



City of Elkins

Planning Commission

May 11, 2023
3:30 PM
401 Davis Avenue
Council Chamber, 2nd Floor

AGENDA

- 1. Call to order and roll call**
- 2. Public comment**
- 3. Minutes**
 - a. Proposed minutes for the meeting of April 13, 2023.
- 4. Presentation**
- 5. Reports**
- 6. Unfinished business**
 - a. Murals and signs
 - b. Comprehensive Plan Update
 - c. Engagement with WVU LUSD law clinic
- 7. New business**
- 8. Announcements**
- 9. Adjournment**



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	May 11, 2023
Section:	Minutes
Category:	Action Item
Agenda Item Name:	Proposed minutes for the meeting of April 13, 2023.
Recommended By:	
Summary:	
Fiscal Impact:	
Recommendation:	
Attachments:	1. Planning Commission-2023_04_13- minutes- unsigned

PLANNING COMMISSION REGULAR MEETING MINUTES

***401 Davis Avenue
City Hall, Council Chambers
April 13, 2023
3:30 p.m.***

Present were Committee Members: Nanci Bross-Fregonara (President), Jerry Marco, Phillips Kolsun, Burley Woods, Vance Jackson, Duke Talbott

Kate Somers was absent.

MINUTES

Duke Talbot **MOVED APPROVAL OF THE MINUTES OF THE MARCH 9, 2023 MEETING.** The motion carried.

UNFINISHED BUSINESS

Consensus to request a contract from the WVU Land Use and Sustainable Development Law Clinic for comprehensive plan update.

NEW BUSINESS

The city clerk presented information about implementing a zoning change request process.

Discussed city code regarding murals and wall signs for the application of zoning code to murals.

ADJOURNMENT

Cw. Bross-Fregonara, **MOVED ADJOURNMENT.** The motion carried.

The meeting was adjourned at 4:22 p.m.

The foregoing minutes were approved at the meeting of _____, 2023.

Name & Title

Signature



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	May 11, 2023
Section:	Unfinished business
Category:	Action Item
Agenda Item Name:	Murals and signs
Recommended By:	
Summary:	
Fiscal Impact:	
Recommendation:	
Attachments:	1. city code on murals and wall signs

Attachment for agenda item: Murals in Central Business District

Section 21-132 Signs for Central Business District.

Purpose. Signage in commercial and districts is allowed to a somewhat greater extent, while maintaining proportion to the size and scope of uses typically present. However, even these more intensive uses in smaller communities are limited in signage to some degree in order to maintain small-town character and limit visual distraction by signage.

- (a) Permitted sign use as accessory to dwellings shall be the same as for Section 21-129.
- (b) *Signs permitted as accessory to non-dwellings.*
 - (1) Permitted permanent sign use as accessory to non-dwellings: A-frame, awning, canopy, chalkboard, freestanding, geological, marquee, minor, monument, neon, projecting, temporary, topiary, wall, and window signs. Only one (1) of each is permitted per use per frontage, except wall signs and window signs. More than two hundred (200) square feet of frontage is required for a use to have more than one (1) pole sign. No more than six (6) permanent signs are permitted by right per use.
 - (2) Permitted temporary signs as accessory to non-dwellings: A-frame, banner, chalkboard, minor, person-assisted, wall, wicket, window. No more than six (6) temporary signs are permitted in one calendar year per use.
 - (3) No more than three (3) flags as accessory to a non-dwelling are permitted.
- (c) Off-premises signs are prohibited.
- (d) *Dimension specifications chart.* All maximum sign area requirements include the sum total sign area of all signs per use.

	Freestanding, Monument, and Wall Signs	All Other Signs	Temporary Signs	Flags
Max. Sign Area	1 sq. ft. per 1 ft. of lineal frontage, not to exceed 32 sq. ft.	0.5 sq. ft. per 1 ft. of lineal frontage, not to exceed 24 sq. ft.	6 sq. ft. displayed at one time	60 sq. ft. ea.
Max. Height	8 ft.	4 ft.	4 ft.	40 ft.

