The Marion County Commission sat in regular session pursuant to its adjournment on Wednesday, July 13th, 2016. Present were Commissioner Garcia, Commissioner Elliott and President VanGilder.

The proceedings of Wednesday July 13th, 2016, together with those had and done under the supervision of Janice Cosco, Clerk and Recorder for the Marion County Commission on July 14th, 15th, 18th, 19th, 20th, 21st, 22nd, 25th and 26th, 2016 were approved as submitted and signed.

Pastor Jim Zinn of the Walnut Grove United Methodist Church led the Court with a prayer. Columbus Carpenter led the Court with the Pledge of Allegiance. President VanGilder called the meeting to order. Commissioner Elliott moved to dispense with the reading of the minutes of Wednesday, July 13th, 2016 and accept them as presented. Commissioner Garcia seconded. President VanGilder concurred.

For the record, notes James Priester, Assessor presented to the County Commission the following Exonerations for approval.

Dated July 27th, 2016
Nos. #2016-368 through #2016-441

Pursuant to the recommendation of James Priester, Assessor and approval of Patrick Wilson, Prosecuting Attorney; Commissioner Elliott moved that the President sign Nos. #2016-368 through #2016-441. Commissioner Garcia seconded. President VanGilder concurred.

The Commission received an Order of Probate of Wills from the County Clerk’s Office for the month of June, 2016. Charlie Reese stated that this Order is a list of Estates in which have been admitted to Probate in the County Clerk’s Office, in vacation of the Commission, from June 1, 2016 through June 30, 2016 pursuant to West Virginia Code §41-5-10, as amended.
BEFORE THE COUNTY COMMISSION OF MARION COUNTY, WEST VIRGINIA

IN RE: CONFIRMATION OF PROBATE OF WILLS, BY CLERK IN VACATION

ORDER CONFIRMING PROBATE OF WILLS

On this day came Janice Cosco, Clerk of the Commission, and presented a list of Estates in which wills have been admitted to Probate by her office, in vacation, from June 1, 2016, to June 30, 2016, pursuant to W. Va. Code 41-5-10, as amended.

The Commission, having received no objections to the actions of the Clerk, and perceiving no objections thereto, does ratify and confirm the probate of wills in all the Estates attached hereto. The list attached hereto is made a part of this Order by this expressed reference thereto, as if all such Estates are fully set forth herein.

Dated this 27th day of July, 2016.

Janice Cosco, Clerk

David A. Glance,
Fiduciary Supervisor

by Deputy

Thomas F. Antulov, Deputy

1
Commissioner Elliott stated that hearing no objection moved that the Commission sign the Order. Commissioner Garcia seconded. President VanGilder concurred.

The Commission received a request for a budget revision in the Animal Control Budget; in the amount of $2,520.00 for 3 percent increase in cost of living.
Commissioner Elliott moved that the Commission sign the revision. Commissioner Garcia seconded. President VanGilder concurred.

For the record, note the Commission presented the Resolution for the Revision of the Levy Estimate (Budget) of the Coal Severance for the County of Marion.
RESOLUTION

At a regular session of the Marion County Commission, held on the 13th day of July, 2016, the following order was made and entered:

SUBJECT: The revision of the Levy Estimate (Budget) Of the Coal Severance for the County of Marion. The following resolution was offered:

RESOLVED: That subject to approval of the State Auditor as ex officio chief inspector of public offices, the county commission does hereby direct the budget be revised PRIOR TO THE EXPENDITURE OR OBLIGATION OF FUNDS FOR WHICH NO APPROPRIATION OR INSUFFICIENT APPROPRIATION CURRENTLY EXISTS, as shown on budget revision number 1, a copy of which is entered as part of this record.

The adoption of the foregoing resolution having been moved by Randy Elliott moved, and duly seconded by Rick Garcia the vote thereon was as follows:

Randy Elliott
Rick Garcia
Ernie VandGilder

WHEREUPON, the Marion County Commission declared said resolution duly adopted, and it is therefore ADJUDGED and ORDERED that said resolution be, and the same is, hereby adopted as so stated above, and the President of The Marion County Commission is authorized to fix his signature on the attached “Request for Revision to Approved Budget” to be sent to the State Auditor for approval.

