021 Bonds are Outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation. In the event the schedule of rates and charges initially established for the System in connection with the Series 2021 Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation, the Issuer hereby covenants and agrees that it will, to the extent and in the manner authorized by law, promptly adjust and increase such schedule of rates and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation.

Section 7.05. Sale of the System. So long as any of the Prior Bonds are Outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of the System, or any part thereof, except as provided in the applicable Prior Ordinances. Additionally, so long as the Series 2021 Bonds are outstanding and except as otherwise required by law, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Prior Bonds and Series 2021 Bonds that are Outstanding. The proceeds from any such sale, mortgage, lease or other disposition of the System shall immediately be remitted to the Commission for deposit in the Series 2003A Bonds Sinking Fund, the Series 2003B Bonds Sinking Fund, the Series 2012 Bonds Sinking Fund and the Series 2021 Bonds Sinking Fund, respectively, pro rata, with respect to the principal amount of each of the Prior Bonds and the Series 2021 Bonds then Outstanding, and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder of the Prior Bonds, the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest on the Series 2021 Bonds and Prior Bonds in such manner. Any balance remaining after the payment of the Series 2021 Bonds and any other Bonds Outstanding and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$100,000, the Issuer shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Depreciation Account. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$100,000 but not in excess of \$500,000, the Issuer shall first, determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding. The proceeds derived from any such sale, lease or other disposition of such property, aggregating during such Fiscal Year in excess of \$100,000 and not in excess of \$500,000, shall with the

written consent of the Holders of a majority of the outstanding principal of the Bonds be remitted by the Issuer to the Commission for deposit in the Sinking Funds, respectively, pro rata, with respect to the principal amount of each of the Bonds then Outstanding and shall be applied only to the purchase of the respective Bonds of the last maturities then Outstanding at prices not greater than the par value thereof plus 3% of such par value or to the redemption thereof to the extent such Bonds are then subject to redemption, or if such written consent of the Holders of a majority of the outstanding principal of the Bonds is not obtained, then the proceeds of any such sale shall be deposited in the Depreciation Account. Such payment of such proceeds into the Sinking Funds or the Depreciation Account shall not reduce the amounts required to be paid into said funds by other provisions of this Ordinance. No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of \$500,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of over 50% in principal amount of the Bonds then Outstanding and the Consulting Engineers. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided in this Section 7.06 and in Section 7.07, the Issuer shall not issue any obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2021 Bonds. All obligations issued by the Issuer after the issuance of the Series 2021 Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on, pledge and source of and security for payment from such revenues and in all other respects, to the Series 2021 Bonds.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2021 Bonds, and the interest thereon, if any, upon any or all of the income and revenues of the System pledged for payment of the Series 2021 Bonds and the interest thereon, in this Resolution, or upon the System or any part thereof.

Section 7.07. Additional Parity Bonds. No Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2021 Bonds pursuant to this Resolution, except under the conditions and in the manner herein provided.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2021 Bonds.

No such Parity Bonds shall be issued except for the purposes of financing the costs of the design, acquisition and/or construction of extensions, additions, betterments or improvements to the System, refunding all or a portion of one or more series of Bonds or Prior Bonds, or to pay claims which may exist against the revenues or facilities of the System or all or any combination of such purposes

No Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Secretary a written statement by the Independent Accountants reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest, if any, on the following:

- (1) The Bonds then Outstanding;
- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Bond Legislation then Outstanding; and
- (3) The Parity Bonds then proposed to be issued.

The “estimated average increased annual Net Revenues to be received in each of the 3 succeeding years,” as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from (a) the improvements to be financed by such Parity Bonds, if any, and (b) any increase in rates adopted by the Issuer, the period for appeal of which has expired (without successful appeal) prior to the date of delivery of such additional Parity Bonds, whether or not such approved rates are being charged and collected by the Issuer.

The Net Revenues actually derived from the System during the 12-consecutive month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Accountants on account of increased rates, rentals, fees and charges for the System adopted by the Issuer, the period for appeal of which has expired (without successful appeal) prior to issuance of such Parity Bonds.

All covenants and other provisions of this Resolution (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds subsequently issued from time to time within the limitations of and in compliance with this section. Bonds issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of the System and their source of and security for payment from said revenues, without preference of any Bond of one series over any other Bond of the same series. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Resolution or other resolution required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on revenues of the System is subject to the prior and superior liens of the Series 2021 Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from revenues of the System, or any part thereof, which rank

prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2021 Bonds.

No Parity Bonds shall be issued any time, however, unless all the payments into the respective funds and accounts provided for in this Bond Legislation with respect to the Bonds then Outstanding, and any other payments provided for in this Bond Legislation, shall have been made in full as required to the date of delivery of such Parity Bonds, and the Issuer shall then be in full compliance with all the covenants, agreements and terms of this Bond Legislation.

Notwithstanding the foregoing, the Issuer may issue Parity Bonds without compliance with any other conditions of this Bond Legislation for the purpose of refunding prior to maturity any issues or series of the Bonds, provided that the annual debt service required on account of the refunding Bonds and the Bonds which are not refunded shall not be greater in any year in which the Bonds not refunded and the refunding Bonds are to be Outstanding than the annual debt service required in such year if the Bonds to be refunded were not so refunded.

Section 7.08. Books; Records and Audit. The Issuer shall keep complete and accurate records of the costs of acquiring the Project site, if any, and acquiring, constructing, equipping and installing the Project. The Issuer shall permit the Purchaser, or its agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Purchaser such documents and information as the Purchaser may reasonably require in connection with the acquisition, construction, equipping and installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

The Issuer shall permit the Purchaser, or its agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times following completion of construction of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the Public Service Commission of West Virginia. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the Governing Body. The Governing Body shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Governing Body shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the Purchaser, or any other original purchaser of the Bonds, and shall mail in each year to any Holder or Holders of Bonds requesting the same, an annual report within 30 days following the date of receipt by thereof by the Issuer containing the following:

A. A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.

B. A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation with respect to said Bonds and the status of all said funds and accounts.

C. The amount of any Bonds or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Accountants in compliance with the applicable OMB Circular and the Single Audit Act or successor thereto in effect at the time, to the extent required, and shall mail upon request, and make available generally, the report of said Independent Accountants, or a summary thereof, to any Holder or Holders of Bonds and shall submit said report to the Purchaser or any other original purchaser of the Bonds.

Section 7.09. Rates. Prior to the issuance of the Series 2021 Bonds, equitable rates or charges for the use of and service rendered by the System shall be established that meet the requirements of this Section 7.03 all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Secretary, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect for each Fiscal Year beginning on and after July 1, 2021, shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any Fiscal Year for payment of principal of and interest on the Series 2021 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2021 Bonds, including the Prior Bonds.

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year. The Issuer, by a resolution duly adopted by the Governing Body, may from time to time amend the budget during the subject Fiscal Year provided that the budget remains balanced after such amendment. After the adoption of any such amendment, the budget, as amended, shall be the budget of the Issuer for the balance of the subject Fiscal Year. No expenditures for the operation and maintenance of the

System shall be made in any Fiscal Year in excess of the amounts provided therefor in the budget until the Issuer shall have approved such increased expenditures by a resolution duly adopted. The Issuer shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Purchaser and to any Bondholder or anyone acting for and in behalf of such Bondholder who shall file his or her address with the Issuer and request in writing that copies of all such budgets, any amendments thereto and resolutions be furnished him or her and shall make available such budgets, any amendments thereto and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Holder of any Bonds or anyone acting for and in behalf of such Holder of any Bonds.

Section 7.11. Engineering Services and Operating Personnel. The Issuer shall provide and maintain competent and adequate engineering services reasonably satisfactory to the Purchaser covering the supervision and inspection of the development and construction of the Project. The Issuer shall also employ qualified operating personnel properly certified by the State to operate the System so long as the Series 2021 Bonds are Outstanding.

Section 7.12. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 20 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System to all users of the services of the System delinquent in payment of charges for the service of the System and will not restore such services until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and the Issuer shall take all further actions to enforce collections to the maximum extent permitted by law.

Section 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer

or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15. Insurance and Construction Bonds. The Issuer hereby covenants and agrees that so long as any of the Series 2021 Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies will be placed in the Depreciation Account and shall be used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Depreciation Account. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Purchaser, the prime contractor and all subcontractors as their respective interests may appear during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Issuer, the contractors and subcontractors, as their interests may appear.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Issuer, the Issuer and the Purchaser from claims for bodily injury and/or death and not less than \$500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) WORKERS' COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR: AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of 100% of the construction contract and to be required of each contractor contracting directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with West Virginia Code Chapter 38, Article 2, Section 39.

(4) FLOOD INSURANCE, if the facilities of the System are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

(5) BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

(6) FIDELITY BONDS, will be provided for every officer, member and employee of the Issuer or the Governing Body having custody of the revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

Section 7.16. Completion and Operation of Project; Permits and Orders. The Issuer will complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Issuer has obtained all permits required by state and federal laws for the acquisition and construction of the Project, all orders and approvals from the Public Service Commission of West Virginia necessary for the acquisition and construction of the Project and the operation of the System and all approvals for issuance of the Series 2021 Bonds required by state law, with all requisite appeal periods having expired without successful appeal.

Section 7.17. Compliance With Law. The Issuer shall perform, satisfy and comply with all terms and conditions of the Act and all other applicable laws, rules and regulations issued by State, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

Section 7.18. Contracts. The Issuer has or shall, simultaneously with the delivery of the Series 2021 Bonds or within thirty days thereafter, enter into written contracts for the acquisition, construction and Equipping of the Project.

Section 7.19. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 2021 Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 2021 Bonds during the term thereof is, under the terms of the Series 2021 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) in the event that both (A) in excess of 5% of the Net Proceeds of the Series 2021 Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 2021 Bonds during the term thereof is, under the terms of the Series 2021 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5 % of Net Proceeds of the Series 2021 Bonds used for

a Private Business Use shall be used for a Private Business Use related to the governmental use of the System, or if the Series 2021 Bonds are for the purpose of financing more than one project, a portion of the System, and shall not exceed the proceeds used for the governmental use of that portion of the System to which such Private Business Use is related.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% of the Net Proceeds of the Series 2021 Bonds or \$5,000,000 are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 2021 Bonds to be directly or indirectly “federally guaranteed” within the meaning of Section 149(b) of the Code and Regulations promulgated thereunder.

D. INFORMATION RETURN. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2021 Bonds and the interest thereon, including without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer will take all actions that may be required of it so that the interest on the Series 2021 Bonds will be and remain excludable from gross income for federal income tax purposes and will not take any actions which would adversely affect such exclusion.

ARTICLE VIII

INVESTMENT OF FUNDS

Section 8.01. Investments. Any moneys held as a part of the funds and accounts created by this Bond Legislation shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Bond Legislation, the need for such moneys for the purposes set forth herein, and the specific restrictions and provisions set forth in this Section 8.01.

Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the “Consolidated Fund.” The Commission, the Depository Bank, or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account,

regardless of the loss on such liquidation. The Depository Bank or such other bank or national banking association, as the case may be, may make any and all investments permitted by this section through its own bond department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year during which the respective banks hold any such funds, accounts or investments (or more often if reasonably requested by the Issuer), a summary of such funds, accounts, and investment earnings.

Section 8.02. Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Series 2021 Bonds in such manner and to such extent as may be necessary, so that the Series 2021 Bonds will not constitute “arbitrage bonds” under Section 148 of the Code and Regulations prescribed thereunder, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Series 2021 Bonds) so that the interest on the Series 2021 Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 8.03. Tax Certificate and Rebate. A. The Issuer shall deliver a tax certificate or other similar document relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Series 2021 Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Series 2021 Bonds as may be necessary in order to fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of this Ordinance.

B. Unless excepted therefrom, the Issuer shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, the Issuer shall deposit, or cause to be deposited, in the Rebate Fund such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder and used only for payment of rebatable arbitrage to the United States. The Issuer shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be from time to time in effect, with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds

lawfully available therefore. The Issuer at its expense, may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer may deem appropriate in order to assure compliance with this Section 8.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 8.03 in accordance with the requirements of Section 148(f) of the Code and such Regulations. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and the required amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, in order to maintain the exclusion of interest on the Series 2021 Bonds from gross income for federal income tax purposes.