From Section 21-32 Definitions:

“Wall Sign” means any sign, inscription, artwork, figure, marking, or design that is attached, painted, drawn, marked, etched, or scratched onto a wall or against a flat vertical exterior surface of a structure. **Wall signs include murals.**

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CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	May 11, 2023
Section:	Unfinished business
Category:	Action Item
Agenda Item Name:	Comprehensive Plan Update
Recommended By:	
Summary:	
Fiscal Impact:	
Recommendation:	
Attachments:	None



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	May 11, 2023
Section:	Unfinished business
Category:	Action Item
Agenda Item Name:	Engagement with WVU LUSD law clinic
Recommended By:	
Summary:	
Fiscal Impact:	
Recommendation:	
Attachments:	1. 2023.05.08.Elkins Comp Plan Retainer Agreement

RETAINER AGREEMENT

THIS RETAINER AGREEMENT (“Agreement”) is between the West Virginia University College of Law Land Use and Sustainable Development Clinic (“LUSDC”) and the City of Elkins, West Virginia (“Client”), on May 8, 2023. This Agreement establishes an attorney-client relationship solely between the LUSDC and Client.

SCOPE OF THE AGREEMENT

1. If Client is not a business entity or has not yet formed a business entity at the time this Agreement is signed, then this Agreement is entered into between the LUSDC and the person signing.
2. If Client is a business entity, this Agreement does not establish an attorney-client relationship between the LUSDC and any of the owners, directors, officers, employees, or agents of Client.
3. Any legal services to be performed by the LUSDC on behalf of any owners, directors, officers, employees, or agents of Client, must be the subject of a separate retainer agreement. Representation can only occur if:
 - a. The representation is not adverse to the interests of Client as a business entity; and
 - b. Client consents to the representation. Consent must be given by:
 - i. An appropriate official of Client other than the individual who is to be represented, or
 - ii. The unanimous vote of the shareholders, members, directors, or owners of Client.
4. All previous retainer agreements executed between the LUSDC and the Client are no longer effective.

AUTHORITY TO REPRESENT/SCOPE OF SERVICES

5. Client seeks representation and legal services and agrees to representation and legal services by the LUSDC, and the LUSDC agrees to represent and provide legal services (“Representation and Services”) for Client in connection with drafting an update to the City of Elkins 2015 Comprehensive Plan.
6. When the services are completed, the LUSDC shall invoice Client for payment. The amount of the invoice shall not exceed fifteen-thousand, two-hundred forty dollars (\$15,240.00). **Insert any optional services and costs here**
7. Client authorizes the LUSDC to take any steps which, in its discretion, are reasonably necessary or appropriate to protect Client’s interests in this Matter.
8. Client authorizes student clinicians to work on and take the lead in investigating factual and legal issues, drafting documents, communicating with Client, in order to assist in this Matter. A licensed attorney or attorneys shall at all times supervise the law student or students working on this Matter. The licensed attorney’s or attorneys’ supervision shall be consistent with applicable law and rules of professional conduct.
9. The LUSDC agrees to take action as may be necessary, in the LUSDC’s professional judgment, to further the interests of the Client in connection with this Matter. These actions include, but are not limited to, legal advice, research, drafting documents for a transactional matter, on-site visits, and recording documents with the appropriate government agency. **At no point may the**

LUSDC represent the Client in litigation or take any action or participate in any action that moves this Matter, or any other matters that arise within the scope of representation, toward litigation. The LUSDC's services to Client under this Agreement are limited to those that the LUSDC agrees to in paragraph five (5), or in a subsequent written amendment to this Agreement signed by both parties.

10. The LUSDC shall terminate the Representation and Services upon completion of this Matter or upon the failure to consummate this Agreement. Any further representation must be the subject of a new retainer agreement. If, in the absence of a new retainer agreement, the LUSDC provides further services, the terms of this Agreement will continue in effect.

AUTHORITY TO BIND

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

CLIENT INFORMATION

14. Client agrees to promptly provide all information and documents, which are either requested or helpful to assisting with the Representation and Services, and to attend all scheduled meetings. Client further agrees to be active participants in the completion of the scope of work which may include, but is not limited to, assisting in the identification of stakeholders, gathering background information, and helping to publicize and organize any public meetings or public hearings.
15. Client consents to the release of all information regarding its legal issue(s) or legal matter(s), as related to the Representation and Services and this Matter, to all student clinicians and faculty supervisors of the LUSDC.