Marion County Commission
Ernie VandGilder, Commissioner
President
Randy Elliott, Commissioner
Rick Garcia, Commissioner
**REQUEST FOR REVISION TO APPROVED BUDGET**

Subject to approval of the state auditor, the governing body requests that the budget be revised prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists. (§ 11-6-20a)

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<th>REVENUES: (net each acct.)</th>
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<th>(DECREASE)</th>
<th>REVISED AMOUNT</th>
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**NET INCREASE/(DECREASE) Revenues (ALL PAGES)**

325,000

COUNTIES-TRANSFERS TO THE GENERAL FUND FROM OTHER FUNDS MUST HAVE PRIOR APPROVAL OF AUDITOR’S OFFICE

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<th>EXPENDITURES: (net each account category)</th>
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**NET INCREASE/(DECREASE) Expenditures**

325,000

**APPROVED BY THE STATE AUDITOR**

**AUTHORIZED SIGNATURE OF ENTITY**

**APPROVAL DATE**
The Commission presented the Lease agreements between the Marion County Commission and MCPARC.

Lease Agreement

This Lease Agreement made and entered into the 1st day of July, 2016 by and between the County Commission of Marion County, West Virginia ("Lessor") and the Marion County Parks and Recreation Commission ("Lessee").

WHEREAS, Lessor is a public corporation created and established pursuant to the provisions of West Virginia Code § 7-1-1 et seq., and the constitution of the State of West Virginia and;

WHEREAS, Lessor is the owner of certain tracts or parcels or tracts of land located in Marion County, West Virginia and;

WHEREAS, Lessee is a public corporate body created and established by the County Commission of Marion County, West Virginia pursuant to the provisions of West Virginia Code § 7-11-1 et seq. for the purpose of establishing, improving, developing, administering, operating and maintaining a county public parks and recreation system and public recreational facilities in Marion County, West Virginia, and;

WHEREAS, Lessor desires to lease to Lessee several parcels or tracts of land for the purpose establishing, improving, developing, administering, operating and maintaining public parks and public recreational facilities in Marion County, West Virginia, and Lessee desires to lease from Lessor for the term, at the rental and upon the covenants, conditions and provisions herein set forth those certain properties as described herein for such purposes.

 THEREFORE, in consideration of the mutual promises herein, contained and other good and valuable consideration, and upon the terms and conditions as set forth herein, Lessor hereby leases to Lessor those certain parcels or tracts of land located in Marion County, West Virginia, each area of real estate being located in Marion County and generally described and known as follows:

(a) Curtisville Lake Park and Campground
(b) 12th Street Pool
(c) Guyses Run Fishing Park
(d) Icos Run Soccer Complex
(e) Mary Lou Retton Park
(f) East Marion Park
(g) The Rail Trail System

1. Term.

Lessor hereby leases the above described premises to Lessee, and Lessee hereby leases the same from Lessor, for an "Initial Term" of ten (10) years beginning the 1st day of July, 2016 and ending the 30th day of June, 2026. Lessee may immediately take possession of the premises upon the execution of this lease by the parties.
2. Renewal

Lessee shall have the option to renew this lease at the end of the initial ten (10) year term at the rate of one dollar ($1.00) per year for an additional ten (10) year term. Lessee shall give lessor notice of the intent to exercise this option at least thirty days prior to the expiration of the initial term of this lease.

3. Rental

Lessee shall pay to Lessor the sum of one dollar ($1.00) per year payable in advance on the first day of each calendar year during the lease term to Lessor at its address of 200 Jackson Street, Rm 403, Fairmont, WV 26554 or at such other place designated by written notice from Lessor to Lessee.

4. Condition of Premises

The parties to this lease further agree that the Lessee has carefully inspected the premises to the extent desired and acknowledges that the Marion County Commission has not made any guarantees, representations or warranties regarding the physical, environmental or geological conditions thereof or any improvement thereon and that the Marion County Commission expressly disclaims any and all obligation and liability to the Lessee, its successors and assigns, regarding any defects which may exist with respect to such physical, environmental or geological condition of the real estate herein conveyed or any improvement thereon and that the lease of the real estate to the Lessee is in "AS IS" condition, and the Lessee assumes all risk of any such physical, environmental or geological condition regardless of the cause or date of origin of such condition, and that under no circumstances whatsoever shall the Marion County Commission be required to correct, remedy or cure any such physical condition, environment contamination or geological instability or other condition. The Lessee further covenants and agrees that it has reviewed the above and has had the opportunity and has consulted with an attorney regarding the effect thereof and willingly accepts same.

Under this clause, the Marion County Commission shall be indemnified for all liability and costs incurred under common law or existing local, state or federal statutes that protect the public health or environment, including but not limited to the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 et seq., the West Virginia Underground Storage Tank Act, West Virginia Code §22-17-1 et seq., and the Hazardous Waste Management Act, West Virginia Code §22–18-3 et seq.

