

IN THE COUNTY COMMISSION OF WOOD COUNTY, WEST VIRGINIA

IN RE: MINUTES OF MEETING HELD
THURSDAY, JUNE 8, 1995

PRESENT: JEAN GRAPES, PRESIDENT
STEVEN A. GRIMM, COMMISSIONER
HOLMES R. SHAVER, COMMISSIONER

On this date, the County Commission met in regular session. They signed purchase orders, invoices and other correspondence.

On this date, the County Commission approved Personal Property Improvers for Jack L. & Mary C. McDonald - Vienna District and Gary Lamp - City District.

At 9:15 A.M., the County Commission held a public hearing in regard to the closing of part of Broadway Avenue, Olive Street and Laurel Street in Tygart District. Attorney John (Jack) Bailey represented Junkyard Inc., which is owned by R.C. Heckert. President Grapes said that Mr. Bailey would have to notify the B&O Railroad, whose property borders the streets. Mike Topping, a manager for Ames Company was present and stated that Ames would like to have access to the river. President Grapes stated that the County Commission usually doesn't give away access to the river. This hearing is continued to July 6, 1995 at 9:30 A.M. An Order was prepared regarding this matter.

On this date, came Mary R. Rader, Director of the Wood County Planning Commission, and presented to the County Commission of Wood County a revised plat of Dogwood Addition. The said revised plat of Dogwood Addition corrects a discrepancy between the assumed original boundary (fence) and the recent survey of the said property and corrects an error in the width of the Private Drive located between

lot numbers five (5) and six (6) in the said Dogwood Addition. The said revised plat has received approval of the Wood County Planning Commission at their regular monthly meeting held in May, 1995. Upon a motion made by Holmes R. Shaver, seconded by Steven A. Grimm and made unanimous by Jean Grapes, the County Commission of Wood County did hereby ORDER that the revised plat of Dogwood Addition be given approval for recordation in the Office of the Clerk of the County Commission of Wood County. The bond in the amount of fifty thousand dollars (\$50,000.00) and Notice of Lien recorded with Justification of Surety filed remains in full force. An Order was prepared regarding this matter.

On this date, came Mary R. Rader, Director of the Wood County Planning Commission, and presented to the County Commission of Wood County a plat of Waverly Oaks Addition. Said Waverly Oaks Addition is located in Union District, consists of fifteen (15) lots and is being developed by Daniel R. Graham. Water and sewer facilities are being provided by the Union-Williams Public Service District with all other utilities, such as gas, electric, telephone, etc. being provided by the respective utility companies. A homeowners' association, to provide maintenance and upkeep, has been approved; along with the National Pollutant Discharge Elimination System permit has been applied for through the West Virginia Division of Environmental Protection, Charleston, West Virginia. Upon a motion made by Holmes R. Shaver, seconded by Steven A. Grimm and made unanimous by Jean Grapes, the County Commission of Wood County did hereby ORDER that the plat of Waverly Oaks Addition be approved for

recordation in the Office of the Clerk of the County Commission of Wood County. The ten thousand dollar (\$10,000.00) bond required by the Planning Commission will be posted at a later time in accordance with the approval of the County Commission. An Order was prepared regarding this matter.

On this date, the West Virginia Department of Health and Human Resources Work and Training Program (CWEP) Contract Addendum was signed by Mary R. Rader, County Administrator, on behalf of the County Commission of Wood County. The said CWEP Contract by and between the County of Wood, as the Sponsor, and The Parkersburg Area No. 6 Area/Wood 54 Area/State Office of Work and Training, referred to as the Office, is hereby revised effective July 1, 1995 to continue through June 30, 1996. An Order was prepared regarding this matter.

On this date, the County Commission of Wood County was in receipt of a letter from the Governor of the State of West Virginia, Gaston Caperton, in which it authorizes the County Commission to enroll sixteen (16) youth participants and to hire two (2) crew supervisors in regard to the 1995 Governor's Summer Youth Program. Receipt of said approval is pursuant to an Application signed by the President of the County Commission, Jean Grapes, on March 13, 1995 and in which Wood County requested twenty-six (26) youth participants and two (2) crew supervisors. All documentation pertaining to the said Governor's Summer Youth Program is on file in the Office of the County Administrator. An Order was prepared regarding this matter.