C. In order to establish that the Series 2021 Bonds qualify for the exception from the arbitrage rebate requirements of Section 148(f) of the Code provided for in Section 148(f)(4)(D) of the Code, the Issuer covenants that it is a governmental unit with general taxing powers; that no part of the Bonds are private activity bonds; that 95% or more of the Net Proceeds of the Series 2021 Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and that the aggregate face amount of all the tax-exempt obligations (other than private activity bonds), including without limitation the Series 2021 Bonds, issued by the Issuer during the 2021 calendar year in which the Bonds are issued, does not and will not exceed \$5,000,000, determined in accordance with Section 148(f)(4)(D) of the Code and the Regulations from time to time in effect and applicable to the Series 2021 Bonds. For purposes of this paragraph and for purposes of applying Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this paragraph and Section 148(f)(4)(D) of the Code, be treated as not issued by such unit; all obligations issued by a subordinate entity shall, for purposes of applying this paragraph and Section 148(f)(4)(D) of the Code to each other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefiting thereby shall be treated as one issuer.

ARTICLE IX

DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an “Event of Default” with respect to the Series 2021 Bonds:

(1) If default occurs in the due and punctual payment of the principal or of interest on any of the Series 2021 Bonds; or

(2) If default occurs in the Issuer’s observance of any of the covenants, agreements or conditions on its part relating to the Series 2021 Bonds, set forth in this Bond Legislation, any supplemental resolution or in the Series 2021 Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such

default by the Purchaser, the Commission, the Depository Bank or any other Paying Agent or other Holder of a Series 2021 Bond; or

(3) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; or

(4) If default occurs with respect to any of the Prior Bonds or any of the ordinances authorizing the issuance of the Prior Bonds.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Bondholder may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Holders of the Bonds, including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds, (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Holders of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of this Bond Legislation or the rights of such Bondholders; provided that all rights and remedies of the Holders of the Series 2021 Bonds shall be on a parity with the Holders of the Prior Bonds.

No remedy by the terms of this Resolution conferred upon or reserved to the Bondholders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Bondholders hereunder or now or hereafter existing at law or by statute.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or Event of Default hereunder by the Bondholders shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereto.

Section 9.03. Appointment of Receiver. Any Holder of a Bond, may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, any Holder of a Bond, shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby

established, and to apply such rates, rentals, fees, charges or other avenues in conformity with the provisions of this Bond Legislation and the Act.

The receiver so appointed shall forthwith, directly or by his or her or its agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate and maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might exercise.

Whenever all that is due upon the Bonds and interest thereon and under any covenants of this Bond Legislation for reserve, sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Bond Legislation shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Holder of any Bonds, shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Holders of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds, and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

Section 9.04. Restoration of Issuer and Bondholder. In case any Bondholder shall have proceeded to enforce any right under this Resolution by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer and such Bondholder shall be restored to their former positions and rights hereunder, and all rights and remedies of such Bondholder shall continue as if no such proceedings had been taken.

ARTICLE X

PAYMENT OF BONDS

Section 10.01. Payment of Series 2021 Bonds. If the Issuer shall pay or there shall otherwise be paid, to the respective Holders of all Series 2021 Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then with respect to the Series 2021 Bonds only, the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Holders of the Series 2021 Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to the issuance of the Series 2021 Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2021 Bonds, no material modification or amendment of this Bond Legislation, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the respective rights of the Holders of the Series 2021 Bonds shall be made without the consent in writing of the Holders of a majority of the principal of the Series 2021 Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Series 2021 Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein respectively pledged therefor without the consent of the respective Holder thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds required for consent to the above-permitted amendments or modifications.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Holders of the Series 2021 Bonds and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Bond Legislation should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, any Supplemental Resolution, or the Series 2021 Bonds.

Section 11.04. Headings, Etc. The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only and shall not affect in any way the meaning or interpretation of any provision hereof.

Section 11.05. Conflicting Provisions Repealed. All orders, ordinances, or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed, provided that in the event of any conflict between this Ordinance and

any of the Prior Ordinances then in effect, the Prior Ordinance then in effect shall control (unless less restrictive), so long as the respective Prior Bonds or any portion thereof are Outstanding.

Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the enactment of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, Recorder and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 11.07. Statutory Notice and Public Hearing. Upon enactment hereof, an abstract of this Ordinance, substantially in the form attached hereto as Exhibit B, which is determined by the Issuer to contain sufficient information as to give notice of the contents hereof, shall be published once a week for 2 successive weeks within a period of 14 consecutive days, with at least 6 full days intervening between each publication, in a qualified newspaper published and of general circulation in the Corporation of Shepherdstown, together with the notice set forth therein stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2021 Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than 10 days subsequent to the date of the first publication of the said abstract and notice, and present protests, and that a certified copy of the Ordinance is on file in the office of the Town Clerk for review by interested parties during the office hours of the Town Clerk.

At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Section 11.08. Effective Date. This Ordinance shall take effect following the public hearing described in Section 11.07 above.

Passed on First Reading _____, 2021

Passed on Second Reading _____, 2021

Passed on Final Reading and
Effective following public
hearing held on _____, 2021

Mayor

Recorder

EXHIBIT A

DESCRIPTION OF PROJECT

Design, acquisition, construction and equipping of additions, betterments and improvements to the waterworks system of the Corporation of Shepherdstown including without limitation the renovation and improvement of the water treatment plant and related facilities.

EXHIBIT B

NOTICE OF PUBLIC HEARING

**CORPORATION OF SHEPHERDSTOWN
NOTICE OF PUBLIC HEARING
ON WATER BOND ORDINANCE**

A public hearing will be held on the following entitled Ordinance at a [regular/special]meeting of the Council of the Corporation of Shepherdstown to be held on _____, _____, 2021, at [_____ p.m.], in the Council Chambers at the Shepherdstown Town Hall, 104 North King Street, Shepherdstown, West Virginia, and at such hearing any person interested may appear before the Council and present protests, all objections and suggestions shall be heard by the Council and it shall then take such actions as it shall deem proper in the premises upon an Ordinance entitled:

ORDINANCE AUTHORIZING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATERWORKS SYSTEM OF THE CORPORATION OF SHEPHERDSTOWN, INCLUDING CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATER TREATMENT PLANT, AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CORPORATION OF SHEPHERDSTOWN OF WATER REVENUE BONDS, SERIES 2021, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$1,250,000.00); DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE SERIES 2021 BONDS; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES OF AND SECURITIES FOR THE HOLDERS OF THE SERIES 2021 BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; AND PROVIDING WHEN THIS ORDINANCE SHALL TAKE EFFECT

The above-entitled Ordinance was enacted by the Council of the Corporation of Shepherdstown on _____, 2021.

The above quoted title of the Ordinance describes generally the contents thereof and the purposes of the Bond issue contemplated thereby. The Corporation of Shepherdstown contemplates the issuance of the Bonds described in said Ordinance. The proceeds of the Bonds will be used to provide permanent financing the costs of the design, acquisition, construction and equipping of certain additions, betterments and improvements to the waterworks system for the

Corporation of Shepherdstown including, the renovation and improvement of the water treatment plant and related facilities. The Bonds are payable solely from revenues derived from the ownership and operation of the waterworks system of the Corporation of Shepherdstown. No taxes may at any time be levied for the payment of the Bonds or the interest thereon.

A certified copy of the above-entitled Ordinance is on file at the office of the Town Clerk of the Corporation of Shepherdstown in the Shepherdstown Town Hall, 104 North King Street, Shepherdstown, West Virginia, for review by interested parties during regular office hours.

Following the said public hearing, the Council intends to enact said Ordinance on final reading and put said Ordinance into effect.

Dated: _____, 2021.

/s/Lori Robertson, Recorder

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of the CORPORATION OF SHEPHERDSTOWN on the ____ day of _____, 2021, and passed on third and final reading and put into effect following a public hearing held on _____, 2021.

Dated: _____, 2021.

Recorder

[SEAL]

FINANCE COMMITTEE MINUTES

Friday, June 25, 2021

10:45 a.m.

Town Hall

1. Call to order at 10:45 a.m.
2. Members present: Mayor Auxer, Jim Ford
3. Members absent: Cheryl Roberts
4. Staff present: Amy Boyd, Debbi Nickerson
5. Reading/approval of minutes – Motion by J. Ford to approve the minutes.
Unanimous.
6. Unfinished Business
 - a. Hotel/Motel Tax- discussion ensued regarding the allocations of the Hotel/Motel Tax. D. Nickerson reported that the WV State Auditors Office requires the Town's portion of the Hotel/Motel Tax be placed entirely in the Parks and Recreation budget. J. Ford reviewed the Town's Hotel/Motel Ordinance which provides permissible expenditures. Further research will be done regarding the WV State Auditor's Office budget requirement.
7. New Business
 - a. Status of American Relief Plan- D. Nickerson has completed the application. Mayor Auxer reported a total of \$700,000 in losses due the COVID 19. The funds will be placed in the areas of loss.
8. Financial Reporting
9. Mayor's Report
10. Meeting adjourned at 11:18 a.m.

Respectfully submitted by,

Amy L. Boyd, Town Clerk

FINANCIAL STATEMENTS for Council ALL FUNDS

July 1, 2020 - June 30, 2021

Inclusions:

GENERAL FUND & COAL SEVERANCE FUND

1. General Fund Summarized Balance Sheet
2. General Fund Summarized Budget vs Actual
3. General Fund Summarized Budget vs Actual Operating Income
and Expenses
4. VL Reserved Funds
5. Coal Severance Balance Sheet
6. Coal Severance Budget vs Actual
7. General Fund & Coal Severance Fund Footnote page

HOUSING AUTHORITY FUND

1. Summarized Balance Sheet
2. Summarized Income/Loss
3. Footnote Page

WATER FUND

1. Summarized Balance Sheet
2. Summarized Budget vs Actual

SEWER FUND

1. Summarized Balance Sheet
2. Summarized Budget vs Actual

PAYROLL ACCOUNT (Internal Service Fund)

1. Balance Sheet
2. Income/Expense Statement

General Fund
Balance Sheet-Summarized
As of June 30, 2021

	<u>Jun 30, 21</u>
ASSETS	
Current Assets	
Checking/Savings	
GENERAL FUNDS BANKING	1,008,952.26
PAYROLL CASH FUND (JSB)	826.29
RESERVED FUNDS BANKING	3,724,378.63
RESTRICTED FUNDS BANKING	<u>134,186.23</u>
Total Checking/Savings	4,868,343.41
Accounts Receivable	
General Funds A/R	<u>39,964.25</u>
Total Accounts Receivable	39,964.25
Other Current Assets	
Other Current Assets	<u>56,819.09</u>
Total Other Current Assets	<u>56,819.09</u>
Total Current Assets	4,965,126.75
Fixed Assets	
General Fixed Assets (Gov-Wide)	<u>5,437,696.51</u>
Total Fixed Assets	<u>5,437,696.51</u>
TOTAL ASSETS	<u>10402823.26</u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
244.01 - General Fund Payable - Payroll	(26,300.38)
General Funds A/P	<u>23,506.47</u>
Total Accounts Payable	(2,793.91)
Credit Cards	
Credit Cards Payable	<u>55,048.78</u>
Total Credit Cards	55,048.78
Other Current Liabilities	
280.4 - DI - Changes in Assuptions	25,685.00
140.02 - DO - Change in Proportionate	(16,430.00)
292.4 - PPA-Beginning Net OPEB Obli...	313,932.00
292.3 - PPA-2017 RHBT Payment	(23,705.00)
292.2 - PPA-Beginning OPEB Liability	(276,168.79)
290.5 - Restricted for Equipment	2,731.48
280.3 - DI-Changes/Differences Prop. S	15,979.00
280.2 - DI-Difference Proj/Actual Earn	4,911.00
280.1 - DI-Different Expected/Actual I	3,813.00
250.1 - Net OPEB Liability	262,044.00
140.01 - DO-RHBT Payments Subsequ...	(24,060.26)
260 - Accrued Compensated Absences	32,013.11
Gen Fund Other Current Liab.	<u>57,075.14</u>