5. Use

Lessee shall use the Leased Premises exclusively for the purposes of developing and managing recreational facilities for the benefit of the public of Marion County, West Virginia, the type and nature of which shall be at the discretion of the Lessee. If at any time Lessee ceases to use the leased premises for the purpose set forth herein this lease shall terminate without action on the part of Lessor and Lessor shall have the right to enter upon and take immediate possession of the leased premises.
6. Sublease and Assignment.

Lessee shall not have the right, without Lessor’s consent to sublet any portion of the leased premises or assign this Lease to other entity.

7. Repairs.

During the Lease term Lessee shall make, at Lessee’s expense, all necessary repairs to the Leased Premises.

8. Alterations and Site Improvements.

Lessee shall have the right to renovate, make additions, improvements and changes to the leased premises from time to time as Lessee may deem desirable, provided the same are made in a workmanlike manner and utilizing good quality materials and are constructed in accordance with all laws, ordinances, rules and regulations governing the use of public recreational facilities. Lessee shall have the right to place and install personal property, fixtures, equipment and other installations as it may deem necessary to the operation of public recreational facilities in and upon the Leased Premises. Lessee shall have the right to construct upon the leased premises a parking lot or parking spaces as it deems appropriate for the use of the leased premises as a recreational facility. All buildings, machinery, trade fixtures and installations, whether acquired by Lessee at the commencement of the Lease term or placed or installed on the leased Premises by Lessee thereafter, shall become fixtures of the leased premises and may not be removed at any time during the term of this Lease without the written consent and approval of the Lessor.

Lessee shall bear the cost of all construction, renovations, changes and improvements, including the costs of any and legal and regulatory requirements and permits that may be required by any federal, state, or local governmental entity, and any other work on or within the leased premises.

9. Grounds Maintenance, Gates, Mowing and Plowing

All areas within the leased premises shall be the managed and maintained by the Lessee without exception. By way of example but not by way of limitation of Lessee’s obligations, Lessee shall maintain all gates and fencing around the leased premises and shall maintain the lawn, shrubbery, trees or any other vegetation in a condition in accordance with the standard of care that prevails and is common in public recreational facilities. Lessee shall be responsible for and keep the premises clear of ice and snow as necessary during the fall, winter and spring months and from all other obstructions and hazards throughout the year.

10. Insurance.

A. Lessor shall maintain fire and extended coverage insurance in such amounts as Lessee shall deem appropriate on the leased premises and all buildings or other structures and any of its personal property located on the leased premises. The cost of such insurance shall be borne exclusively by Lessee and Lessor shall have no responsibility whatsoever for the cost of any such insurance. If the Leased
Premises or any other part of any building or other structure on the leased premises is damaged by fire, storm, or other casualty or other act of nature, resulting from any act of Lessee or any of Lessee’s agents, employees or invitees, rent shall not be diminished or abated while such damages are under repair, and Lessee shall be solely responsible for the costs of repair not covered by insurance. If the Leased Premises is damaged by any rain, wind or lighting, or any other act of nature rent shall not be diminished or abated while such damages are under repair, and Lessee shall be solely responsible for the costs of repair not covered by insurance.

B. Lessee shall, at its own expense, maintain a policy or policies of comprehensive general liability insurance or protection with respect to the respective activities on the leased premises with the premiums thereon fully paid on or before due date, issued by and binding upon some good and reputable insurance company or self-insuring risk pool. Such insurance or protection shall afford minimum protection of not less than one million dollars ($1,000,000.00) coverage of bodily injury and five hundred thousand dollars ($500,000.00), property damage. Lessor shall be listed as an additional insured on Lessee’s policy or policies of comprehensive general liability insurance, and Lessee shall on an annual basis on the anniversary of the execution of this lease provide Lessor with a current Certificates of Insurance evidencing Lessee’s compliance with this Paragraph. Lessee shall obtain the agreement of Lessee’s insurers to notify Lessor that a policy is due to expire at least (10) days prior to such expiration. Lessor shall not be required to maintain insurance against thefts within the Leased Premises or the Building.

C. Lessor may on at least an annual basis review and reconsider the amount of insurance coverage necessary for the type and nature of activities conducted on the Leased Premises by Lessee or any of Lessee’s agents, employees or invitees and if Lessor deems that a greater amount of coverage than required by paragraph B above is necessary or advisable Lessor may require that Lessee increase the amount of coverage. Should Lessor deem it advisable or necessary to require increased coverage by Lessee, Lessor shall provide at least thirty days notice to Lessee of the required increase.