On this date, the County Commission of Wood County, upon a

motion made by Holmes R. Shaver, seconded by Steven A. Grimm and passed, authorized Jean Grapes, in her official capacity as President and on behalf of the County Commission, to sign an additional copy of the Request for Reimbursement for expenses incurred by Wood County during the month of February, 1995 in regard to the Drug Control and System Improvement Grant Number 94-DC-057. The Criminal Justice and Highway Safety Office, Charleston, West Virginia, requested said additional copy of the Request for Reimbursement as per conversation with Toni Tiano of Tiano/Knopp Associates, Inc., Grant Consultants for the Wood County Commission. The said original Request for Reimbursement for the month of February, 1995 appears in Order Book 56, at Page 205 and bears the date of March 23, 1995. All documentation pertaining to the said Drug Control and System Improvement Grant is on file in the Office of the County Administrator. An Order was prepared regarding this matter.

Having no further scheduled appointments or business to attend to, the County Commission adjourned at 12:00 Noon.

Approved:

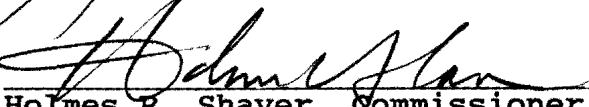
THE COUNTY COMMISSION OF WOOD COUNTY



 Jean Grapes, President



 Steven A. Grimm, Commissioner



 Holmes R. Shaver, Commissioner

PURCHASE ORDERS SIGNED ON JUNE 8, 1995

No.	19882	D.A.R.E. America	\$	242.71
	20036	Signs & More		30.00
	20044	Wal-Mart		122.46
	20047	Bernhardt's		55.35
	20048	Bell Atlantic		52.11
	20067	Murray Sheet Metal		972.60
	20091	Fire Extinguisher Specialist		45.00

PLEASE SEE ATTACHED FOR THE COPY OF AN ORDER THAT WAS LEFT OUT OF THE MINUTES.

JULY 13, 1995

BEFORE THE COUNTY COMMISSION OF WOOD COUNTY, WEST VIRGINIA

IN RE:

MANAGEMENT OF LITIGATION INVOLVING COUNTY OFFICERS OR
EMPLOYEES AND MEMBERS AND EMPLOYEES OF BOARDS, COMMITTEES
OR COMMISSIONS OF THE COUNTY. (nunc pro tunc June 8, 1995)

ORDER

On this 8th day of June, 1995, came before the Commission RICHARD
A. HAYHURST, an attorney at law practicing in Wood County, West Virginia, and
reported to the Court as follows, to-wit:

1. That he had heretofore been requested by the County
Administrator to review existing procedures for management of civil litigation which
involves the County or any of its elected officials, or clerks, deputies or assistants
to any of its elected officials, or employees of the Commission or of any of the
elected officials of the County, or members of or persons employed by any board
or commission the members of which may be appointed by the Commission;

2. That he has conferred with the County Administrator and with
the Prosecuting Attorney, as well as other officials or employees of the County and
has determined that the informal system of tracking and managing such litigation
should be formally set out;

3. That he has become aware that the Commission has purchased
certain policies of insurance to cover certain risks incident to the conduct of
governmental business and that certain other boards and commissions the members
of which are appointed by the Commission have made independent arrangements for
commercial insurance coverage for certain risks, but that there are certain other
risks incident to the conduct of governmental business for which there is at
present no insurance coverage available or in place;

4. That he is aware that under the provisions of Section 1 of
Article 4 of Chapter 7 of the Code of West Virginia of 1931, as amended, the
Office of the Prosecuting Attorney has primary responsibility "to attend to civil
suits in such county in which the State, or any department, commission or board

thereof, is interested, and to advise, attend to, bring, prosecute or defend, as the case may be, all matters, actions, suits and proceedings in which such county . . . is interested," but that due to limitations on the resources of the Office of the Prosecuting Attorney, potential conflicts of interest, the availability of assigned defense counsel supplied and compensated by an insurance carrier having an applicable policy of insurance in place, or other circumstances not easily susceptible of exhaustive enumeration herein, the services of the Office of the Prosecuting Attorney may not be available to provide legal services in civil matters involving the County or any of its elected officials, or clerks, deputies or assistants to any of its elected officials, or employees of the Commission or of any of the elected officials of the County, or members of or persons employed by any board or commission the members of which may be appointed by the Commission;

5. That he is also advised that there are certain boards and commissions the members of which are appointed by the Commission, such as the Wood County Development Authority, the Wood County Board of Parks and Recreation Commissioners, the Wood County Airport Authority, the various public service districts located in whole or in part within Wood County, the various civil service commissions, and perhaps others, who have their own budget, have retained their own separate counsel either on a regular or on an *ad hoc* basis, or for which neither the Commission nor the County Clerk acts as fiscal manager;

6. That he is also advised that, under certain limited circumstances, the Commission is empowered by Section 3 of Article 4 of Chapter 7 of the Code of West Virginia of 1931, as amended, to employ legal counsel "to advise the Commission on matters of a civil nature and to conduct any litigation of a civil nature to which the County is a party," but that such authority is to be used sparingly and only upon a showing of necessity, due to concerns for the integrity of the public fisc;