07/09/21

General Fund
Balance Sheet-Summarized
As of June 30, 2021

	<u>Jun 30, 21</u>
Total Other Current Liabilities	<u>377,819.68</u>
Total Current Liabilities	<u>430,074.55</u>
Total Liabilities	430,074.55
Equity	
Fund Balance	5,466,470.38
Net Assets (GL#298) (Quickbooks Accou...	3,938,098.61
Net Income	<u>568,179.72</u>
Total Equity	<u>9,972,748.71</u>
TOTAL LIABILITIES & EQUITY	<u>10402823.26</u>

C2

General Fund
Budget vs. Actual-Summarized
 July 2020 through June 2021

	Jul '20 - Jun 21	Budget	\$ Over Bu...	% of Budget
Income				
Property Tax Revenue	231,987.82	223,004.00	8,983.82	104.0%
Other Tax Revenues	549,324.79	596,300.00	(46,975.21)	92.1%
License & Permit Revenue	23,268.73	13,000.00	10,268.73	179.0%
Planning Commission Revenue (Planning & Zoning)	200.00	100.00	100.00	200.0%
Hotel Occupancy Tax Revenue	69,838.44	100,209.00	(30,370.56)	69.7%
Parking Fee Revenue	81,520.59	187,000.00	(105,479.41)	43.6%
Court Fee Revenues	60,817.50	72,700.00	(11,882.50)	83.7%
Rents Revenue	43,201.00	43,702.00	(501.00)	98.9%
Refuse Collections Revenue	187,101.20	193,300.00	(6,198.80)	96.8%
Other Revenues	316,274.61	119,800.00	196,474.61	264.0%
Video Lottery Proceeds Revenue	287,283.05	294,600.00	(7,316.95)	97.5%
Gaming Income-Table Games	66,466.85	100,300.00	(33,833.15)	66.3%
Grant Revenue	20,409.95	0.00	20,409.95	100.0%
Pass-Through Grant Revenue	0.00	0.00	0.00	0.0%
Total Income	1,937,694.53	1,944,015.00	(6,320.47)	99.7%
Gross Profit	1,937,694.53	1,944,015.00	(6,320.47)	99.7%
Expense				
Regional Council Dues	641.58	900.00	(258.42)	71.3%
Town Government Salaries/Fringe	10,525.94	10,540.00	(14.06)	99.9%
Town Elections	3,861.77	0.00	3,861.77	100.0%
City Hall-Employee Salary/Fring	90,267.48	102,283.00	(12,015.52)	88.3%
City Hall Accounting/Audit	13,757.98	27,000.00	(13,242.02)	51.0%
City Hall Legal Fees	14,989.33	22,000.00	(7,010.67)	68.1%
City Hall Utilities	10,693.01	16,500.00	(5,806.99)	64.8%
City Hall Insurance	20,856.02	35,200.00	(14,343.98)	59.3%
City Hall Bldg/Equip Expenses	4,610.96	21,960.00	(17,349.04)	21.0%
General Fund Donations	11,490.00	11,000.00	490.00	104.5%
City Hall Other Expenses	35,313.26	37,600.00	(2,286.74)	93.9%
Public Works Expenses (shared by Town/Water/Sewer)	0.00	5,000.00	(5,000.00)	0.0%
Christmas in Shepherdstown Exp. (\$2000 alloc. from Gen Fund)	0.00	0.00	0.00	0.0%
Planning Commission Expenses (Planning & Zoning)	93,647.18	92,966.00	681.18	100.7%
City Hall Grant Expenses	9,691.03	0.00	9,691.03	100.0%
City Hall Video Lottery Expense	22,426.11	13,900.00	8,526.11	161.3%
Tobacco Warehouse Expense (Include with Town Hall)	5,820.63	5,200.00	620.63	111.9%
City Hall Contingency Expenses (Up to 10% of budget allowed)	0.00	63,456.00	(63,456.00)	0.0%
Police Salaries & Fringe	479,993.87	558,499.00	(78,505.13)	85.9%
Police Contractual Svc	29,336.62	40,600.00	(11,263.38)	72.3%
Police Vehicle Expenses	8,450.88	17,000.00	(8,549.12)	49.7%
Police Utilities & Rent	13,894.44	34,000.00	(20,105.56)	40.9%
Police Equip. Purchase & Repair	15,013.34	49,550.00	(34,536.66)	30.3%

C3

General Fund
Budget vs. Actual-Summarized
 July 2020 through June 2021

	Jul '20 - Jun 21	Budget	\$ Over Bu...	% of Budget
Police Remittance Fees	7,455.00	7,700.00	(245.00)	96.8%
Police Other Expenses	55,204.03	79,100.00	(23,895.97)	69.8%
Police Dept. Grant Expenses	185.19	1,400.00	(1,214.81)	13.2%
Streets Salaries & Fringe	77,996.76	76,968.00	1,028.76	101.3%
Streets Vehicle Expenses	3,739.01	7,500.00	(3,760.99)	49.9%
Streets Utilities	17,970.40	19,750.00	(1,779.60)	91.0%
Streets Maintenance & Equipment	3,273.60	20,800.00	(17,526.40)	15.7%
Streets Other Expenses	17,613.25	23,000.00	(5,386.75)	76.6%
Streets Tree Maintenance	13,403.00	40,000.00	(26,597.00)	33.5%
Sanitation Salaries & Fringe	106,382.63	114,820.00	(8,437.37)	92.7%
Sanitation Equip Repair & Maint	794.76	1,000.00	(205.24)	79.5%
Sanitation Dumping Fees	46,729.36	60,000.00	(13,270.64)	77.9%
Sanitation Vehicle Expenses	8,525.33	21,000.00	(12,474.67)	40.6%
Sanitation Other Expenses	62,264.66	70,900.00	(8,635.34)	87.8%
Sanitation Dept. Grant Expenses	0.00	0.00	0.00	0.0%
Parks Salaries & Fringe	3,769.78	7,170.00	(3,400.22)	52.6%
Parks Vehicle Expenses	300.77	600.00	(299.23)	50.1%
Parks Maintenance	2,836.14	8,800.00	(5,963.86)	32.2%
Parks Equipment & Supplies	932.56	14,000.00	(13,067.44)	6.7%
Parks Utilities	65.00	150.00	(85.00)	43.3%
Visitors Center Expenses	44,792.15	70,146.00	(25,353.85)	63.9%
General Gov-Capital Projects-GF	0.00	20,000.00	(20,000.00)	0.0%
Public Safety-Cap Projects-VL	0.00	49,000.00	(49,000.00)	0.0%
Streets Cap Projects-VL	0.00	65,057.00	(65,057.00)	0.0%
Hlth/Sanit-Capital Project-GF	0.00	0.00	0.00	0.0%
Total Expense	1,369,514.81	1,944,015.00	(574,500.19)	70.4%
Net Income	568,179.72	0.00	568,179.72	100.0%

C4

Summarized Budget vs Actual Operating Income and Expenses

Accrual Basis

Summarized by Department

	Jul '20 - Jun 21	Jul '19 - Jun 20	\$ Change
Income			
Property Tax Revenue	231,987.82	207,525.47	24,462.35
Other Tax Revenues	549,324.79	652,976.22	(103,651.43)
License & Permit Revenue	23,268.73	15,786.18	7,482.55
Planning Commission Revenue (Planning & Zoning)	200.00	400.00	(200.00)
Hotel Occupancy Tax Revenue	69,838.44	70,081.11	(242.67)
Parking Fee Revenue	81,520.59	159,602.27	(78,081.68)
Court Fee Revenues	60,817.50	59,176.39	1,641.11
Rents Revenue	43,201.00	43,701.00	(500.00)
Refuse Collections Revenue	187,101.20	185,486.90	1,614.30
Other Revenues	316,274.61	146,669.03	169,605.58
Video Lottery Proceeds Revenue	287,283.05	278,283.75	8,999.30
Gaming Income-Table Games	66,466.85	82,072.04	(15,605.19)
Grant Revenue	20,409.95	2,537.45	17,872.50
Total Income	1,937,694.53	1,904,297.81	33,396.72
Gross Profit	1,937,694.53	1,904,297.81	33,396.72
Expense			
Regional Council Dues	641.58	641.58	0.00
Town Government Salaries/Fringe	10,525.94	10,414.36	111.58
Town Elections	3,861.77	0.00	3,861.77
City Hall-Employee Salary/Fring	90,267.48	82,643.28	7,624.20
City Hall Accounting/Audit	13,757.98	27,753.08	(13,995.10)
City Hall Legal Fees	14,989.33	14,842.02	147.31
City Hall Utilities	10,693.01	12,424.08	(1,731.07)
City Hall Insurance	20,856.02	30,146.16	(9,290.14)
City Hall Bldg/Equip Expenses	4,610.98	3,324.48	1,286.48
General Fund Donations	11,490.00	11,800.00	(310.00)
City Hall Other Expenses	35,313.26	40,546.71	(5,233.45)
Christmas in Shepherdstown Exp. (\$2000 alloc. from Gen ...	0.00	2,130.00	(2,130.00)
Planning Commission Expenses (Planning & Zoning)	93,647.18	88,558.19	5,088.99
City Hall Grant Expenses	9,691.03	0.00	9,691.03
City Hall Video Lottery Expense	22,426.11	38,590.99	(16,164.88)
Tobacco Warehouse Expense (Include with Town Hall)	5,820.63	165.93	5,654.70
Police Salaries & Fringe	479,993.87	440,587.78	39,406.09
Police Contractual Svc	29,336.62	19,835.10	9,501.52
Police Vehicle Expenses	8,450.88	7,938.37	512.51
Police Utilities & Rent	13,894.44	15,181.42	(1,286.98)
Police Equip. Purchase & Repair	15,013.34	14,380.86	632.48
Police Remittance Fees	7,455.00	7,105.00	350.00
Police Other Expenses	55,204.03	51,821.82	3,382.21
Police Dept. Grant Expenses	185.19	207.76	(22.57)
Streets Salaries & Fringe	77,996.76	72,907.30	5,089.46
Streets Vehicle Expenses	3,739.01	4,048.46	(309.45)
Streets Utilities	17,970.40	18,007.38	(36.98)
Streets Maintenance & Equipment	3,273.60	2,799.94	473.66
Streets Other Expenses	17,613.25	14,890.23	2,723.02
Streets Tree Maintenance	13,403.00	24,141.54	(10,738.54)

C5

Summarized Budget vs Actual Operating Income and Expenses

	Jul '20 - Jun 21	Jul '19 - Jun 20	\$ Change
Sanitation Salaries & Fringe	106,382.63	91,475.43	14,907.20
Sanitation Equip Repair & Maint	794.76	452.86	341.90
Sanitation Dumping Fees	46,729.36	59,583.52	(12,854.16)
Sanitation Vehicle Expenses	8,525.33	11,925.55	(3,400.22)
Sanitation Other Expenses	62,264.66	56,349.78	5,914.88
Sanitation Dept. Grant Expenses	0.00	1,261.13	(1,261.13)
Parks Salaries & Fringe	3,769.78	2,574.90	1,194.88
Parks Vehicle Expenses	300.77	348.95	(48.18)
Parks Maintenance	2,836.14	21,280.13	(18,443.99)
Parks Equipment & Supplies	932.56	664.07	268.49
Parks Utilities	65.00	53.30	11.70
Visitors Center Expenses	44,792.15	46,315.61	(1,523.46)
Total Expense	1,369,514.81	1,350,119.05	19,395.76
Net Income	568,179.72	554,178.76	14,000.96

