



## AGENDA

Jefferson County Planning Commission  
Tuesday, November 14, 2017, 7:00 PM

Planning Commission meetings are held in the Old Charles Town Library Meeting Room located at 200 East Washington Street, at the side entrance on Samuel Street in the City of Charles Town.

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**All Citizens that desire to speak must sign-in prior to the Agenda Item being addressed.**

1. Approval of Meeting minutes:
  - October 10, 2017.
2. Citizen Communications: If you wish to comment, please sign-in to speak for issues that are not on the agenda or items that are not open for public comment. Items not open for public comment will be so noted.
3. Request for postponement.
4. **Public Hearing:** For a request by applicant Shepherdstown Public Library for a waiver from Section 24.108.C. of the Subdivision and Land Development Regulations that requires a Site Plan be submitted within two years from receiving Concept Plan approval. The property is designated as Shepherdstown (09) Tax District; Map 8; Parcel 11. (File PCW#17-04)
5. **Public Hearing:** On the proposed text amendments to the Jefferson County Subdivision and Land Development Regulations, File# STA16-01, for the purpose of scheduling a Public Hearing. The text amendment, in accordance with WV Code § 8A-4-5 proposes revisions and additions to multiple sections of the Subdivision and Land Development Regulations including Section 20.106, Adjustment of Lot Boundaries; Division 20.200, types of development; Section 20.201, Minor Subdivisions; Section 20.202, Major Subdivisions; Section 20.203, Minor Site Development; and Appendix A, Section 1.4, Final Plat; and Section 1.5, Recordation of Final Plats for Minor and Major Subdivisions.

**There is no public comment for the following items.**

6. **Discussion and Action** by the Planning Commission to vote to accept or deny the Preliminary Plat Application for Colonial Hills Phase IIIA (File#17-06) as complete in accordance with Sections 24.113 and 24.114 of the Subdivision Regulations for the purpose of scheduling a Public Hearing for this application at the December 12, 2017 Planning Commission meeting. The property is designated as Tax District: Shepherdstown (09); Tax Map: 8; Parcel 10. Zoned: Residential Growth; Size: a 7.92 acre +/- portion of a 27.15 acre parcel.
7. Review and approval of the 2018 Planning Commission Meeting Schedule.
8. Reports from Legal Counsel and legal advice to the Planning Commission.
  - a) Active Litigation:
    - Shiloh Citizens Association: Report on legal action in Supreme Court, Docket #15-1031.
9. Planners Memo

10. President's Report.

Jefferson County Planning Commission  
October 10, 2017

The Jefferson County Planning Commission met on October 10, 2017 with the following Commission members present: Donnie Fisher, President; Steve Stolipher, Vice President; Jack Hefestay, Wade Louthan, Secretary; J Ware, Ron Thomas and Ray Bruning. Staff members present included Jennifer Brockman, County Planner; Roger Goodwin, Director of Engineering, Planning & Zoning; Jonathan Saunders, County Engineer; Nathan Cochran, Assistant Prosecuting Attorney; Alexandra Beaulieu, Zoning Administrator; and Rhonda Greenholtz, Planning Clerk.

Mr. Gene Taylor and Mr. Peter Onoszko were absent with prior notification

Mr. Donnie Fisher called the meeting to order at 7:00 PM.

1. Approval of the September 12, 2017 minutes.  
The minutes were approved with no objections.
2. Citizen Communications. None
3. Request for postponement. None
4. At the request of the County Commission, the Planning Commission reviewed, discussed, and made a recommendation regarding whether the petition for a Zoning Map Amendment by property owner Rankin Properties, LLC. (File # Z17-03) for a property located at the NW corner of the intersection of Alternate WV 45/Potomac Farms Road and WV 480/ Kearneysville Pike is consistent with the *Envision Jefferson 2035 Comprehensive Plan*. The applicant requested to rezone the property from Residential Growth (RG) to General Commercial (GC).

Ms. Jennifer Brockman presented an overview of the request showing commercial and residential uses in proximity to the site. She also pointed out that the location is included within the Shepherdstown Preferred Growth Area and shown as Future Mixed Use Residential/Commercial on the Future Land Use Guide. Staff recommended that the Planning Commission find that the request to rezone the property from Residential Growth (RG) to General Commercial (GC) zoning is consistent with the *Envision 2035 Jefferson Comprehensive Plan* and recommend approval.

Mr. Paul Raco, PJ Raco Consulting, LLC, representative for Christopher Rankin (Rankin Properties, LLC), made a presentation pointing out items that makes this request consistent with the Comprehensive Plan. Rezoning the property from Residential Growth to Commercial will reduce the impact on schools and traffic as the “residential” impact will be taken out. He stated that a commercial use of this property would integrate the proposed commercial development with existing and approved future residential development on

adjoining properties and in the surrounding area. This property is served by central sewer and water that is supplied by Shepherdstown and the system had just been updated and expanded. The property also has direct access to Alternate WV 45/Potomac Farms Road.

Mr. Steve Stolipher made a motion to recommend to the Jefferson County Commission that this request is in conformance with the *Envision 2035 Jefferson Comprehensive Plan*. Mr. J Ware seconded the motion. A vote was taken which carried unanimously.