7. That the possibility exists that some officer, deputy, assistant, clerk or employee of the County government or member or employee of some board or commission the members of which are appointed by the Commission may find himself or herself as a party to civil litigation arising from the conduct of his or

her official duties on behalf of the County and may require the assistance of competent legal counsel at public expense;

8. That he is of the opinion that there needs to be a mechanism in place for the County Administrator and the Prosecuting Attorney to be advised immediately if such a civil proceeding commences;

9. That he is of the opinion that the question of arranging for the allocation of legal representation among the Office of the Prosecuting Attorney, counsel retained by any insurance carrier offering such counsel, or the retention of private legal counsel paid at public expense should be made by the proper budget authority immediately upon the commencement of any such civil proceeding, or theretofore, and that the Commission has a duty to the public to see that public funds entrusted to its management are not improperly or imprudently expended for private legal counsel expecting to be paid at public expense; and

10. That he has conferred with the Prosecuting Attorney and has secured her approval of the recommendations herein made and of the policy hereinafter ordained.

ACCORDINGLY, in consequence of such circumstances, the said Richard A. Hayhurst advised the Commission that it should establish a mechanism and promulgate forms whereby any of the County's elected officials, or clerks, deputies or assistants to any of its elected officials, or employees of the Commission or of any of the elected officials of the County, or members of or persons employed by any board or commission the members of which may be appointed by the Commission may report to the County Administrator and to the Prosecuting Attorney the receipt of any summons, process or other legal paper by which a claim is made against any of the County's elected officials, or clerks, deputies or assistants to any of its elected officials, or employees of the Commission or of any of the elected officials of the County, or members of or persons employed by any board or commission the members of which may be appointed by the Commission immediately upon receipt thereof; that, with respect to any claim made against any of the County's elected officials, or clerks, deputies or assistants to any of its elected officials, or employees of the Commission or of

any of the elected officials of the County, or members of or persons employed by any board or commission the members of which may be appointed by the Commission and for which the Commission is acting as budget administrator, an early determination should be made by the County Administrator as to whether the claim made falls within the coverage of any policy of insurance purchased or administered by the County Administrator's office, triggering a defense obligation on the part of the insurance carrier(s), whether the matter falls within the ambit of authority of the Office of the Prosecuting Attorney, whether private legal counsel should be engaged by the Commission or whether some different arrangement should be entertained to protect the interests of the persons involved in such civil litigation; that the tender of defense of any litigation covered by any policy of insurance purchased or administered by the County Administrator's Office should be done by the County Administrator's Office; that the County Administrator's Office should be responsible for liason with any such insurance carrier; that none of the elected officials, or clerks, deputies or assistants to any of its elected officials, or employees of the Commission or of any of the elected officials of the County, or members of or persons employed by any board or commission the members of which may be appointed by the Commission should be permitted to retain or arrange for the hiring of private legal counsel unless the Commission enters an order approving such retention under the provisions of Section 3 of Article 4 of Chapter 7 of the Code of West Virginia of 1931, as amended, and unless appropriate estimates and budgets are agreed upon in advance in order properly to facilitate the lawful process of budgeting, appropriation and spending of public funds; and that the Commission has ample authority under the provisions of Section 5 of Article 1 of Chapter 7 of the Code of West Virginia of 1931, as amended, to make the ordinance hereinafter set out.

WHEREUPON, upon such recommendations, the Commission, in consideration of its rights, privileges and obligations, doth hereby ORDER, ADJUDGE, ORDAIN and DECREE as follows, to-wit:

A. That there is hereby established, under the general supervision of the County Administrator and the Prosecuting Attorney, a mechanism for central reporting, co-ordination and management of all civil litigation to which any of the

County's elected officials, or clerks, deputies or assistants to any of its elected officials, or employees of the Commission or of any of the elected officials of the County, or members of or persons employed by any board or commission the members of which may be appointed by the Commission may become or be a party.

B. That all elected officials, or clerks, deputies or assistants to any of its elected officials, or employees of the Commission or of any of the elected officials of the County, or members of or persons employed by any board or commission the members of which may be appointed by the Commission are hereby directed forthwith upon receiving any legal process, summons or other document evidencing the initiation of any claim against any of such elected officials, or clerks, deputies or assistants to any of its elected officials, or employees of the Commission or of any of the elected officials of the County, or members of or persons employed by any board or commission the members of which may be appointed by the Commission which pertains to or arises from the performance of official duties to file with the County Administrator and the Prosecuting Attorney, on forms which shall be prescribed by the County Administrator, such information about such lawsuit or legal proceeding as the County Administrator may request.