11. Indemnification

Lessee shall indemnify and hold harmless Lessor, its employees, agents, representatives, directors, and board members, from and against any claims, demands, or causes of action whatsoever, including without limitation those arising on account of any injury or death of persons or damage to property caused by, or arising out of, or resulting from, the use of the leased premises, whether or not such use is consistent with the purposes set forth in this lease, by its officers, employees, agents, or representatives

12. Utilities.

Lessee shall pay all charges for water, sewer, gas, electricity, telephone and other services and utilities used by Lessee on the leased premises during the term of this Lease unless otherwise expressly agreed in writing by Lessor.
13. Signs.

Lessee shall have the right to place on the Leased Premises, at locations selected by Lessee, any signs which are permitted by applicable zoning ordinances and private restrictions and which are consistent with Lessee’s use of the leased premises as a recreational facility. Lessor shall, when necessary, assist and cooperate with Lessee in obtaining any necessary permission from governmental authorities or adjoining owners and occupants for Lessee to place or construct the foregoing signs. Lessee shall repair all damage to the leased premises resulting from the removal of signs installed by Lessee.

14. Entry and Inspection by Lessor

Lessor shall have the right to enter upon the Leased Premises at reasonable hours to inspect the same, provided Lessor shall not thereby unreasonably interfere with Lessee’s use of the Leased Premises.

15. Default.

If default shall at any time be made by Lessee in the payment of rent when due to Lessor as herein provided, or in the event that Lessee fails to maintain any policy of insurance as required under the terms of this agreement, and if said default shall continue for fifteen (15) days after written notice thereof shall have been given to Lessee by Lessor, or if default shall be made in any of the other covenants or conditions to be kept, observed and performed by Lessee, and such default shall continue for thirty (30) days after notice thereof in writing to Lessee by Lessor without correction thereof, Lessor may declare the term of this Lease ended and terminated by giving Lessee written notice of such intention, and if possession of the Leased Premises is not surrendered, Lessor may immediately reenter said premises and take control thereof. Lessor shall have, in addition to the remedy above provided, any other right or remedy available to Lessor on account of any Lessee default, either in law or equity. Lessor shall use reasonable efforts to mitigate its damages.

16. Termination

This agreement may be terminated by any party at any time for any reason or no reason at all upon a thirty (30) days written notice to the other party. Provided, however, that in the event of a default as described in paragraph 16 above the provisions of this agreement relating to default shall control.

17. Quiet Possession.

Lessor covenants and warrants that upon performance by Lessee of its obligations hereunder, Lessor will keep and maintain Lessee in exclusive, quiet, peaceable and undisturbed and uninterrupted possession of the Leased Premises during the term of this Lease.

18. Waiver.
No waiver of any default of Lessor or Lessee hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by Lessor or Lessee shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.


The provisions of this Lease shall extend to and be binding upon Lessor and Lessee and their respective legal representatives, successors and assigns.

20. Consent.

Lessor shall not unreasonably withhold or delay its consent with respect to any matter for which Lessor’s consent is required or desirable under this Lease.


If there is a default with respect to any of Lessor’s covenants, warranties or representations under this Lease, and if the default continues more than fifteen (15) days after notice in writing from Lessee to Lessor specifying the default, Lessee may, at its option and without affecting any other remedy hereunder, cure such default and deduct the cost thereof from the next accruing installment or installments of rent payable hereunder until Lessee shall have been fully reimbursed for such expenditures, together with interest thereon at a rate equal to the lesser of twelve percent (12%) per annum or the then highest lawful rate. If this Lease terminates prior to Lessee’s receiving full reimbursement, Lessor shall pay the unreimbursed balance plus accrued interest to Lessee on demand.

22. Compliance with Law.

Lessee shall in its development and use of the leased premises comply with all laws, orders, ordinances and other public requirements, whether same be federal, state, or local now or hereafter enacted and pertaining to development or use of the Leased Premises.

23. Final Agreement.

This Agreement is the final agreement between the parties hereto and terminates and supersedes all prior understandings or agreements on the subject matter hereof, whether same were written or oral. This Agreement may be modified only by a further writing that is duly executed by both parties.


This Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of West Virginia.
Commissioner Elliott moved that the Commission sign the Lease Agreement. Commissioner Garcia seconded. President VanGilder concurred.
The Marion County Clerk’s Office presented the Orders to Relocate Precincts 112 and 113 from Hickman Run Head Start to the Marion County Conventions and Visitor’s Bureau and Precinct 70 from the Grangeville Community Center to the Bingamon Baptist Faith Calvary Bible Church.