5. A work session was held on the proposed text amendments to the Jefferson County Subdivision and Land Development Regulations, File# STA16-01, for the purpose of scheduling a Public Hearing. The text amendment, in accordance with WV Code § 8A-4-5 proposes revisions and additions to multiple sections of the Subdivision and Land Development Regulations including Section 20.106, Adjustment of Lot Boundaries; Division 20.200, types of development; Section 20.201, Minor Subdivisions; Section 20.202, Major Subdivisions; Section 20.203, Minor Site Development; and Appendix A, Section 1.4, Final Plat; and Section 1.5, Recordation of Final Plats for Minor and Major Subdivisions.

This item was postponed from the September 12, 2017 Planning Commission meeting.

Ms. Jennifer Brockman stated that the goal of this work session is for the Planning Commission to schedule a Public Hearing on the above amendments. The amendments were based primarily on questions received regarding Minor Subdivisions and Site Plans. Ms. Brockman provided an overview of the proposed changes in each section. The items that are to be revised, once approved, will be reflected on the checklists.

Mr. Steve Stolipher made a motion to schedule a Public Hearing on the proposed text amendments with minor modifications as directed by the Planning Commission at the next regular scheduled Planning Commission meeting to be held on November 14, 2017.

Mr. Wade Louthan seconded the motion. A vote was taken which carried unanimously.

6. A Review and Discussion on the summary of the status of the implementation of the recommendations of *Envision Jefferson 2035 Comprehensive Plan* to the Planning Commission to be forwarded to the County Commission as an addendum to the Annual Report was to be held at this meeting. Ms. Brockman asked that the discussion be held in January as she is trying to get feedback from the other agencies involved.
7. Reports from Legal Counsel and legal advice to the Planning Commission.
  - a) Active Litigation:
    - Shiloh Citizens Association: Report on legal action in Supreme Court, Docket #15-1031 Possible Executive Session.  
No new updates on this item.

Minutes  
Planning Commission  
October 10, 2017

8. Planners Memo.

- An Ethics and Open Meetings Training will be held on Wednesday, October 18, 2017 at 7:00 PM in the Old Charles Town Library Meeting Room.
- Training for the Planning Commission on Signage Laws is tentatively scheduled for November 28, 2017.
- Upcoming PC meeting:

Next Regular Meeting: November 14, 2017

9. President's Report. None

10. Actionable Correspondence. None

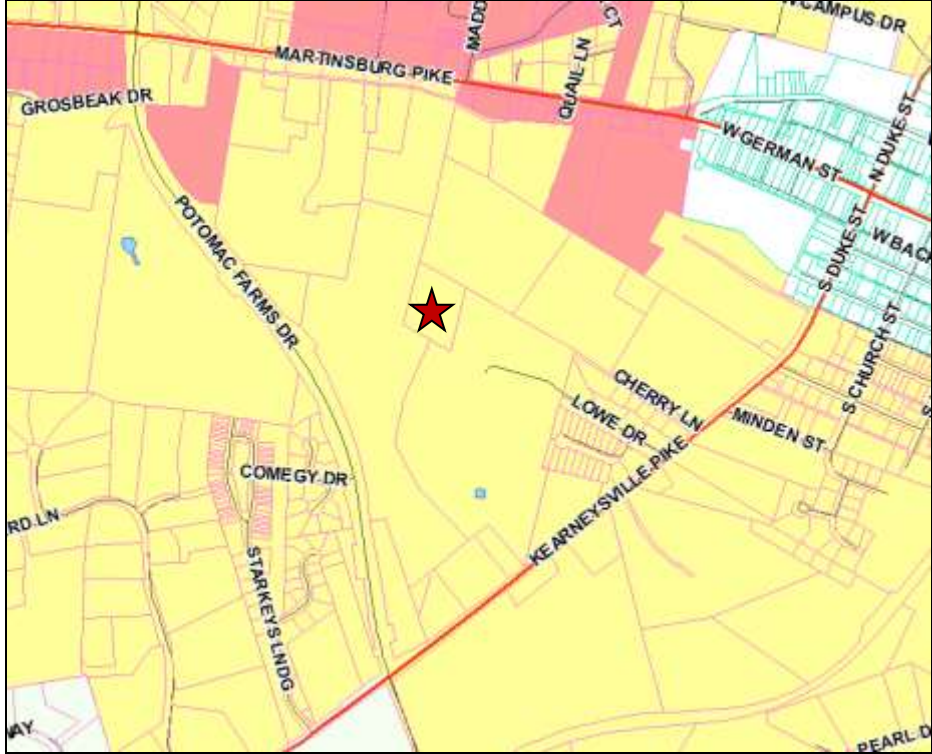
11. Non-Actionable Correspondence. None

Mr. Fisher motioned to adjourn the meeting at 7:54 PM with no objections.

Staff Report  
 Jefferson County Planning Commission Meeting  
 November 14, 2017

**Shepherdstown Public Library PCW File 17-04  
 (Concept Plan File S15-05)**

Item #: PCW17-05: Request by applicant, Shepherdstown Public Library, for a waiver from Section 24.108.C. of the Subdivision and Land Development Regulations that requires a Site Plan be submitted within two years from receiving Concept Plan approval. The applicant is requesting a 1 (one) year extension of the Concept Plan approval.