CG

General Fund
VL Reserved Funds
As of June 30, 2021

Type	Date	Num	Name	Memo	Split	Amount	Balance
RESERVED FUNDS BANKING							3,403,507.60
101.020 · Video Lottery NT (JSB)							2,904,564.56
VL NT-Operating Cash							1,940,314.07
Deposit	07/03/2020		Deposit	109.01 · Acc...		6,528.53	1,946,842.60
Deposit	09/19/2020		Deposit	397.001 · R...		287.44	1,947,130.04
Deposit	10/02/2020		Deposit	109.01 · Acc...		6,397.84	1,953,527.88
Deposit	10/03/2020		Deposit	397.001 · R...		6,387.08	1,959,914.96
Deposit	10/10/2020		Deposit	397.001 · R...		6,813.12	1,966,728.08
Deposit	10/17/2020		Deposit	397.001 · R...		6,536.93	1,973,265.01
Deposit	10/24/2020		Deposit	397.001 · R...		6,541.23	1,979,806.24
Deposit	11/07/2020		Deposit	397.001 · R...		6,308.26	1,986,114.50
Deposit	11/09/2020		Deposit	109.01 · Acc...		6,942.52	1,993,057.02
Deposit	11/14/2020		Deposit	397.001 · R...		6,300.55	1,999,357.57
Deposit	11/21/2020		Deposit	397.001 · R...		4,483.19	2,003,840.76
Deposit	12/04/2020		Deposit	109.01 · Acc...		4,956.68	2,008,797.44
Deposit	12/05/2020		Deposit	397.001 · R...		4,749.72	2,013,547.16
Deposit	12/18/2020		Deposit	397.001 · R...		4,509.05	2,018,056.21
Deposit	12/28/2020		Deposit	397.001 · R...		3,851.84	2,021,908.05
Deposit	01/04/2021		Deposit	397.001 · R...		5,250.96	2,027,159.01
Deposit	01/11/2021		Deposit	397.001 · R...		7,400.45	2,034,559.46
Deposit	01/19/2021		Deposit	397.001 · R...		4,690.68	2,039,250.14
Deposit	01/23/2021		Deposit	397.001 · R...		5,537.90	2,044,788.04
Deposit	01/25/2021		Deposit	397.001 · R...		4,948.24	2,049,736.28
Deposit	02/06/2021		Deposit	397.001 · R...		4,899.38	2,054,635.66
Deposit	02/08/2021		Deposit	109.01 · Acc...		5,278.32	2,059,913.98
Deposit	02/13/2021		Deposit	397.001 · R...		4,471.11	2,064,385.09
Deposit	02/20/2021		Deposit	397.001 · R...		5,718.84	2,070,103.93
Deposit	03/05/2021		Deposit	109.01 · Acc...		6,666.90	2,076,770.83
Deposit	03/12/2021		Deposit	397.001 · R...		5,866.76	2,082,637.59
Deposit	03/13/2021		Deposit	397.001 · R...		6,459.71	2,089,097.30
Deposit	03/26/2021		Deposit	397.001 · R...		6,663.61	2,095,760.91
Deposit	04/02/2021		Deposit	109.01 · Acc...		7,140.26	2,102,901.17
Deposit	04/09/2021		Deposit	397.001 · R...		6,774.45	2,109,675.62
Deposit	04/10/2021		Deposit	397.001 · R...		6,092.47	2,115,768.09
Deposit	04/17/2021		Deposit	397.001 · R...		5,629.02	2,121,397.11
Deposit	04/24/2021		Deposit	397.001 · R...		5,859.21	2,127,256.32
Deposit	05/01/2021		Deposit	397.001 · R...		6,356.53	2,133,612.85
Deposit	05/08/2021		Deposit	397.001 · R...		5,733.43	2,139,346.28
Deposit	05/15/2021		Deposit	397.001 · R...		5,221.93	2,144,568.21
Deposit	05/22/2021		Deposit	397.001 · R...		6,351.50	2,150,919.71
General Journal	05/27/2021		Tobacco W...	101.011 · G...		(1,500.00)	2,149,419.71
Deposit	06/05/2021		Deposit	397.001 · R...		8,026.49	2,157,446.20
Deposit	06/07/2021		Deposit	109.01 · Acc...		7,480.28	2,164,926.48
Deposit	06/12/2021		Deposit	397.001 · R...		7,137.92	2,172,064.40
Deposit	06/19/2021		Deposit	397.001 · R...		7,585.75	2,179,650.15
Total VL NT-Operating Cash						239,336.08	2,179,650.15
VL-NT-Cap.-Tobacco Whs Impr.							86,132.12
Total VL-NT-Cap.-Tobacco Whs Impr.							86,132.12
VL NT-Cap. Public Works Equip							6,568.00
Total VL NT-Cap. Public Works Equip							6,568.00
VL NT-Capital-Police Equip.							35,582.47
Total VL NT-Capital-Police Equip.							35,582.47
VL NT Cap-Infrastructure-ALL (Budgeted Table Games Revenue)							835,967.90
Total 101.020 · Video Lottery NT (JSB)						239,336.08	3,143,900.64
101.021 · Video Lottery LVL- Operating							21,110.65
VL LVL-Operating Cash							21,110.65
Deposit	07/27/2020		Deposit	109.01 · Acc...		523.03	21,633.68
Deposit	08/26/2020		Deposit	109.01 · Acc...		492.58	22,126.26
Deposit	09/28/2020		Deposit	109.01 · Acc...		500.68	22,626.94
Deposit	10/27/2020		Deposit	109.01 · Acc...		497.94	23,124.88
Deposit	11/27/2020		Deposit	397.02 · Ne...		522.58	23,647.46
Deposit	12/28/2020		Deposit	397.02 · Ne...		507.19	24,154.65
Deposit	01/26/2021		Deposit	109.01 · Acc...		532.52	24,687.17
Deposit	02/26/2021		Deposit	109.01 · Acc...		579.56	25,266.73
Deposit	03/26/2021		Deposit	397.02 · Ne...		530.48	25,797.21
Deposit	04/26/2021		Deposit	109.01 · Acc...		731.06	26,528.27

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General Fund
VL Reserved Funds
As of June 30, 2021

Type	Date	Num	Name	Memo	Split	Amount	Balance
Deposit	05/27/2021			Deposit	109.01 · Acc...	717.04	27,245.31
Total VL LVL-Operating Cash						6,134.66	27,245.31
Total 101.021 · Video Lottery LVL- Operating						6,134.66	27,245.31
101.022 · Video Lottery-Table Games (Restricted-Infrastr./Cap Impr.)							362,832.39
VL-Table Games-All (Restricted Funds)							362,832.39
Deposit	07/09/2020			Deposit	109.01 · Acc...	20.18	362,852.57
Deposit	07/10/2020			Deposit	109.01 · Acc...	2,363.92	365,216.49
Deposit	07/16/2020			Deposit	109.01 · Acc...	6,573.94	371,790.43
Deposit	08/17/2020			Deposit	109.01 · Acc...	47.98	371,838.41
Deposit	08/17/2020			Deposit	109.01 · Acc...	4,460.02	376,298.43
Deposit	09/16/2020			Deposit	109.01 · Acc...	43.59	376,342.02
Deposit	09/16/2020			Deposit	109.01 · Acc...	5,409.36	381,751.38
Deposit	10/16/2020			Deposit	109.01 · Acc...	5,278.96	387,030.34
Deposit	11/16/2020			Deposit	109.01 · Acc...	5,863.63	392,893.97
Deposit	12/16/2020			Deposit	109.01 · Acc...	5,482.71	398,376.68
Deposit	12/16/2020			Deposit	109.01 · Acc...	27.25	398,403.93
Deposit	01/19/2021			Deposit	109.01 · Acc...	5,973.31	404,377.24
Deposit	01/19/2021			Deposit	109.01 · Acc...	32.32	404,409.56
Deposit	02/16/2021			Deposit	109.01 · Acc...	34.47	404,444.03
Deposit	02/16/2021			Deposit	109.01 · Acc...	6,862.18	411,306.21
Deposit	03/16/2021			Deposit	Table Game...	39.88	411,346.09
Deposit	03/16/2021			Deposit	Table Game...	5,339.15	416,685.24
Deposit	04/16/2021			Deposit	109.01 · Acc...	6,293.80	422,979.04
Deposit	04/16/2021			Deposit	109.01 · Acc...	28.82	423,007.86
Deposit	05/17/2021			Deposit	109.01 · Acc...	6,834.47	429,842.33
Deposit	05/17/2021			Deposit	109.01 · Acc...	24.60	429,866.93
Deposit	06/16/2021			Deposit	109.02 · Acc...	8,365.75	438,232.68
Total VL-Table Games-All (Restricted Funds)						75,400.29	438,232.68
Total 101.022 · Video Lottery-Table Games (Restricted-Infrastr./Cap Impr.)						75,400.29	438,232.68
101.07 · Contingency Fund							115,000.00
Contingency Fund (Can be 10% of total budget)							115,000.00
Total Contingency Fund (Can be 10% of total budget)							115,000.00
Total 101.07 · Contingency Fund							115,000.00
Total RESERVED FUNDS BANKING						320,871.03	3,724,378.63
TOTAL						320,871.03	3,724,378.63

C8

Corporation of Shepherdstown-Coal Severance Fund

07/09/21

Balance Sheet

As of June 30, 2021

	<u>Jun 30, 21</u>
ASSETS	
Current Assets	
Checking/Savings	
101 - Coal Severance Checking	<u>11,119.18</u>
Total Checking/Savings	<u>11,119.18</u>
Total Current Assets	<u>11,119.18</u>
TOTAL ASSETS	<u>11,119.18</u>
LIABILITIES & EQUITY	
Equity	
390 - Retained Earnings	11,157.00
Net Income	<u>-37.82</u>
Total Equity	<u>11,119.18</u>
TOTAL LIABILITIES & EQUITY	<u>11,119.18</u>

C9

Budget vs. Actual

July 1, 2021

	<u>Jul 1, 21</u>	<u>Budget</u>	<u>\$ Over Budg...</u>	<u>% of Budget</u>
Income				
310 · Coal Severance Tax	0.00	0.00	0.00	0.0%
380 · Restricted Fund Interest	0.00	0.00	0.00	0.0%
Total Income	0.00	0.00	0.00	0.0%
Expense				
700.45 · Police Uniforms	0.00	0.00	0.00	0.0%
700 · Police Dept. Equipment Expen...	0.00	0.00	0.00	0.0%
502 · Void Check	0.00	0.00	0.00	0.0%
Total Expense	0.00	0.00	0.00	0.0%
Net Income	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.0%</u>

C10

Revenue Item	Vendor	Revenue to Date	Budgeted Amount
Purchase Card Reimbursement	State of WV	7,362.93	20,000.00
TOTAL			20,000.00

FOR THE GENERAL FUND & COAL SEVERANCE FUND (on modified accrual basis):

GENERAL FUND-Budgeted Revenue	Budget Amount	Revenue to Date	Balance Available
General Operating Revenue			
Planning Commission revenue	100.00	200.00	(100.00)
Refuse Revenue-Special Pickup	1,000.00	405.00	595.00
Banner Hanging Fees	500.00		500.00
			-
Tax Revenue			-
Wine/Liquor/Private Club Tax	100,695.39	120,097.86	(19,402.47)
Municipal Sale and Use Tax	307,060.26	305,315.23	1,745.03
			-
			-
In-House Grants			-
Tobacco Warehouse Grant		-	-
Electronic Recycling		-	-
Recycling Grant		-	-
Safety Grant		-	-
DUI		-	-
WV DEP Grant		(1,081.11)	1,081.11
			-
Pass-Thru Grants-New			-
Grant for Gutters		14,900.00	(14,900.00)
GIS		5,218.89	(5,218.89)
Friends of Shep. Riverfront #13LEDA0429			-
Shep. Day Care #13LEDA0052		-	-
Shep. Day Care #13LEDA0441		-	-

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Corporation of Shepherdstown **PAGE 2**
General Operating and Coal Severance
Footnotes to Financial Statements **June-21**

GENERAL FUND-Budgeted Operat	Budget Amount	Expenses to Date	Balance Available
Regional Development Authority	900.00	641.58	258.42
Mayor Office	2,200.00	2,200.00	-
Council Expense	6,650.00	6,650.00	-
Recorder Office	1,690.00	1,690.00	-
Election Supplies	-	3,861.77	(3,861.77)
Postage Machine	600.00	684.00	(84.00)
Dues/Memberships	2,500.00	1,472.01	1,027.99
City Hall Commerical Insurance	35,000.00	20,856.02	14,143.98
City Hall Christmas in Shepherdstown			-
City Hall Christmas in Shepherdstown-from Gen. Funds			-
Video Lottery Unallocated	400.00		400.00
Video Lottery Donation to Fire Depart	8,000.00	6,889.11	1,110.89
Covid - 19		50.00	(50.00)
Video Lottery Tobacco Warehouse Assessment			-
Video Lottery-Library Restoration and	5,000.00	15,487.00	(10,487.00)
Video Lottery-WV State Rail Authority			-
Video Lottery-Water Plant Camera System			-
Video Lottery-Economic Impact Study			-
Video Lottery-Bridge Lights			-
Video Lottery - Skid Loader			
Total Unallocated Video Lottery	13,400.00	22,426.11	(9,026.11)
FUTURE VIDEO LOTTERY EXPENSES			
total amount of Video Lottery in JSB	2,179,650.15		
Video Lottery Unallocated:			
Contingency Fund	115,000.00		
Limited Vidio Lotery	27,245.31		
treatment of 70 Green Ash Trees			
Video Lottery Table Games			
total amount in VL NT Cap Infrastructure	964,250.49		
total amount in VL-Table Games	438,232.68		
Total	3,724,378.63		