TERMS OF PROPOSED REPRESENTATION

16. Client may terminate the LUSDC's Representation and Services in this Matter for any reason by providing the LUSDC with written notice of termination. Should the Client elect to terminate this Agreement, it remains obligated to reimburse the LUSDC for any out-of-pocket expenses not already paid.
17. Client understands that the law allows the LUSDC to decline Representation and Services or to withdraw as counsel for Client and terminate Representation and Services in this Matter for any reason consistent with the West Virginia Rules of Professional Conduct by providing Client with written notice of termination. Some examples of appropriate reasons for declining or terminating Representation and Services by the LUSDC include:

- a. The representation will result in violation of the West Virginia Rules of Professional Conduct or other law;
 - b. Withdrawal can be accomplished without material adverse effect on the interests of Client;
 - c. Client persists in a course of action involving the LUSDC's Representation and Services that the LUSDC reasonably believes is criminal or fraudulent;
 - d. Client has used the LUSDC's Representation and Services to perpetrate a crime or fraud;
 - e. Client insists upon taking action that the LUSDC considers repugnant or with which the LUSDC has a fundamental disagreement;
 - f. Client fails substantially to fulfill an obligation to or renders Representation and Services unreasonably difficult for the LUSDC and has been given reasonable warning that the LUSDC will withdraw unless the obligation is fulfilled;
 - g. The Representation and Services will result in an unreasonable financial burden on the LUSDC or, the LUSDC experiences a loss of funding, which jeopardizes continued operation of the LUSDC
18. Client understands that if this Matter is not closed by the time the student clinicians complete their LUSDC course, the LUSDC may transfer this Matter to another student clinician or attorney.
19. Client further understands that some delay in processing this Matter may occur during the summer months or during times of academic recess.
20. Client understands that there may be instances where meeting by way of telephonic or virtual means in accordance with West Virginia Open Meetings Laws is acceptable and preferable to LUSDC staff and student clinicians.
21. Client further understands that the LUSDC staff will have to drive considerable distances pursuant to this representation. In cases of inclement weather or potential inclement weather, Client understands that the LUSDC will err on the side of safety and will not travel whenever traveling may pose a safety risk to staff and/or students.
22. Client further understands that the LUSDC cannot guarantee that the services outlined in Section 5 of this agreement will be completed by a particular date. The LUSDC will proceed in this matter with due diligence but factors out of the control of the LUSDC may delay delivery of the final product(s), including, but not limited to, weather, client cooperation, the academic calendar, and the LUSDC workload with other clients.
23. Client understands that it may be helpful to the LUSDC and its student clinicians to make videotape or voice recordings ("Recordings") of some or all of Client's interviews to permit discussion of this Matter to the entire LUSDC staff. Client understands that any recordings of interviews will be used for educational purposes and Representation and Services only and that the recordings will not be made available to persons other than student clinicians and faculty in the LUSDC. **Client does /does not** consent to recordings. (Place initials of the executing representative in appropriate space.
24. Client authorizes the student clinicians and faculty of the LUSDC to investigate all facts relating to this Matter. Client specifically consents to the release by any person or agency of information or records relating to it or its history.

OTHER PROVISIONS

25. The LUSDC shall represent Client diligently, faithfully, and competently.
26. To minimize out-of-pocket costs, it may be necessary for Client to assist the LUSDC in gathering and sorting information for use in the LUSDC's Representation and Services for Client. In each instance, Client agrees to provide such assistance, on such schedule, as may be necessary.
27. This Agreement constitutes the entire agreement between the parties for legal Representation and Services relating to the above-described Matter, and it supersedes any and all prior or contemporaneous understandings or agreements.
28. This Agreement may be supplemented, modified, or amended only by mutual agreement of the parties. No supplement, modification, and/or amendment of this Agreement shall be binding unless it is in writing and signed by all parties.
29. If any provision of this Agreement is held invalid or unenforceable, its invalidity or unenforceability will not affect any other provisions of this Agreement, and this Agreement will be construed and enforced as if such provision had not been included.
30. This Agreement may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constituting one and the same agreement.

**CITY OF ELKINS,
WEST VIRGINIA**

Designated Representative

Date

**WEST VIRGINIA UNIVERSITY
COLLEGE OF LAW, LAND USE AND
SUSTAINABLE DEVELOPMENT CLINIC**

Katherine Garvey
Director

Date