APPLICANT:	Shepherdstown Public Library
OWNER/DEVELOPER:	Same as above
SURVEYOR/ENGINEER:	Ryan Perks, Gordon
PROPERTY LOCATION:	Lowe Drive, adjacent to the Clarion Hotel and Conference Center
LEGAL DESCRIPTION:	District: Shepherdstown (09); Map: 8; Parcel: 11 
SURROUNDING PROPERTIES:	North: Residential Growth      South: Residential Growth East: Residential Growth      West: Residential Growth
LOT AREA:	Currently 3.81 acres; proposed to be 4.33 acres for build out
APPROVED ACTIVITY:	13,500 square foot library with associated parking.
APPROVALS:	
Concept Plan (File #S15-05)	Submitted: 08/26/15 Determined Sufficient and Complete: 09/11/15 Planning Commission Approval: 10/13/15

**Staff Report**  
Jefferson County Planning Commission Meeting  
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Background:

The existing 3.8 acre property is located on Lowe Drive adjacent to the Clarion Hotel and Conference Center off of Kearneysville Pike (WV 480) and Potomac Farms Road (Alternate WV 45) in the greater Shepherdstown area. The property is zoned Residential Growth and is proposed to be the site of the new Shepherdstown Library. A library (Cultural Facility) is considered a Principal Permitted Use in this zoning district.

On October 13, 2015, the Jefferson County Planning Commission held a Public Workshop regarding the Concept Plan for the proposed 13,500 square foot, two-story library structure. As noted at this meeting, this project is processing via the Minor Site Development Process, with a Concept Plan, provided the development of new infrastructure or the extension of existing off-tract infrastructure is not required. The Planning Commission approved directing the applicant to move forward with the proposed Site Plan subject to the conditions found in the staff comments found in the October 13, 2015 Staff Report. The Planning Commission further noted that per Section 24.121(C), the direction provided to the applicant in the Concept Plan Public Workshop shall be applicable for a period of two years. It is this provision that is the subject of this Waiver Request.

The Request

The applicant is requesting a 1-year extension, from October 13, 2017 to October 13, 2018 to prepare the Site Plan for the Shepherdstown Public Library project. Granting of this waiver will allow the Site Plan to proceed through the standard review process rather than beginning over. This will allow the project to proceed in a timely manner and will avoid duplication of effort by both the County and applicant.

Waiver Requirements

Division 24.300 of the Jefferson County Subdivision and Land Development Regulations states that waivers from the minimum standards in these Regulations, as well as process and procedural waivers, may be granted by the Planning Commission only when the Planning Commission finds that granting a waiver will be consistent with all of the following criteria:

- (1) That the design of the project will provide public benefit in the form of reduction in County maintenance costs, greater open space, parkland consistent with the County parks plan, or benefits of a similar nature;

This waiver request to extend the approval of the Concept Plan for one year will not impact the design of the project, but will permit the library to further pursue fundraising efforts utilizing the currently approved Concept Plan.

- (2) That the waiver, if granted, will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents;

This waiver request is not a request to vary any standards or requirements found in the Subdivision Regulations. All health, safety and welfare requirements will be abided by. The Library Board is working cooperatively with the adjacent property owners to ensure the extension of water, wastewater and the Lowe Drive occurs as a part of their projects, allowing the library to process as a minor development while meeting the regulation requirements.

- (3) That the waiver, if granted, will be in keeping with the intent and purpose of these Regulations; and

**Staff Report**  
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The purpose of the Subdivision and Land Development Regulations is to “facilitate the County Government’s review of proposals for development of land either by subdivision plat or site plan, to ensure that proposed subdivision plats or site plans meet the standards of the Jefferson County Zoning Ordinance and satisfy the legal requirements of the State and County for the subdivision and development of land, and to promote efficient and attractive development in a manner that reduces off-site impacts.” This waiver request is not a request to vary any of the Regulations standards other than the length of time to submit the Site Plan proposed in the approved Concept Plan. The Subdivision Regulations further require that any amendments to these Regulations or the Zoning Ordinance in the second year after the approval of a Concept Plan shall be required as a part of the Site Plan submittal.

- (4) That the waiver if granted will result in a project of better quality and/or character.

The granting of this waiver will allow the applicant to proceed with the plan as proposed in the Concept Plan stage without resubmitting those required steps. The quality and character of the project will be the same as when first proposed in the Concept Plan.

**Recommendation**

Staff recommends granting the requested waiver to extend the submission time of the Site Plan until October 13, 2018 with the provision that any amendments to the Subdivision Regulations or the Zoning Ordinance which occur within that year and impact the design of the proposed project be required as a part of the Site Plan submittal. This waiver is for a time extension and not a change to the site layout or a waiver of any Subdivision Regulation standards. Providing an extension of 12 months to the Library Board would provide for the continuation of this development in accordance with the Concept Plan previously reviewed and approved by the Planning Commission.