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Corporation of Shepherdstown **PAGE 3**
General Operating and Coal Severance
Footnotes to Financial Statements **June-21**

GENERAL FUND-Budgeted Operati	Budget Amount	Expenses to Date	Balance Available
			-
Tobacco Warehouse Flood Insurance	4,000.00	5,654.00	(1,654.00)
Police Commerical Insurance	45,000.00	44,410.09	589.91
Streets Commerical Insurance	7,500.00	7,457.35	42.65
Sanitaiton Commerical Insurance	9,000.00	8,285.14	714.86
Parks Commerical Insurance	800.00	330.94	469.06
			-
			-
			-
			-
Budgeted Capital Expenditures-Ge	Budget Amount	Expenses to Date	Balance Available
Public Works Equipment-GF			
Gen Gov Bldgs/Impr - VL	20,000.00	-	20,000.00
Budgeted Capital Expenditures-Vic	Budget Amount	Expenses to Date	Balance Available
Public Safety - VL (Police)	49,000.00	-	49,000.00
			-
			-
			-
			-
Budgeted Capital Expenditures-Ge	Budget Amount	Expenses to Date	Balance Available
CAPITAL GRANT EXPENDITURES			
Tobacco Warehouse Improvement-not yet		-	-
			-

COAL SEVERANCE-Budgeted Rev	Budget Amount	Revenue to Date	Balance Available
Coal Severance Tax	5,000.00	2,279.17	2,720.83

COAL SEVERANCE-Budgeted Exp	Budget Amount	Expenses to Date	Balance Available
Police Equipment	6,900.00	2,460.00	4,440.00

C13

Housing Authority Fund
Balance Sheet
As of June 30, 2021

	<u>Jun 30, 21</u>
ASSETS	
Current Assets	
Checking/Savings	
100.00 · Housing Authority Check...	<u>1,513.65</u>
Total Checking/Savings	<u>1,513.65</u>
Total Current Assets	<u>1,513.65</u>
TOTAL ASSETS	<u>1,513.65</u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
200.02 · EVCF Endowment Fund	<u>-37,496.10</u>
Total Accounts Payable	<u>-37,496.10</u>
Total Current Liabilities	<u>-37,496.10</u>
Total Liabilities	<u>-37,496.10</u>
Equity	
Fund Balance	<u>39,668.89</u>
Net Income	<u>-659.14</u>
Total Equity	<u>39,009.75</u>
TOTAL LIABILITIES & EQUITY	<u>1,513.65</u>

C14

Housing Authority Fund
Income & Loss
July 2020 through June 2021

	<u>Jul '20 - Jun 21</u>
Income	
410.00 · Interest Income on Checking	<u>24.86</u>
Total Income	24.86
Expense	
455.00 · Home Maint. & Clean up	
455.01 · Sidewalk Assistance (Sidewalk Assista...	<u>684.00</u>
Total 455.00 · Home Maint. & Clean up	<u>684.00</u>
Total Expense	<u>684.00</u>
Net Income	<u><u>-659.14</u></u>

CIS

Corporation of Shepherdstown
Housing Authority

As of	June-21
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Footnotes to Financial Statements

*Over \$1500 exists to assist low-income residents
per the Housing Authority Ordinance.*

C16

Shepherdstown Waterworks
Balance Sheet-Summarized
 As of June 30, 2021

	<u>Jun 30, 21</u>
ASSETS	
Current Assets	
Checking/Savings	
GENERAL FUNDS BANKING	1,015,187.79
RESERVED FUNDS BANKING	1,048,413.26
RESTRICTED FUNDS BANKING	3,511,788.11
Total Checking/Savings	5,575,389.16
Accounts Receivable	
141 · A/R, Water Customer Billing	158,252.10
143 · Allow. for Doubtful Accounts	(5,000.00)
Total Accounts Receivable	153,252.10
Other Current Assets	
253.20 · Deferred Inflows	(46,241.91)
162 · Prepaid Expenses	(1,102.47)
Total Other Current Assets	(47,344.38)
Total Current Assets	5,681,296.88
Fixed Assets	
105 · Fixed Asset-Constr. In Progress	3,365,156.48
Fixed Assets (All Funds)	10232895.83
Fixed Asset Adjustments (Accum. Depr. & Amort.)	(4,286,197.80)
Total Fixed Assets	9,311,854.51
TOTAL ASSETS	<u>14993151.39</u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Other Current Liabilities	
235 · Customer Dep/Int Pay.-Cash Acct	55,310.52
236 · Cust Dep/Int Pay-DR/CR Acct	29,154.11
238 · Accrued Interest Payable	34,527.07
241 · Misc. Current/Accrued Liab.	211,202.30
221 · Bond Payable-Current	200,903.83
Total Other Current Liabilities	531,097.83
Total Current Liabilities	531,097.83
Long Term Liabilities	
186.20 · Deferred Outflows	(7,643.88)
221 · Bond Payable-Long term	6,191,535.17
Total Long Term Liabilities	6,183,891.29
Total Liabilities	6,714,989.12

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Shepherdstown Waterworks
Balance Sheet-Summarized
As of June 30, 2021

	<u>Jun 30, 21</u>
Equity	
215 - Retained Earnings	6,815,111.81
271 - Contrib. in aid of Construction (Capacity Fees thru 6/3...	1,069,125.91
Net Income	<u>393,924.55</u>
Total Equity	<u>8,278,162.27</u>
TOTAL LIABILITIES & EQUITY	<u>14993151.39</u>

C18

Shepherdstown Waterworks
Budget vs Actual-Summarized
July 2020 through June 2021

	Jul '20 - Ju...	Budget	\$ Over Bud...	% of Budget
Ordinary Income/Expense				
Income				
419 · Water Interest Income	34,545.05	48,000.00	(13,454.95)	72.0%
461 · Water Metered Revenue (including penalties ...	1,590,856.26	1,750,000.00	(159,143.74)	90.9%
474 · Other Water Revenues	6,737.03	43,000.00	(36,262.97)	15.7%
Total Income	1,632,138.34	1,841,000.00	(208,861.66)	88.7%
Expense				
521 · Employee Screening (Pre-Employment Screen...	0.00	250.00	(250.00)	0.0%
601 · Water Salaries & Wages	439,821.50	436,170.00	3,651.50	100.8%
604 · Employee Pensions & Benefits	97,436.14	111,000.00	(13,563.86)	87.8%
401.1 · Water Billing Expenses	11,845.10	11,900.00	(54.90)	99.5%
401.2 · Water Administration	49,517.85	58,680.00	(9,162.15)	84.4%
401.3 · Water Utility Billing (Sewer Usage)	137,700.82	171,300.00	(33,599.18)	80.4%
401.4 · Water Plant Expenses	128,950.71	339,000.00	(210,049.29)	38.0%
403 · Water Depreciation Expense	177,125.76	190,000.00	(12,874.24)	93.2%
408 · Taxes-Other than Income	45,899.26	44,000.00	1,899.26	104.3%
427 · Interest Expense	42,330.76	52,000.00	(9,669.24)	81.4%
615 · Purchased Power	44,719.84	50,100.00	(5,380.16)	89.3%
618 · Chemicals	41,958.62	70,000.00	(28,041.38)	59.9%
631 · Contractual Svc-Engineering	23,444.74	205,000.00	(181,555.26)	11.4%
632 · Contractual Svc-Accounting	15,125.00	6,000.00	9,125.00	252.1%
633 · Contractual Svc-Legal	6,565.28	5,000.00	1,565.28	131.3%
635 · Contractual Svc-Testing	20,639.32	49,000.00	(28,360.68)	42.1%
636 · Contractual Svc-Other	17,370.47	20,000.00	(2,629.53)	86.9%
650 · Transportation Expenses	5,276.54	30,700.00	(25,423.46)	17.2%
657 · Insurance-General Liability	30,863.21	30,000.00	863.21	102.9%
659 · Insurance-Other	6,053.04	5,000.00	1,053.04	121.1%
660 · Advertising Expense	128.94	2,500.00	(2,371.06)	5.2%
675 · Administrative Lending Fees	7,315.20	8,000.00	(684.80)	91.4%
Total Expense	1,350,088.10	1,895,600.00	(545,511.90)	71.2%
Net Ordinary Income	282,050.24	(54,600.00)	336,650.24	(516.6)%
Other Income/Expense				
Other Income				
419.5 · Capacity Accounts Interest	25,222.31	24,600.00	622.31	102.5%
474. · Other Water Revenue	86,652.00	30,000.00	56,652.00	288.8%
Total Other Income	111,874.31	54,600.00	57,274.31	204.9%
Net Other Income	111,874.31	54,600.00	57,274.31	204.9%
Net Income	393,924.55	0.00	393,924.55	100.0%

C19

Shepherdstown Sewer
Balance Sheet-Summarized
 As of June 30, 2021

	<u>Jun 30, 21</u>
ASSETS	
Current Assets	
Checking/Savings	
GENERAL FUNDS BANKING	297,927.71
RESERVED FUNDS BANKING	658,005.92
RESTRICTED FUNDS BANKING	2,207,571.66
Total Checking/Savings	3,163,505.29
Accounts Receivable	
General Funds A/R	105,023.88
Total Accounts Receivable	105,023.88
Other Current Assets	
253.20 · Deferred Inflows	(31,160.33)
Other Current Assets	(8,438.09)
Total Other Current Assets	(39,598.42)
Total Current Assets	3,228,930.75
Fixed Assets	
Fixed Assets	16,011,663.10
105 · Construction in Progress	71,487.20
Fixed Asset Adjustment (Accumulated Depreciation)	(6,079,322.73)
Total Fixed Assets	10,003,827.57
TOTAL ASSETS	<u>13,232,758.32</u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Other Current Liabilities	
186.20 · Deferred Outflows	(9,758.63)
Current Liabilities	175,781.79
235 · Cust. Dep/Int. Pay-Cash Acct	37,096.68
236 · Cust Dep/Int Payable-DR/CR	23,587.45
221 · Bonds Payable-Current	207,139.52
Total Other Current Liabilities	433,846.81
Total Current Liabilities	433,846.81
Long Term Liabilities	
221 · Bonds Payable-Long Term	4,557,069.97
Total Long Term Liabilities	4,557,069.97
Total Liabilities	4,990,916.78
Equity	
214 · Retained Earnings	5,893,025.80
271 · Contrib. in Aid of Construction (Capacity Fees thru 6/3...	2,495,029.86



07/09/21

Shepherdstown Sewer
Balance Sheet-Summarized
As of June 30, 2021

	Jun 30, 21
Net Income	(146,214.12)
Total Equity	8,241,841.54
TOTAL LIABILITIES & EQUITY	13,232,758.32