ORDER OF NOTICE TO RELOCATE THE LOCATION OF THE POLLING PLACE FOR PRECINCT 70 WEST AUGUSTA MAGISTERIAL DISTRICT, MARION COUNTY, WEST VIRGINIA

WHEREAS, the Marion County Commission pursuant to WV Code Chapter 3, Article 1, Section 5, shall utilize precincts for the basic territorial election unit; and

WHEREAS, the County Commission shall divide each Magisterial District of the County into election precincts, shall number the precincts, shall determine and establish the boundaries thereof, and shall designate one voting place in each precinct which shall be established as nearly as possible at the point most convenient for the voters of the precinct; and

WHEREAS, pursuant to West Virginia Code Chapter 3, Article 1, Section 7, the County Commission of any county may change the boundaries of any precinct into two or more precincts or consolidate two or more precincts into one or change the location of any polling place whenever the public convenience may require it; and

WHEREAS, the Grangeville Community Building which has been used as the polling place for precinct 70 in the West Augusta Magisterial District is inconvenient for public use, and accordingly, the County Commission therefore finds it necessary to establish a new polling place for all future elections.

It is therefore now ORDERED that it is the intent of the County Commission of Marion County, West Virginia to change the polling place for Precinct 70 from the Grangeville Community Building to the Bingamon Baptist Faith Calvary Bible Church, Margaret Road, Mannington, West Virginia, and that same shall be utilized as the new polling place for Precinct 70 for all future elections or until further Order of this Commission.

It is further ORDERED that notice of this Order to Relocate shall be given at least one month prior to such change by publishing NOTICE of the change as a class II-O Legal Advertisement in compliance with the provisions of Article 3 Chapter 59 of the West Virginia Code, as amended and by posting at the site of the previous polling place and at the site of the new polling place.

It is further Ordered that a copy of this Order shall be placed in the Election Precinct Record Book by the Clerk of the County Commission.

Given under our hand and seal of the County of Marion, this 27th day of July 2016.

MARION COUNTY COMMISSION

Ernest J. VanGilder, President

Randall J. Elliott, Commissioner

Richard García, Commissioner

Attest:

Janice Cosco, County Clerk by deputy, Thomas F. Antulov
Commissioner Elliott moved that the Commission sign the Orders. Commissioner Garcia seconded. President VanGilder concurred.
For the record, note the Commission received the Proposed Remedial Action Plan Released from Sharon Steel/Fairmont Coke Works Superfund Site.

The Commission received a request for advice and consent to appoint William Hobson to the Mannington PSD.

Commissioner Elliott moved that the Commission appoint William Hobson to the Mannington PSD. Commissioner Garcia seconded. President VanGilder concurred.
For the record, note the Commission received the submitted their Sheriff’s Settlement Report for the fiscal Year July 1, 2015 through June 30, 2016.

For the record, note the Commission received the Valley Falls Public Service District Reconciliation Summary for periods ending 4-30-2016 and 5-31-2016.

Walter Colley of the Day Report Program informed the Commission of the garbage situation within the County in that the Day Report Center picked up 28 bags of trash last weekend just along Rt. 250. He added that something needs to be done about enforcement of fines over littering. President VanGilder and Commissioner Elliott both were in agreement over the trash situation and Commissioner Garcia added that those who are caught should pay a steep fine and then have to cleanup along the roads for a time period.

Chris McIntire, Director of Central Communications stated that the upgrade of the 911 Center has been completed and went very well with a lot of assistance from the Computer Department and Maintenance Department. Chris thanked all for their help in this endeavor. Chris added that the software and technology will assist the police, fire and rescue.

Charlie Reese said that Maine has no trash alongside their roads because they have a deposit on all bottles both plastic and glass and cans as well. Charlie added that the DNR Project at the Park is in the State Purchasing Department and needs their approval prior to work beginning at the river by Green River Group. Charlie added that Water Street has been paved by the City of Fairmont and they did a great job. Commissioner Elliott wanted to complement both the City of Fairmont and Robin Gomez for their part in the Palatine Park Project area.

Charlie Reese introduced Mark Trach as the new Assessor for the upcoming year, which was in attendance today.

John Provins of MCPARC and in charge of events at Palatine Park stated that all the events that have been scheduled have been very well attended and good for the community. John added that a Jimmy Buffett Tribute Band will be in attendance on Saturday, August 20th at the Park. Also coming up is the Think Pink Floyd Band in celebration of Rock n Roll. President VanGilder stated that with the addition of the Park and all of the events that take place there, has been a great community involvement. He added it has been a major benefit and plus for the County and City as well.

There being no further business to come before the County Commission, it is ordered that this Commission do now recess until, Wednesday, August 10th, 2016 at 10:00 a.m. for the next scheduled County Commission Meeting.

Ernest VanGilder, President