**JEFFERSON COUNTY, WEST VIRGINIA**  
**Dept. of Engineering, Planning, and Zoning**  
**Office of Planning and Zoning**  
 116 East Washington Street, P.O. Box 716  
 Charles Town, WV 25414  
 www.jeffersoncountywv.org

File Number: PCW 17-04  
 Staff Initials: RLG  
 Sketch Received: ✓  
 List of Adjoiners: ✓  
 Fees Paid: 100.00

Email: [planningdepartment@jeffersoncountywv.org](mailto:planningdepartment@jeffersoncountywv.org)  
[zoning@jeffersoncountywv.org](mailto:zoning@jeffersoncountywv.org)

Phone: (304) 728-3228  
 Fax: (304) 728-8126

**Waiver Request**

*Note: Waivers from the 2008 Amended Subdivision Regulations must comply with Division 24.300 of the Subdivision Regulations.*

*Sketch on a separate sheet of paper the shape and location of lot. Show the location of the intended construction or land use indicating building setbacks, size, and height. Identify existing buildings, structures, or land uses on the property. Sign and date the sketch. Provide a vicinity map of the area and a list of the adjoining property owner's mailing addresses.*

**Property Owner Information**

Name: Shepherdstown Public Library  
 Mailing Address: PO Box 278  
 Phone Number: 304-876-2783 Email: shealinda@gmail.com libbysturm@comcast.net

**Applicant Contact Information**

Name: Same as property owner  
 Mailing Address: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

**Applicant Registered Engineer(s), Surveyor(s), or Consultant(s)**

Name: Gordon  
 Mailing Address: 301 N Mildred St, Charles Town, WV 25414  
 Phone Number: 304-725-8456 Email: rperks@gordon.us.com

**Physical Property Details**

Physical Address Lowe Drive, Shepherdstown, WV 25443  
 Tax District: Shepherdstown Map No: 8 Parcel No: 10 11 (113)  
 Parcel Size: 3.97 Deed Book: 1155 Page No: 612

**Zoning District (please check one)**

Residential Growth (RG)	Industrial Commercial (IC)	Rural (R)	Residential- Light Industrial- Commercial (R-LI-C)	Village (V)	Neighborhood Commercial (NC)	General Commercial (GC)	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
			Highway Commercial (HC)	Light Industrial (LI)	Major Industrial (MI)	Planned Neighborhood Development (PND)	Office/Commercial Mixed-Use (OC)
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**RECEIVED**

OCT 02 2017

JEFFERSON COUNTY  
 PLANNING, ZONING AND ENGINEERING  
 Place Date Stamp Here

**What Section of the Subdivision Regulations are you Requesting to Waive?**

Section 24.108.C - Minor Site Plan Concept Plan - Direction - Effect

**Briefly Describe the Nature of Your Waiver Request:**

Applicant requests a 1-year extension of the time requirements to prepare a site plan for the Shepherdstown Public Library project in consideration of the direction received in the Concept Plan public workshop held October 13, 2015.

**Explain how the design of the project will provide public benefit in the form of reduction in County maintenance costs, greater open space, parkland consistent with the County Parks Plan or benefits of a similar nature.**

The project will provide a new public library for the benefit of the County-wide community.

**Explain how the waiver, if granted, will not adversely affect the public health, safety, or welfare or the rights of adjacent property owners or residents.**

Granting of the waiver simply allows the site plan to proceed through the standard review process rather than beginning over again. All steps in the site plan process will still be followed; therefore no adverse affect will result

**Explain how the waiver, if granted, will be in keeping with the intent and purpose of this Ordinance.**

Granting of the waiver simply allows the site plan to proceed through the standard review process rather than beginning over again. All steps in the site plan process will still be followed and input from the public workshop will be used in preparation of the site plan.

**Explain how the waiver, if granted, will result in a project of better quality and/or character.**

Granting of the waiver will allow the project to proceed in a more timely fashion and avoid duplication of effort by both the County and applicant.

**Original signature is required. The information given is correct to the best of my knowledge.**

*Elizabeth A. Green* 10-02-17  
Signature of Property Owner                      Date

\_\_\_\_\_  
Signature of Property Owner                      Date

**To Be Completed By Office**

11/14/17 Date of Public Meeting/Public Hearing

10/31/17 Date Property to be Posted By

PC Official/Administrative Body

10/27/17 Date Adjoiner Letters to be Mailed

Approved/Denied by a vote of \_\_\_\_\_ for and \_\_\_\_\_ against this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

**Approved**                       **Denied**

SHEPHERDSTOWN PUBLIC LIBRARY WAIVER REQUEST (FILE #S15-05)  
LIST OF ADJOINING PROPERTY OWNERS

1. KEN LOWE MGMT COMPANY  
MAP 8 PARCEL 12  
233 LOWE DRIVE  
SHEPHERDSTOWN, WV 25443
  
2. MARK COLONIAL HILLS LLC  
MAP 8 PARCEL 10  
6259 REYNOLDS MILL RD  
SEVEN VALLEYS, PA 17360
  
3. FEDERAL GROUP INC.  
MAP 8 PARCEL 10.9  
233 LOWE DRIVE  
SHEPHERDSTOWN, WV 25443



amendment to a zoning ordinance or action by the Planning Commission when the landowner:

- a. Obtains or is the beneficiary of a significant affirmative governmental act, which remains in effect allowing development of a specific project;
- b. Relies in good faith on the significant affirmative governmental act; and
- c. Incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.

**E.D. Automatic Extension.**

1. All requirements, for the vesting of property rights contained in an ordinance enacted pursuant to WV Code Section 8A-4-2 that require the performance of any action within a certain time period for any subdivision or land development plan or plat valid under West Virginia law and outstanding as of January 1, 2010, shall be extended as provided in a resolution passed by the County Commission until July 1, 2012, or longer as agreed to by the municipality, county commission or planning commission. The provisions of this subsection also apply to any requirement that a use authorized pursuant to a special exception, special use permit, conditional use permit or other agreement or zoning action be terminated or ended by a certain date or within a certain number of years.
2. Any subdivision or land development plan or plat, whether recorded or not yet recorded, valid under West Virginia law and outstanding as of January 1, 2010, shall remain valid as provided in a resolution passed by the County Commission until July 1, 2012, or such later date provided for by the terms of the Planning Commission or County Commission's local ordinance or for a longer period as agreed to by the Planning Commission or County Commission. Any other plan or permit associated with the subdivision or land development plan or plat shall also be extended for the same time period. *Provided, that* the land development plan or plat has received at least preliminary approval by the Planning Commission or County Commission by March 1, 2010.