C21

Shepherdstown Sewer
Budget vs Actual -Summarized
 July 2020 through June 2021

	Jul '20 - Jun 21	Budget	\$ Over Bu...	% of Budget
Ordinary Income/Expense				
Income				
419 · Sewer Interest Income	27,473.59	58,000.00	(30,526.41)	47.4%
522 · Metered Sewer Revenue (including penalties & adj.)	1,181,930.56	1,320,000.00	(138,069.44)	89.5%
536 · Other Wastewater Revenues	3,125.00	10,960.00	(7,835.00)	28.5%
Total Income	<u>1,212,529.15</u>	<u>1,388,960.00</u>	<u>(176,430.85)</u>	<u>87.3%</u>
Gross Profit	1,212,529.15	1,388,960.00	(176,430.85)	87.3%
Expense				
408 · Taxes Other than Income	36,813.06	31,000.00	5,813.06	118.8%
701 · Salaries & Wages	304,961.03	292,250.00	12,711.03	104.3%
704 · Employee Pensions & Benefits	64,534.76	72,000.00	(7,465.24)	89.6%
401.1 · Sewer Billing Expenses	8,679.17	9,000.00	(320.83)	96.4%
401.2 · Sewer Administration	(389.71)	52,850.00	(53,239.71)	(0.7)%
401.3 · Sewer Utility Billing (Water Usage)	31,703.66	36,000.00	(4,296.34)	88.1%
401.4 · Sewer Plant Maintenance	320,006.76	238,250.00	81,756.76	134.3%
403 · Depreciation Expense (Book entry only)	400,026.71	350,000.00	50,026.71	114.3%
711 · Sludge Removal	18,017.54			
715 · Purchased Power	118,295.39	140,350.00	(22,054.61)	84.3%
718 · Chemicals	55,329.69	120,000.00	(64,670.31)	46.1%
731 · Contractual Svc-Engineering	0.00	2,000.00	(2,000.00)	0.0%
732 · Contractual Svc-Accounting	3,000.00	3,000.00	0.00	100.0%
733 · Contractual Svc-legal	300.00	4,000.00	(3,700.00)	7.5%
735 · Contractual Svc-testing	5,461.54	15,000.00	(9,538.46)	36.4%
736 · Contracted Services-Other	16,713.78	20,000.00	(3,286.22)	83.6%
750 · Transportation Expenses	7,202.28	12,000.00	(4,797.72)	60.0%
757 · Insurance-General Liability	40,601.42	35,000.00	5,601.42	116.0%
759 · Insurance-Other	125.00	0.00	125.00	100.0%
760 · Advertising	0.00	2,000.00	(2,000.00)	0.0%
Total Expense	<u>1,431,382.08</u>	<u>1,434,700.00</u>	<u>(3,317.92)</u>	<u>99.8%</u>
Net Ordinary Income	(218,852.93)	(45,740.00)	(173,112.93)	478.5%
Other Income/Expense				
Other Income				
419.5 · Capacity Accounts Interest	7,223.03	8,000.00	(776.97)	90.3%
426 · Misc. Non-Utility Revenue	(0.06)	2,740.00	(2,740.06)	(0.0)%
536 · Other Wastewater Revenue	95,415.84	35,000.00	60,415.84	272.6%
Total Other Income	<u>102,638.81</u>	<u>45,740.00</u>	<u>56,898.81</u>	<u>224.4%</u>
Other Expense				
401.61 · Sewer Capacity Cash Expenses (Restricted Fund Expen...	30,000.00			
Total Other Expense	<u>30,000.00</u>			
Net Other Income	<u>72,638.81</u>	<u>45,740.00</u>	<u>26,898.81</u>	<u>158.8%</u>
Net Income	<u>(146,214.12)</u>	<u>0.00</u>	<u>(146,214.12)</u>	<u>100.0%</u>

C22

Balance Sheet

As of June 30, 2021

	Jun 30, 21
ASSETS	
Current Assets	
Checking/Savings	
Payroll Acct (Payroll & Tax Checking Acct)	35,353.46
Total Checking/Savings	35,353.46
Accounts Receivable	
Due from General Operating	(61,576.69)
Total Accounts Receivable	(61,576.69)
Other Current Assets	
1401 · Cash due-PEIA/RHBT/Sick Pool (Should be A/R-QB will not allow)	
Cash Transfer PEIA Health/Life (Should be A/R-QB will not allow)	854,165.16
Cash Transfer-PEIA RHBT-current (Should be A/R-QB will not allow)	229,727.68
1401 · Cash due-PEIA/RHBT/Sick Pool (Should be A/R-QB will not allo...	(173,815.68)
Total 1401 · Cash due-PEIA/RHBT/Sick Pool (Should be A/R-QB will not ...	910,077.16
1450 · Workers Comp Deposit	36,374.45
1500 · Adjustment Account (Use as offset for P/R corr.)	(2,246.52)
Total Other Current Assets	944,205.09
Total Current Assets	917,981.86
TOTAL ASSETS	917,981.86
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Other Current Liabilities	
2110 · Direct Deposit Liabilities (Direct Deposit Liabilities)	(367.66)
2100 · Payroll Liabilities-FED & WV	54,746.12
2102 · Payroll Liability-Pennsylvania	(3.65)
2103 · Payroll Liab-PEIA HEALTH/RHBT	(3,516.48)
2104 · Employee Health Withholding (Holding account for Employee H...	2,720.60
2106 · FBMC Benefits Management	(4,021.97)
2107 · AFLAC	398.04
Total Other Current Liabilities	49,955.00
Total Current Liabilities	49,955.00
Total Liabilities	49,955.00
Equity	
1110 · Fund Equity (Retained Earnings)	663,228.01
Net Income	204,798.85
Total Equity	868,026.86
TOTAL LIABILITIES & EQUITY	917,981.86

C23

CORP OF SHEPHERDSTOWN-PAYROLL ACCT
Profit & Loss (Internal Service Fund)
 July 2020 through June 2021

	<u>TOTAL</u>
Ordinary Income/Expense	
Income	
Checking Account Interest	672.72
General for Payroll	<u>1,770,936.09</u>
Total Income	<u>1,771,608.81</u>
Gross Profit	1,771,608.81
Expense	
6584 · Reimbursement	697.26
409 · Mayors Office	2,000.00
410 · City Council	6,000.00
411 · Records Office	1,500.00
440 · City Hall	129,291.45
6560 · Other Gross Payroll	64,256.63
700 · Police Department	300,461.60
750 · Streets and Highways	60,693.89
800 · Sanitation Department	59,529.13
900 · Parks	2,947.65
S-100 · Sewer	290,723.39
W-100 · Water	430,122.88
6500 · Employer Taxes/Expen...	<u>218,586.08</u>
Total Expense	<u>1,566,809.96</u>
Net Ordinary Income	<u>204,798.85</u>
Net Income	<u><u>204,798.85</u></u>

C24

DRAFT

Shepherdstown Grant Committee
Minutes - June 17, 2021 - 4p.m. at Town Hall

Call to Order 4:00pm

Present: Chris Stroeck, D.W. Gregory, Mary Fortuna

Minutes

5.20.21

Motion to approve by Mary Fortuna

Seconded by D.W. Gregory

6.2.21

Motion to approve by Chris Stroeck

Seconded by Mary Fortuna

[approved with a non-substantive change]

Old Business:

- A. Cares Act: No word on applications. Mary will reach out to Catholic Charities to determine if they have heard of any entities being funded from CDBG-CV Round 2, and also to inquire whether residents in need could benefit by being connected with Catholic Charities immediately regardless of whether the town is funded, since there may be other sources of assistance.
- B. Additional Committee Members: Town Council will vote on Matt Jividen's application to join the committee
- C. Community Input:
 - a. Mary and Chris will attend the Parks and Rec Committee meeting on June 22nd at 6pm to conduct a listening session for information regarding funding needs
 - b. Log: it was agreed that the log of potential applications and funding/needs matches would be posted on the committee's web page.
 - c. Mary will schedule a meeting with CATF to explore possible projects for the upcoming NEA Our Town grant opportunity. D.W. will attend if she is available.
 - d. It was agreed that the Shepherdstown Library and Historic Shepherdstown would be invited to upcoming listening sessions.
- D. Criteria for determining pursuit of funding opportunities: the committee discussed what criteria would be used for making recommendations to the Town Council (for approval of all projects) when determining which funding opportunities would be pursued. It was agreed that the criteria would be revised and posted on the committee's web page as follows:

All grant applications submitted by the committee will be approved by the town

council prior to submission. The committee will make recommendations to the Town Council for potential funding appeals based on the following criteria:

- a. Projects will benefit stakeholders in the Corporation of Shepherdstown
- b. Projects will be for public benefit, and will meet an established need.
- c. Projects will support the vision of the Town's Comprehensive Plan as outlined in its "Vision for the Future."
- d. Funding appeals will be for projects that are officially sanctioned.
- e. Projects will be prioritized based on urgency of the need they will meet.
- f. Appeals will be a good fit for the capacity of the grants committee and town partners.

New Business:

- E. Upcoming Grant Opportunities: Committee discussed potential funding opportunities and agreed to further research them with the goal of presenting one or more for approval at the next Town Council meeting:
 - a. REAP Grant (recycling)
 - b. USDA Grant (multiple needs matches possible)
 - c. CDBG-CV Round 3 (housing assistance - pending input from Catholic Charities)
 - d. Firefighter's Charitable Foundation (portable AED devices for law enforcement)
 - e. Firehouse Subs Foundation (AED devices)

Motion to adjourn: Chris Stroeck

Seconded: D.W. Gregory

Meeting adjourned 5:03 p.m.



BOARDS AND COMMISSIONS APPLICATION

Please write at least a paragraph for the sections that ask for a description
(attach additional sheets if necessary).
You are also welcome to submit a résumé.

Name: ☒ Mr. ☐ Ms. MATT JIVIDEN Address: 205 N. PRINCESS ST

Phone numbers – Home: 304-280-7006 Work: 304-263-8871 Cell: _____

Email address: matthew.jividen@gmail.com Employer: LEGAL AID of WEST VIRGINIA

Occupation: LAWYER

Which board/commission would you like to serve on? GRANT

Please describe your background and education.

UNIVERSITY of WISCONSIN - MADISON
B.A. (HISTORY) 2008

WEST VIRGINIA UNIVERSITY COLLEGE OF LAW
J.D. 2012

Please describe your experience and any special training you may have that apply to this board/commission.

I'VE GOT FORMAL TRAINING & EXPERIENCE IN RESEARCH & TECHNICAL WRITING. I'VE SPENT THE LAST NINE YEARS AT A GRANT FUNDED ORG, AND UNDERSTAND THE PROCESS of GRANT APPLICATION & COMPLIANCE. I'VE LIVED IN TOWN w/ MY FAMILY SINCE 2015. I HAVE AN APPRECIATION FOR THE THINGS THAT MAKE THE TOWN SPECIAL, AND UNDERSTAND WHERE THERE MAY BE ROOM FOR IMPROVEMENT.

Please describe your motivation for serving on this board/commission.

I BELIEVE CIVIL ENGAGEMENT IS IMPORTANT - ESPECIALLY IN A SMALL TOWN. I THINK MY SKILLS WOULD BE PUT TO GOOD USE ON THE GRANT COMMITTEE. I'D LIKE TO HELP THE TOWN FIND RESOURCES TO MAINTAIN + IMPROVE QUALITY OF LIFE HERE IN SHEPHERDSTOWN.

Please describe what you know about this board/commission.

I'VE ATTENDED A COUPLE MEETINGS. MY UNDERSTANDING IS THAT THE COMMITTEE LOOKS FOR AVAILABLE GRANTS & APPLIES FOR GRANTS THAT ALIGN W/ THE INTERESTS OF THE TOWN.

How did you hear about this board/commission?

I RECALL COUNCIL PERSON STRECH MENTIONED HIS INTENTION TO FORM THE COMMITTEE WHILE CAMPAIGNING. MORE RECENTLY, I SAW THE NEWS ABOUT GRANT APPLICATIONS THE COMMITTEE

Please provide two personal or professional references (include name and phone number).

HAD
COMPLETED

AVAILABLE ON REQUEST

Signature: Matt [Signature]

Date submitted: 6-2-21

Please type in your answers and submit the completed form by hand, mail, fax or email to:

Town Clerk's Office
104 North King Street
P.O. Box 248
Shepherdstown, West Virginia 25443-0248
304-876-1473 (fax)
clerk@shepherdstown.us

For additional information, or to request a hard copy of the application, please call 304-876-2398.