C. That the County Administrator shall henceforth keep a record of all such legal proceedings, whether or not there exists any insurance arrangement purchased or administered by the Office of the County Administrator arguably to cover such legal proceeding and whether or not the claim is asserted against an elected official or clerk, deputy or assistant thereof or employee of any elected county official, on the one hand, or member of any board or commission which administers its own budget or has its own insurance arrangement or regular relationship with private legal counsel;

D. That the responsibility of communication with and conducting liason between the County and any insurance carrier for any policy of insurance purchased or administered by the County Administrator's Office shall be vested in the County Administrator; provided, however, that each board or commission which has purchased or obtained insurance coverage separate and apart from that purchased or administered by the County Administrator's Office shall make its own

arrangements for communication with and conducting liason between such board or commission and its insurance carrier(s);

E. That, immediately upon receipt of any notification to the County Administrator of the initiation or pendency of any such legal proceedings, in the event that the County Administrator's Office has purchased or is administering insurance coverage for such claim, the County Administrator shall forthwith notify the insurance carrier(s) involved and request confirmation of coverage and assignment of legal counsel for the involved person or persons; provided, however, that in the event that there is no such insurance coverage or the insurance carrier declines to assign legal counsel or any question arises about the scope and extent of available insurance coverage or of the insurance carrier's defense obligation, then the County Administrator shall forthwith consult with the Commission and with the Prosecuting Attorney to establish whether the legal proceeding may and should be handled by the Office of the Prosecuting Attorney;

F. That only upon concurrence of the following events, to-wit: (i) the absence of available insurance coverage or refusal of the insurance carrier to assign legal counsel, (ii) the inability or unsuitability of the Office of the Prosecuting Attorney to provide appropriate legal representation, and (iii) a determination that the claim or legal proceeding is one in which legal counsel is necessary and should be provided at public expense from funds under the management and control of the Commission, will the Commission consider retention of legal counsel under the provisions of Section 3 of Article 4 of Chapter 7 of the Code of West Virginia of 1931, as amended;

G. That, as and when a determination is made by the Commission that private legal counsel should be hired at public expense under the provisions of Section 3 of Article 4 of Chapter 7 of the Code of West Virginia of 1931, as amended, such counsel shall be selected by the Commission and a clear understanding, committed to writing, shall be entered into between the Commission and the selected legal counsel regarding the method of compensation of such legal counsel and containing, where appropriate, a budget for such retention, a clear understanding as to the frequency of billing to be rendered and, if the nature of

the matter lends itself to such treatment, a guaranteed ceiling beyond which the costs and fees of such legal counsel will not extend;

H. That none of the such elected officials, or clerks, deputies or assistants to any of its elected officials, or employees of the Commission or of any of the elected officials of the County, or members of or persons employed by any board or commission the members of which may be appointed by the Commission shall have any authority whatsoever to retain private legal counsel or to seek payment or reimbursement of legal fees and costs of defense of any such claim or lawsuit from the public funds entrusted to and managed by the Commission unless the policy herein set out shall have been complied with prior to engagement of such private legal counsel;

J. That the County Administrator is hereby directed to forward a summary of this policy to any and all elected officials, or clerks, deputies or assistants to any of its elected officials, or employees of the Commission or of any of the elected officials of the County, or members of any board or commission the members of which may be appointed by the Commission or any- and everyone else receiving a regular paycheck from the public funds of Wood County administered by the Commission or the Clerk of this Commission, as well as any new persons hereafter entering into any such service, in the form attached hereto, incorporated herein and made a part hereof; provided, however, that the policy herein set out shall be and remain binding upon all present or future elected officials, or clerks, deputies or assistants to any of its elected officials, or employees of the Commission or of any of the elected officials of the County, or members of or persons employed by any board or commission the members of which may be appointed by the Commission, whether or not such notice is given or received;

K. That the foregoing policy shall take effect immediately upon passage of this ORDER and shall remain in full force and effect until the further order of this Commission; and

L. That nothing contained in this ORDER shall be construed to impose upon the Commission or the public treasury of Wood County, West Virginia,

any obligation regarding payment or reimbursement of legal fees and costs not otherwise imposed upon the Commission by law.

ENTER:

THE COUNTY COMMISSION OF WOOD COUNTY,

By *Jean Hayes*
As her President

and *[Signature]*
As a Commissioner thereof,

and *[Signature]*
As a Commissioner thereof.

PRESENTED BY:

Richard A. Hayhurst

Richard A. Hayhurst, Attorney at Law,
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Facsimile (304) 428-2674.

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