**Sec. 20.106 Adjustment of Lot Boundaries (Merger Plats)**

Elimination of a lot line between two or more contiguous lots under the same ownership may process via a Deed only.

All other adjustments of boundary lines require submission and approval of a Merger Plat and shall be subject to the requirements of Appendix A Section 1.4 of these Regulations, Subsections 1 - 9, 12, 15, 16, 17, 27, 28 and 33 and shall be prepared on either a Legal Size sheet or an 18" x 24" sheet.

Boundary line adjustments shall only require field surveying of any newly created line. If the entirety of both lots cannot be shown at the scale of the plat, provide an inset map that depicts the total boundary of both parcels at a scale acceptable to staff. Source documentation for the unsurveyed lines shall be is noted on the plat; provided, however, that any provisions of the WV Code shall prevail. Any newly created line shall be referenced by a tie line into an existing monument of the parent tract or parcel stated in the deed of reference that is being used. The

adjustment of boundary lines or the consolidation of lots or portions of lots for the exclusive purpose of increasing land area or adjusting shape shall be approved, provided that the following criteria are met:

A. ~~that a~~ Access to all lots included on this plat is not adversely affected and is depicted on the plat;

B. ~~provided a~~ No new lot is created;

C. ~~and~~ The remaining area of the lot from which the land is taken, satisfies requirements for minimum lot size in the zone district in which it is located. Lot boundary adjustments between non-conforming lots shall be exempt from the minimum lot size criteria unless the lot(s) ~~from which the land is taken~~ is(are) rendered unbuildable.

A.D. ~~\_\_\_\_\_~~ The following note shall be included on this plat and in the deed: Properties so merged must clearly state in the deed the following, unless otherwise approved by the County Planner:

“The land(s) hereby conveyed is (are) adjacent to and contiguous with that certain parcel of land which is owned by the grantees herein, having been conveyed to them by deed of record in the Clerk’s Office of Jefferson County in Deed Book \_\_\_\_\_, Page \_\_\_\_\_, and this conveyance is made for the purpose of adjusting the boundary line(s) of said presently owned land(s) of the grantees.”

E. Provide acreage table on plat showing beginning acreages, the merged acreages and the final/net acreages for each lot in the following format:

<b>Acreage Table</b>		
	<b>Parcel A</b>	<b>Parcel B</b>
<b>Existing</b>	<u>    </u> AC	<u>    </u> AC
<b>Merger</b>	<u>  +  </u> AC	<u>  -  </u> AC
<b>Final Area</b>	<u>    </u> AC	<u>    </u> AC

F. If the merger is occurring within a previously approved subdivision, a note which references the original plat stating “See PB \_\_\_\_\_ (Plat Book) PG \_\_\_\_\_ (Page Number), for subdivision notes and restrictions” shall be added.

B.G. ~~\_\_\_\_\_~~ New lot lines do not create any setback violations. A note shall be added to the plat to this effect or front, rear and side setbacks shall be designated on the Plat along with any existing structures.

A deed shall be required to be recorded with the plat and shall include the Plat Book and Page Number of the recorded plat and the note from 20.106 (D) above, clearly label the proposed merged land area.

**Sec. 20.107 Conservation Easements**

All easements created and approved by the Jefferson County Farmland Protection Board, or any other land, viewshed, wildlife, water, or historic conservation agency or group, for the purpose of preservation shall process a deed with a corresponding exhibit detailing the boundary of the conservation area through the Office of Planning and Zoning prior to recordation. The

extinguishment and retention of any development rights shall be detailed in the deed and on the exhibit.

## Division 20.200 Types of Development

Unless explicitly stated within the individual sections listed in this Division, all requirements of these Regulations apply to each of the types of development listed below. Appendix A and Appendix B are included as requirements. Each development type shall comply with the requirements of the zone district in which it is located and may be limited by that zone's restrictions. ~~Any subdivision in the Rural District since October 5, 1988, shall designate maximum density calculations on every plat. (See Zoning Ordinance)~~ Residue parcels from which development rights have been utilized prior to the effective date of these Regulations shall remain as residue parcels. Such parcels shall be limited to the number of development rights to which the parcel was entitled prior to the effective date of these Regulations. Excluded are developments for the purpose of extraction or harvesting of resources and for roads on agricultural land for the purpose of conducting the agricultural operation.

### Sec. 20.201 Minor Subdivisions

*Minor subdivisions* are those that do not require the development of new off-tract infrastructure, the extension of existing off-tract infrastructure, or the creation of common areas, and result in the creation of five (5) residential lots or less, or two (2) nonresidential lots or less, including the parent parcel or residue, from contiguously owned parcels of record. Such subdivisions are approved by the staff. ~~Standards for approval of a minor subdivision shall be as established in this section.~~ Further subdivision of a parent parcel beyond the maximum five (5) lots allowed to be created via the minor process after October 5, 1988 shall be classified as a Major Subdivision and processed accordingly, unless a waiver is applied for and approved by the Planning Commission. A list of all deed transfers since October 5, 1988 shall be submitted with each plat.