Shepherdstown Tree Commission Minutes [L] [SEP]

June 17, 2021

6:00 p.m. [L]
[SEP] Town Hall [L]
[SEP]

Masks and Distancing Required

1. **Members Present:** Lori Robertson – Chair, Frank Welch, James Dillon, and Jenny Haynes **Absent:** Carrie Blessing, and Marty Amerikaner
2. **Call to Order:** L. Robertson called the meeting to order at 6:02 p.m.
3. **Approval of April 8, 2021 minutes.**

F. Welch – move to approve April 8, 2021 Tree Commission minutes.
No objections noted.

F. Welch – move to approve May 13, 2021 Tree Commission minutes.
No objections noted.
4. **Public Comment:**
None
5. **Visitors:** None
4. **Unfinished Business-**
 - a. Verbiage for Comprehensive Plan –input fr.om Commission. Pending.
 - b. Tree wells – Public Works – Frank to order flexipave to try around some of our problem tree wells
 - c. 103 W. High St –We will need to bag-water it June/July/August - DONE
 - d. Monarch Way station – Ribbon Cutting July 2021 – date set for July 17th

10 a.m.

e. HOLD DUE TO COVID - Suggestion to have Bartlett give us a quote to clear the bowl in Rumsey Park with a brush-cutter. Then plant a large White oak (red foliage in the fall) or a Chinkopin Oak and keep the bowl clear. Put a large circle around the tree for water to pool to keep it moist.

f. Grant through Than Hitt – CommuniTree – trees have been planted and CommuniTree will be watering them.

g. Sage Place – tree wells will need 2” maximum of mulch around the trees just along Sage Place Drive but not to include the circle. DONE

James suggested planting perennial evergreen plugs in 2-3 years – Eastern Star Sedge. Trimming quotes from Viking and Bartlett for the fall.

h. Trees to be trimmed off of our town signs that need it. Public Works has been on this regularly.

i. Bob Hanna/Tree City– Frank to receive a tree for Tree City/Arbor Day. We received a Wildfire Black Gum. Will replace a poor Redbud on E. German St.

j. SU hill – possibilities for planting – Viburnum Winterthur or Black chokeberry. CommuniTree planted three trees on the hill but James thinks that these other plants can still go in-between them.

k. Devonshire Tree Removal request –Flexi-pave is being ordered.

5. New Business:

a. Requests-

1. Very Large dead pine tree in Rumsey Park to the left of the new Redbud trees. A quote was received from Viking for \$1600. Frank is getting a quote from Bartlett.

2. Redbuds on E. German across from Alice C. The tree city tree will replace one of these or an Okame Cherry (to order in August). The other one should be saved.

3. Historic Shepherdstown – back parking lot of the Entler Hotel – dead tree – need quote – Frank has contacted Bartlett for a quote.

4. Austin Slater – 100 W. New St – corner of New/King – Cherry tree encroaching on house roof. Please trim back. Frank thinks this has been done and will check.

5. Danielle Corsetto – corner of Church/New – Church side – dead Dogwood – requesting to have it removed and prefers no replacement. James is thinking a Serviceberry in the fall.

6. Paul Davis – tree in front of his home-mostly dead – 111 N. Mill St. Frank is getting a quote from Bartlett.

7. Rachel Heller – 107 N. Mills St. – large Maple dying – concerned about a limb falling on home. Frank to get quote.

8. Jim Schmitt – dead tree in front of house – Bartlett removed it June 15th, 2021.

9. Sarah Moerschel and Wendy Moseley – 300 W. High St – tree half dead that the power company repeatedly cuts the top off of. Frank to include with Bartlett quote.

10. Trim limbs off of roof – the first home on the right on N. Mill Street across from the Mill. Frank to include in quote.

11. Lori inquired about trimming the trees along S. Princess – the Ann Magnolias and Crepe Myrtle. James explained how to do it and she will do it ASAP.

6. **Maintenance/Misc. - Fall Spring 2021 -**

7. **Adjournment:**

L. Robertson – if there are no objections, the meeting is adjourned at 7:06 p.m. None noted.

DRAFT MINUTES
SHEPHERDSTOWN, WEST VIRGINIA
WATER & SANITARY BOARDS

June 24, 2021

Attendees: **Water Board** – J. Auxer (Mayor), J. Bresland, S. Kemnitzer (Chair), M. Godfrey, A. Slater
Sanitary Board – J. Auxer (Chair), H. Heyser, R. Keller (excused at 1:30PM)
Town Staff –A. Boyd, C. Coe, C. Painter, D. Nickerson, C. Painter, K. Shipley, F. Welch,
Engineer – J. Ekstrom, Ghosh Engineering
Town Council- J. Haynes

Visitors: Jim Schmitt, Shepherdstown Volunteer Fire Department
Ben Svetlow, Gordon Associates (Sheetz project application)

1. CALL TO ORDER.

The Water and Sanitary Boards meeting was called to order by J. Auxer at 12:32 pm.

2. MINUTES FROM PRIOR MEETING.

The proposed minutes of the May 20, 2021, regular meeting was reviewed. H. Heyser recommended the discussion during the executive session be redacted consistent with past practice. Upon motion duly made and seconded, the minutes were approved as revised.

3. VISITORS-FIRE HYDRANTS (taken out of order to accommodate a visitor)

J. Auxer introduced J. Schmitt, Trustee of the Shepherdstown Volunteer Fire Department. J. Schmitt commented that the fire department is pleased with the progress made on hydrant repairs and asked that his comments appear in the minutes of this meeting. K. Shipley updated the board on ongoing repairs and plans. J. Slater distributed a spreadsheet that is tracking all the hydrants scheduled for repair. M. Godfrey encouraged town staff to pursue cost recovery from parties damaging the hydrants. S. Kemnitzer complimented the town on the water interruption notice system resulting from the recent hydrant repair on German Street. C. Coe called attention to a letter from the Fernbank at Cress Creek homeowner's association included in the board packet, complimenting the water department on the recent repairs to the hydrants in their community. J. Schmitt exited the meeting.

4. Finances

4.a. Financial Statements

The financial statements were reviewed. J. Auxer reported on efforts to tally the losses to the water and sewer departments arising from the adverse impact of the COVID-19 pandemic affecting volumes, generally large customers that curtailed services. He noted that an application is being made for Federal relief funding, further reporting that sewer losses totaled \$197,300. H. Heyser observed that FY 2022 budgets show us in the black; J. Auxer responded that if large customers return to normal operations that would be the likely outcome. R. Keller asked that on schedule S-17 the \$216,910 expenditure was for the latest membrane installment, to which D. Nickerson responded yes.

5. FLOW AND QUALITY REPORTS.

5.a WATER - NO VIOLATIONS.

C. Coe stated that all the water-related reports were negative, therefore no violations. He noted that we participated in the Berkeley Springs water tasting contest where over 4,000 entries were made. H. Heyser inquired about the DEP report included in the board packet, F. Welch responded that this document should not have been included. A. Auxer commented on the exceedingly low volume at 200,000 gallons. M. Godfrey inquired about the reported amount of chlorine used, C. Coe advised the metric is pounds per gallon per day.

5.b. SANITARY REPORTS – NO VIOLATIONS.

Results for May were reviewed, no violations.

6. UNFINISHED BUSINESS.

6.a FIRE HYDRANTS.

Addressed earlier in the meeting.

6.b SEWER USE ORDINANCE – REVISION AND COMMENTS.

R. Keller discussed including a requirement for grease traps for new facilities, noting that the new Sheetz application includes a grease trap. He also observed that there was no mud/dirt pit collector in the plans for the carwash station; this is a desirable feature to capture mud and dirt before it goes into the sewer flow. R. Keller stated this design requirement should also go into the revised ordinance. J. Auxer recommended some language regarding ongoing inspections be included too. R. Keller requested J. Ekstrom's assistance in drafting these provisions for the proposed ordinance.

6.d SHEETZ APPLICATOIN. (taken out of order to accommodate a visitor)

J. Auxer recognized Ben Svetlow of the engineering firm Gordon Associates attending on behalf of the Sheetz application (application 005-21, Step 2). It was noted that the former owner of the property had made the Step 1 application, and that now we have a new owner of record, and a new Step 1 application has been made for this location, representing a lower capacity request. Detailed plans had been submitted to the two boards prior and at the meeting. R. Keller asked B. Svetlow to revisit the plans for a carwash mud collector system. It was clarified that the facility will connect to the Maddex Farm pump station due to gravity advantages and capacity at the station.

ACTION ITEM: M. GODFREY MOVED AND J. BRESLAND SECONDED THAT THE WATER BOARD APPROVE THE STEP 1 APPLICATION OF SHEETZ INC.; UNANIMOUSLY ADOPTED BY THE WATER BOARD.

ACTION ITEM: R. KELLER MOVED AND H. HEYSER SECONDED THAT THE SANITARY BOARD APPROVE THE STEP 1 APPLICATION OF SHEETZ INC.; UNANIMOUSLY ADOPTED BY THE SANITARY BOARD.

In response to M. Godfrey's question, F. Welch advised that Sheetz will be issued a new capacity letter.

6.c ENHANCED BILLING AND PAYMENT PROJECT.

J. Auxer called on A. Slater, A. Boyd and C. Painter to present their findings and recommendations. The project team shared the results of their findings and a proposal made by SmartBill, an outsource billing and payment firm that services approximately 35 municipalities in West Virginia, including several local

entities. SmartBill will provide printing, folding for a secure enclosed statement bill, up to two additional inserts, and several additional payment options, including electronic checks. Bill information will be secure enhancing the control over sensitive customer information. J. Slater discussed SmartBill's cybersecurity program which is deemed to be effective. C. Painter discussed the several client references checks she made which all came back positive; of note were Berkeley Water and Berkeley Sanitary. Other enhanced customer service features were discussed, including the much desired electronic billing. J. Slater presented a break-even analysis that showed the incremental cost of this new system is \$4,158 per year; the incremental cost will be completely offset if 792 customers convert to electronic billing. Following questions, answers, and further discussion:

ACTION ITEM: S. KEMNITZER MOVED AND J. BRESLAND SECONDED THAT THE WATER BOARD APPROVE THE RECOMMENDATION TO CONVERT TO THE SMARTBILL ENHANCED BILLING AND PAYMENT SYSTEM; UNANIMOUSLY ADOPTED BY THE WATER BOARD.

ACTION ITEM: R. KELLER MOVED AND H. HEYSER SECONDED THAT THE SANITARY BOARD APPROVE THE RECOMMENDATION TO CONVERT TO THE SMARTBILL ENHANCED BILLING AND PAYMENT SYSTEM; UNANIMOUSLY ADOPTED BY THE SANITARY BOARD.

In response to M. Godfrey' question, J. Auxer advised that this action does conform to the Town's procurement guidelines.

6.d HOME SERVE WARRANTY PROGRAM.

J. Auxer discussed the May 20 presentation of Mr. Rebar concerning the Home Service Warranty Program and asked for comments from the boards concerning the program. S. Kemnitzer voiced her opposition to endorsing the program citing concerns regarding: (1) homeowner's insurance taking precedence on a claim, (2) discomfort with the Town endorsing a product, and (3) recalling staff advising that only 12-15 incidents out of 1,800 water and sewer customers does not reflect a peril warranting this product. J. Auxer reminded the boards that many state municipalities offer the program with favorable comments. S. Kemnitzer advised that Councilman Stroeck, although absent today, had voiced his opposition to the program. A. Slater advised that he tried to ascertain the numbers of claims, dollars awarded, and claims denied, but was not successful in getting the information from Mr. Rebar. With data he had available he said it appeared the payback period for the monthly fee is about 15-20 years, when adding in claims denied it could be up to 30 years. J. Auxer, in assessing the general unfavorable sentiment of the boards for not pursuing the program, will send Mr. Rebar an email advising him that the Town of Shepherdstown will not be entering into their proposed marketing agreement.

6.e CAN JEFFERSON COUNTY HEALTH DEPARTMENT REQUIRE HOMEOWNERS TO CONNECT TO PUBLIC WATER SYSTEMS?

J. Bresland had researched this agenda question and responded: "Yes they can." He further provided a copy of the Jefferson County Board of Health Local Rules, Policies, and Procedures (Authority – WV Code § 16-2-11, Approved 9-11-2020, Effective 9-11-2020), which state:

4.3 Wells in Public Water Service Areas- Permits for individual wells shall not be issued in areas served by public water nor in subdivisions or developments originally designed or approved for individual, or on-site sewage systems based on public water serving the subdivision or development. Geothermal wells will be permitted as long as the design of the well does not include surface discharge or any other secondary use.

F. Welch noted that sewer service is also mandated in the presence of a public sanitary system but in this case by mandate of West Virginia state law. Discussion ensued regarding some instances where wells were observed within the area served by the water department. J. Auxer requested that J. Bresland conduct further research on how to best enforce this county ordinance.

6.f PSC DECISION ON WATER PLANT IMPROVEMENT REQUEST.