#### A. Residential.

All minor residential subdivisions shall ~~contain, but are not limited to,~~ conform with the following ~~criteria:~~

1. ~~**Lots and Residue Parcel.**~~ A minor residential subdivision divides the property into lots and a residue parcel. The subdivision of the lots creates the residue parcel out of the original parcel.
2. ~~**Access.**~~ In the Rural District, lots having a minimum road frontage of 200 feet may front on an existing road right-of-way having a width of 50 feet. Shared driveway access may be required. All other lots, regardless of the zoning district, shall have motor vehicle access, via a 50' access easement, provided that the access easement serves no more than five (5) lots, to either:
  - a) ~~A~~ WV DOH road right-of-way or easement; or
  - b) A road in a major subdivision that meets county roadway design standards (Table 2.2-1).  
via a 50' access easement which extends from the subdivided lots to the existing road right-of-way and the access easement serves no more than

~~five (5) lots. Said access easement shall not be permitted along any existing property lines.~~

~~However, in the Rural District, lots having a minimum road frontage of 200 feet may have a single access onto an existing WV DOH right-of-way or easement or a road in a major subdivision that meets county roadway design standards (Table 2.2-1). Shared driveway access on the adjoining property lines may be required if the distance between the driveways is less than 200 feet.~~

~~2.3. **Water/Well or Sewer/Septic.** Potable water and sanitary sewer service shall be provided according to the requirements of Appendix B, *Engineering Standards*. All submissions shall provide a plat approved by the Department of Health or letters of water and sewer availability, as applicable.~~

#### **B. Family Transfers.**

~~When ~~parent to child or child to parent~~ family transfers are provided for in a specific zoning district, such transfers shall conform with the following: abide by the requirements and standards of minor residential subdivision provisions and the following criteria:~~

~~3.1. The deed shall identify the relationship between the grantor and grantee and document that the recipient has not received a previous family transfer; and~~

~~4.2. State in the deed and on the plat:~~

~~“The lot transferred is to be used for a single-family residence only as long as the lot is not further subdivided. Any further subdivision of the lot shall dissolve the single-family restriction and will place development of the lot under the County land development laws in effect at that time. This lot cannot be transferred again for at least five (5) years; except as another ~~parent to child or child to parent~~ family transfer of land. Any transfer of this lot within the five (5) year period shall place this lot in violation of the Jefferson County Subdivision and Land Development Regulations.”~~

~~3. All lots shall have motor vehicle access, via a 50' access easement, provided that the access easement which serves no more than twelve (12) family transfer lots, to either:~~

~~a) A WV DOH right-of-way or easement; or~~

~~b) A road in a major subdivision that meets county roadway design standards (Table 2.2-1).~~

~~However, lots having a minimum road frontage of 200 feet may have a single access on an existing WV DOH right-of-way or easement or a road in a major subdivision that meets county roadway design standards (Table 2.2-1). Shared driveway access on the adjoining property lines may be required if the distance between the driveways is less than 200 feet.~~

4. [Potable water and sanitary sewer service shall be provided according to the requirements of Appendix B, \*Engineering Standards\*. All submissions shall provide a plat approved by the Department of Health or letters of water and sewer availability, as applicable.](#)
5. As used in this subsection, the word “transfer”, [as it relates to the five year provision](#), shall not include:
  - a. Deeds to Trustees to secure a debt, except that no foreclosure can be had thereunder except at public auction and this provision must appear in the deed of trust;
  - b. Judicial sales or tax sales;
  - c. Mortgages;
  - d. Deeds of partition under or pursuant to an order of Court;
  - e. Real estate transferred by will or intestacy.
6. [Each individual eligible to receive a family transfer as defined in the Jefferson County Zoning and Land Development Ordinance shall](#) ~~A parent or a child may receive only one such exempt lot within the County after July 19, 1979.~~
7. Parents who are married are entitled to only one such [family transfer](#) parcel.

**B-C. Non-Residential.**

The re-subdividing of a lot located in an approved industrial park or existing major non-residential subdivision shall be permitted to follow the minor non-residential subdivision process. When a non-residential [land use subdivision is permitted](#) ~~provided for~~ in the [Rural Zoning District](#), such [site](#) development may utilize the minor non-residential subdivision provisions provided only one parcel is being subdivided off and only one use will be established on the lot. [Additionally, any commercially zoned property may have a one-time exemption to divide off one lot utilizing the minor non-residential provisions providing that no off-site utilities are required and future connections to adjacent lots are provided.](#) All minor non-residential subdivisions shall contain, but are not limited to, the following criteria:

1. **Lots.** A minor non-residential subdivision divides the property into more than one lot.
2. **Access.** All lots shall front on an existing internal subdivision road built to county grade road standards and having a minimum right-of-way width of 50 feet. Lots having direct access to a state road are not permitted to process as a minor, except for those proposals utilizing the non-residential permitted uses in the Rural District.
3. **Water/Well or Sewer/Septic.** Potable water and sewer shall be provided according to the requirements of Appendix B, *Engineering Standards*. All submissions shall provide a plat approved by the Department of Health.

Where, in the judgment of staff, a residential or non-residential proposal does not comply with the minor subdivision requirements and/or the intent of these Regulations, the

proposed subdivision shall be classified as a major subdivision. The reason for such a determination shall be provided to the applicant in writing. The determination may be appealed to the Planning Commission for consideration and classification.

### **Sec. 20.202 Major Subdivision**

A major subdivision, whether residential or non-residential, is any subdivision of land that requires the development of streets (public or private) or easements of access to the lots, or common area and/or includes the creation of more than five residential lots or more than two non-residential lots, that take access to an existing public street and/or requires the development of new off-tract infrastructure or the extension of existing off-tract infrastructure. (See definition of "Major Subdivision.") A subdivision may be classified as major if in the judgment of staff, a proposal does not comply with the minor subdivision requirements and/or the intent of these Regulations. The reason for such a determination shall be provided to the applicant in writing. The determination may be appealed to the Planning Commission for consideration and classification.

### **Sec. 20.203 Minor Site Development<sup>1, 3, 4, & 6</sup>**

*Minor Site Developments* are those proposals that do not require the development of new off-tract infrastructure or the extension of existing off-tract infrastructure.

~~If the development requires easements for drainage or other purposes, private roads, or parking, and access to public roads is involved that serve one or more land uses, it is a site development.~~

#### **A. Minor Site Development Determination**

Minor ~~Site~~ Developments ~~are determined using the criteria defined in this Section.~~ proposes one or more of the following: Existing single family structures used as a single family residence structures and existing agricultural structures are not included in the square footage computations ~~below noted in this section; unless, development/redevelopment activity at the site triggers stormwater management policy as described in the Jefferson County Stormwater Management Ordinance.~~

1. Building(s), both new and additions to existing, where new structures or new additions to structures located on the parcel total less than 5,000 square feet gross floor area (GFA) on any site shall process administratively.
2. Building(s), both new and additions to existing, where all new structures or new additions to structures located on the parcel total more than 5,000 and less than 250,000 square feet gross floor area (GFA) on any site shall:
  - Process a concept plan with a public workshop and all remaining site plan review processes shall be administratively approved.
  - In the event that any condition(s) placed upon a site plan during the concept plan public workshop that cannot be addressed or resolved administratively, such condition(s) placed upon the concept plan at the public workshop shall return to the Planning Commission for resolution.
3. Building(s), both new and additions to existing, regardless of size, when located in a business and/or industrial park on a lot within an approved major non-residential subdivision with master planned roads and stormwater. Section 20.203 Sub-Section (2) does not apply to this provision;

4. Apartment or multi-family development.
  - If apartment or multi-family development project proposes 10 units or more, applicant shall process a concept plan with a public workshop and all remaining site plan review processes shall be administratively approved.
  - In the event that any condition(s) placed upon a site plan during the concept plan public workshop that cannot be addressed or resolved administratively, such condition(s) placed upon the concept plan at the public workshop shall return to the Planning Commission for resolution.
5. New Wireless Telecommunications Facilities (Cell Towers) shall:
  - Process a concept plan with a public workshop in accordance with Article 4B of the Jefferson County Zoning and Land development Ordinance and all remaining site plan review processes shall be administratively approved.
6. Campgrounds (see Appendix B, Division 8) shall process as a Minor Site Development; except that:
  - Campgrounds proposing more than 10 sites shall process a concept plan with a public workshop in accordance with Article 4B of the Jefferson County Zoning and Land Development Ordinance and all remaining site plan review processes shall be administratively approved.

**B. Site Plan Classifications**

All Minor Site Developments shall be processed utilizing one of the following Site Plan Classifications. Unless explicitly stated within this Section, all requirements of these Regulations apply to each of the classifications listed below, including the requirements of Appendix A and Appendix B. Minor Site Development may requires Stormwater Management Plans and stormwater management activities per the Jefferson County Stormwater Management Ordinance, ~~as identified in A, B, C, and D within this Section.~~

~~Existing single family structures used as single family structures and existing agricultural structures are not included in the square footage computations noted in this section; unless development/redevelopment activity at the site triggers stormwater management policy as described in the Jefferson County Stormwater Management Ordinance.~~

**1. No Site Plan or Stormwater Management Plan Required.**

No site plan is required for additions to existing structures or structures ancillary to existing uses on a property, when:

- a. The footprint of the addition or the new structure is less than ~~250~~ 1,200 square feet; and
- b. No additional parking is required per Zoning Ordinance standards; and
- c. ~~The~~ The disturbed area is no more than ~~5,000~~ 3000 square feet.

Note: Once the total of any additions or new structures processed under this provision since October 5, 1988 exceeds 1,200 square feet, it shall process as a Limited Site Plan or Full Site Plan, as appropriate.

**2. Limited Site Plan and Stormwater Management Plan Addressing Quantity Only Required.**

A site plan limited to basic information needed to address (a) erosion and sediment control, (b) parking requirements for the expanded use, (c) stormwater management (quantity and quality) for the additional impervious area only, (d) handicapped access to the existing and proposed structures and (e) compliance with the Zoning Ordinance, may be used on sites where the structure is:

- e-a. An addition to an existing structure, or, ancillary to an existing use; and
- ~~e-b.~~ The footprint does not exceed ~~1600~~ 3,000 square feet or 35% of the existing structure, whichever is smaller.
- e-c. For a home occupation or cottage industry, the limited site plan standards are applicable if a site plan is required pursuant to the Zoning Ordinance.<sup>2</sup>

**3. Full Site Plan Required.**

Any development which does not meet all of the criteria for a limited ~~or rural~~ site plan shall meet all the requirements of these Regulations ~~and the appendices~~.