J. Auxer referred to the West Virginia Public Service Commission (PSC) order included in the monthly board packet which issued a favorable certificate of public convenience and necessity for the water plant improvement project. J. Ekstrom advised that a pre-bid meeting had been held the day before this meeting on June 23, 2021, where 5 prospective bidders participated in the information sharing conference.

7. NEW BUSINESS.

7.a PRELIMINARY ENGINEERING ON EXTENSIONS OF SEWER LINE AND UPGRADE OF THE WATER DISTRIBUTION SYSTEM. REGION 9.

As regards the water project, J. Ekstrom advised that Region 9 is assisting us with finding grant funding, under a 75% grant/25% matching arrangement. J. Auxer advised that his Region 9 contact is optimistic given the Town has the 25% matching in-hand of approximately \$400,000 for this \$1,650,000 project.

As regards sewer, J. Auxer noted that funding would enable the Town to serve unserved areas, like Mecklenburg Heights. He also advised that this shall help further utilize the waste water plant which has a 670,000 gallon capacity of which only 240,000 gallons is currently being utilized. J. Ekstrom discussed traditional sewer systems versus "green" pressure systems and the funding advantages of the latter option. These reports were met with enthusiasm by the board which encouraged staff and J. Ekstrom to pursue grant fund opportunities and requisite preliminary engineering.

7.b AMERICAN RESCUE PLAN ACT.

As noted under item 4. Finances, J. Auxer reported on his efforts to pursue approximately \$400,000 in Federal relief funding, targeting losses incurred during the prolonged pandemic. The losses were calculated on the decline and closure of major businesses and the resulting loss of gallons of flow.

7.c BROADBAND IMPROVEMENT.

J. Auxer relayed to the boards communication exchanges he has had with Mr. David Deamer, Implementation Coordinator for the Eastern Panhandle Regional Planning and Development Council who is working to improve broadband coverage in the area. Mr. Deamer inquired of the Town's interest in leasing space on the two water towers for a point-to-point wireless broadband system that would serve over 150 users immediately around the towers that are currently unserved or underserved. Mr. Deamer also introduced a developer, Mr. Michael Hofe of Wireless Network Group, who could build the system. J. Auxer advised that our attorneys are now looking at the towers site agreements. J. Auxer advised that this arrangement could be a source of additional revenue to the Town.

6.d SHEETZ APPLICATION.

Addressed earlier in the meeting.

6.e ROUTE 45 CORRIDOR VISION PLAN

J. Auxer reported on a public meeting held in Shepherdstown on June 15 regarding improvements to Route 45 west of town, beginning at University Drive and ending at the intersection at Potomac Drive. J. Auxer noted that board members Kemnitzer and Slater were also in attendance. The schedule for completing the planned improvements and funding is uncertain at this time. The project, if commenced, would involve moving Town water and sewer mains and appurtenances.

8. MAYOR'S REPORT.

Mayor Auxer commented that he covered most of his intended report throughout today's meeting.

M. Godfrey asked if all letters granting capacity are monitored? A. Boyd responded they are maintained and monitored.

9. NEXT MEETING DATE.

July 15, 2021, at 12:30PM.

13. ADJOURNMENT. J. Auxer adjourned the meeting at 2:22PM.

Respectfully Submitted: A. Slater



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Members Present: Bruce Massey – Chairman; Dan Anderson; Keith Alexander; T. Nicole Saunders-Meske

Members Not Present: Jim Broomall

Staff: Andy Beall

Visitors: Jim Auxer; Jim King; Dolores Gregory; Margaret Simpson; Mary Ellen Diaz; Kaveh Sadeghzadeh; Steve Pearson; Larry Barkdoll; Naomi Rohrer; Nicholas Landon; Keith Stegall; Benjamin Bankhurst

Call to Order: 6:00 p.m.

Approval of Minutes: **5/10/2021** **Approved**

Conflicts of Interest: None

Application Review:

Previous Applications:		Project Description
20-14	Nicholas Landon	Add a roof to the previously approved second story porch of new addition.
	338 W. High Street	
<i>The applicant is present and describes the proposed alterations to the previously approved addition. He states that the existing roof pitch would be extended and stepped down over first floor roof deck. He describes an open covered second story deck scenario with railing, but the drawings submitted do not depict accurately what is being described. There is some discussion as to what would be more appropriate, an open covered deck or an enclosed covered deck. Further discussion ensues regarding what is appropriate pursuant to Page 39, section “B” of the guidelines which simply states that new porches should be appropriate to the period of the existing structure. J. King states to the commission that, in his opinion, the submitted renderings are not sufficient for the passing of a motion. Commissioner, K. Alexander agrees that there’s not enough information but believes that an open second-story deck would not be appropriate.</i>		
Notes:		
Motion:	<i>N. Saunders-Meske motions to approve the extension of the roof contingent on the applicant returning with more detailed drawings of both an open and enclosed plan; no objections and passed unanimously.</i>	

New Applications:		Project Description
20-21	Keith Stegall	Resubmittal of revised plans for garage / shed and storm doors.
	301 W. German Street	
<i>The applicant is present and describes the proposed alterations to a previously approved application for which the permit had expired without commencement of the work. The commission begins with review of the proposed storm doors and main door alterations. With all three doors, the openings remain the same. The proposal calls for the removal of ¼” off the</i>		



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bottom of the rear balcony door to accommodate an interior rug. The proposal also calls for the resetting of the rear first-floor door to open inward vs. out. The commission unanimously agree that the proposed storm doors are appropriate as is the resetting of the first-floor rear door to open inward and that the removal of ¼" from the bottom of the balcony door is NOT appropriate. The applicant states that he is fine with not removing a ¼" from the bottom of the balcony door. B. Massey begins the review of the proposed shed by reading an e-mail sent from the adjacent neighbor to the north with concerns regarding its proposed location. The structure, which includes ten (10) foot walls with an overall height of fifteen (15) feet and dimensions of fourteen (14) x twenty-four (24) feet would be located fourteen (14) feet from the neighbor's house and twelve (12) feet back from North Duke Street. The neighbor's e-mail reads (in part)

"It has been brought to our attention that the construction permit for the home at the corner of Duke/German (301 W German St) has expired and is up for renewal. Over the past year we have reflected on the planned project and have a couple of concerns. Points of Concern:

- Location of the Shed structure 12 feet off the front corner of our home.
 - We feel that the location of the building will decrease natural light, the view from our family room window, and general curb appeal of surrounding residences.
 - We hope that re-locating the structure toward the back of the property will be considered."

The applicants express outrage to the inclusion of the e-mail stating they feel they have been "ambushed" and reiterate that the commission already approved the proposed shed in June of 2020. B. Massey explains that given the fact the applicant allowed the permit to expire before beginning the work, that the review process starts anew and that the commission must take into consideration the submittal of the neighbors' concerns not submitted when the application was approved the previous year. The applicants become increasingly agitated. The commission endeavors to offer various options to the applicant which include relocating the proposed shed to the NW corner of the lot or reducing the overall size and height of the structure in its' presently proposed location. The applicant refuses to entertain the proposed options stating the NW corner of the lot has a significant grade reduction which would require large amounts of infill be brought, in order to level. The applicant is asked if the proposed structure would be used as a garage to which the applicant states it would not. Given this, it is also suggested that the applicant could possibly set the shed on piers thus eliminating the need for infill. The applicant refuses to entertain the suggestion. B. Massey states that one of the responsibilities of the HLC is to preserve the historic streetscape and protect the publics' unencumbered view of all historic structures in the Shepherdstown Historic District. The applicant refers to a Sanborn Map included in the application from the turn of the 20th century which shows a structure located in the same location as the proposed shed. The commissioners do not believe this is relevant as there was no historic district at the time of the Sanborn Map and what was appropriate over a century ago may not necessarily be appropriate today. N. Saunders-Meske states she would like the opportunity to research the Secretary of Interior Standards for Rehabilitation on which the Shepherdstown Historic District Design Guidelines are based before a motion is made. The commission concurs.

Notes:

Motion:

- 1) D. Anderson motions to approve the addition of storm doors as presented and the resetting of the rear first-floor door to swing inward, contingent on the rear balcony door not being resized ; no



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	<p><i>objections and motion passed.</i></p> <p>2) <i>N Saunders-Meske motions to table the discussion of the proposed shed pending further research into the Secretary of Interior's Standards for Rehabilitation; no objections and motion passed.</i></p>

New Applications:		Project Description
21-14	Dolores & Paul Gregory	Replace rear screen door and add front screen door, both made of wood with interchangeable storm glass and screens.
	209 W. Washington Street	
The applicants are present and describe the proposed screen doors. The commissioners refer to Page 44 of the Historic District Design Guidelines under Screens and Storm Doors and find the applicants' proposal to be appropriate.		
Notes:		
Motion:	D. Anderson motions to approve application 21-14 as submitted and pursuant to Page 44 of the Historic District Design Guidelines, no objections and motion passed.	

New Applications:		Project Description
21-19	Peggah Wilson & Mary Ellen Diaz	Retroactive application for the addition of a mural on the east elevation wall.
	202 E. Washington Street	
The applicants’ brother, Kaveh Sadeghzadeh who is also a co-owner of the building is present to answer any questions regarding the existing mural painted on the east wall. Staff suggests the motion include the addition of “grass” painted under the chicken to cover the discoloration of the exterior wall.		
Notes:		
Motion:	N. Saunders-Meske motions to approve the existing mural with the possibility of the addition of grass painted under the chicken at some point in the future; no objections and motion passed.	

New Applications:		Project Description
21-20	Larry Barkdoll & Naomi Rohrer	Remove concrete block single-story shed roof rear additions and add new two-story rear addition.
	322 W. German Street	
<i>The applicants are present and describe the proposed addition. The applicant states that the design submitted reflects the suggestions of the commission at the previous months’ workshop. The west elevation of the addition will be set-in from that of the main structure while the east elevation will be flush. Delineation will be achieved via composite board siding</i>		



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juxtaposed to the existing vinyl on the main historic structure. D. Anderson inquires as to the style and material of future porch railing to which the applicant is unsure and agrees to return to the commission at a later date for the porch railing.

Notes:

Motion: *D. Anderson motions to approve application 21-20 as submitted (pursuant to Page 33 of the Historic District Design Guidelines) contingent on the applicant returning at a later date with front porch railing plans; no objections and motion passed.*

New Applications:

21-23 **Austin J. Slater, Jr.**

100 W. New Street

Project Description

Replace concrete pad at threshold of basement door with local limestone.

The applicant is not present, but the commission concurs that the proposal is both diminutive in scale and an improvement in design and material. Given these conditions, they agree to proceed with a motion.

Notes:

Motion: *K. Alexander motions to approve application 21-23 as submitted; no objections and motion passed.*

Workshop: Benjamin Bankhurst – 106 W. Washington Street – Enclosure of rear side porch and addition of wood board privacy fencing along rear east and west property boundaries.

Continuing Business: N/A

New Business: N/A

Administrative Matters: N/A

Adjournment: Motion to adjourn at 8:15 p.m.; no objections and passed unanimously.



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Members Present: Bruce Massey – Chairman; Dan Anderson; Keith Alexander

Members Not Present: Jim Broomall; T. Nicole Saunders-Meske

Staff: Andy Beall

Visitors: Nicholas Landon

Call to Order: 2:05 p.m.

Approval of Minutes: N/A

Conflicts of Interest: None

Application Review:

Previous Applications:		Project Description
20-14	Nicholas Landon	As a follow-up to the regular HLC meeting of June 14, 2021, the applicant has submitted detailed drawings of both a covered open and enclosed porch option
	338 W. High Street	
<i>The applicant is present and describes the proposed options. The commissioners feel either option would be appropriate given the eclectic nature of the area. The applicant states that his preference would be the enclosed option which incorporates cement board and baton siding with aluminum-clad, crank-operated windows with a horizontal slider, dual side-by-side pane configuration.</i>		
Notes:		
Motion:	<i>B. Massey motions to approve the enclosed covered porch option as presented; no objections and passed unanimously.</i>	

Workshop: N/A

Continuing Business: N/A

New Business: N/A

Administrative Matters: N/A

Adjournment: Motion to adjourn at 2:30 p.m.; no objections and passed unanimously.