**C. Site Plan Exception.**

~~For site plans located in the rural zone, Rural Site Plan Required Standards may be utilized.<sup>4</sup> A primary function of the Rural/Agricultural zoning district is to preserve the rural character of the County and the agricultural community. The definition of agricultural allows a number of types of non-residential farming operations to occur in the Rural District. This creates a need to define the manner in which these uses can be permitted in the Rural/Agricultural zone without negatively impacting the rural character area of the land on which it is proposed to be located. While these uses are defined as agricultural, they may have an impact on the farm uses and neighborhoods in which they are located. For this reason,~~

~~All non-residential agricultural uses or principal permitted uses in the Rural DistrictZone that require the construction of a structure other than a residence or other than a structure for private agricultural use that is not intended for public use may utilize this ~~e-Rural Site Plan Exception Standards~~. All Minor Site Developments in the Rural District shall be classified per Section 20.203.B.<sup>4</sup> and Such Rural Site Plan Standards shall meet all the requirements of the Site Plan Classification except for the following: follow the submittal and review requirements of a minor site plan with the following exceptions to the submission. The following provisions apply:~~

- ~~f.a.~~ Parking Areas and Access Drives. Parking areas and access drive aisles (except for the concrete apron) are not required to be asphalt or concrete paved but shall have at least 6" of stone/gravel and be graded in a manner that ensures water will not pool on the primary parking area. No curbs and gutters will be required provided the development conforms to the requirement of Section 2.

If the development is of a size or nature that requires the provision of handicapped parking spaces, such spaces shall be paved with asphalt or concrete and a similar paved surface accessing the front of the structure from the parking pad shall be required as detailed in Appendix B, Sec. 2.5(G), *Off Street Parking Standards*.

~~g-b. Rural Storm Drainage and Management. Development which is proposed in the Rural/Agricultural zoning district which wishes to take advantage of this Exception Rural Site Plan Standards are is required to utilize Low Impact Development (LID) techniques and provide stormwater management (quantity and quality) for the additional impervious area only, to minimize the impact of impervious surfaces and retain the rural character of the area. These techniques are identified in the Jefferson County Stormwater Management Ordinance. Total square footage will be applied and calculated for the non-residential structure(s) that will be open for public use.~~

Where, in the judgment of staff, a proposal does not meet the intent of this ~~Exception rural site plan provision~~ or the intent of these Regulations, ~~this exception may not be utilized proposal shall be classified as a limited or full site plan.~~ The reason for such a determination shall be provided to the applicant in writing. The determination may be appealed to the Planning Commission for consideration and classification.

### **Sec. 20.204 Major Site Development**

*Major site developments* are those proposals that require the development of new infrastructure or the extension of off-tract infrastructure or where the proposal does not meet the definition of a minor site development. This covers the development of one or more parcels of land where there is no subdivision into separate lots. If the development requires easements for drainage or other purposes, private roads, or parking, and access to public roads is involved that serve one or more land uses, it is a site development. Excluded are developments for the purpose of extraction or harvesting of resources and for roads on agricultural land for the purpose of conducting the agricultural operation. Re-subdivision or adjustments of lot lines are also excluded. Major site development shall adhere to ~~F~~full ~~S~~site ~~P~~plan requirements in all proposals.<sup>3</sup>

### **Division 20.300 General Review Standards**

Two types of review occur when a subdivision plat or site plan is proposed, a zoning review and a review of the actual subdivision plat or site plan. Section 20.301 covers the zoning review. Sections 20.302 and 20.303 cover the subdivision plat and site plan review.

#### **Sec. 20.301 Zoning Review**

- A. **General.** A zoning review shall be conducted concurrently with the review of an application for a subdivision plat or site plan. A review shall be provided at each phase of the process. Subdivision plats or site plans that do not meet the zoning standards shall not be approved. Conversely, no subdivision plat shall be denied on the basis of zoning if the Zoning Administrator has decided (or the Board of Zoning Appeals has decided on appeal) that the proposed development complies with the Zoning Ordinance.
- B. **Responsibility.** The zoning review is a function of Staff under provisions of the Zoning Ordinance. Any appeal of Staff's decision shall be heard by the Board of Zoning Appeals.
- C. **Report to Planning Commission.** Staff shall submit a report to the Planning Commission along with the agenda for each meeting at which a subdivision plat or site plan is to be discussed. The report shall contain a final decision as to whether the subdivision plat or site plan meets the standards of the Zoning Ordinance.

[redline would affect the Final Plat, refer to Section 24.202A regarding the Plat Amendment process.](#)

#### Sec. 1.4 Final Plat<sup>4</sup>

The Final Plat shall be drawn or reproduced on Mylar for recordation. The plat shall be drawn at a scale of one inch (1") equals one hundred feet (100') or larger and shall be eighteen inches (18") by twenty-four (24") in size. More than one sheet may be used provided all sheets are indexed on the cover sheet.

The Final Plat is the plat for recordation of the lots created by the subdivision. The Final Plat shall show or be accompanied by:

1. A ½ inch border along all sides except the left side (an 18" side) which shall have a 1-3/4 inch border for binding; [however, a ½" border can be used for the cover page.](#) All text and symbols shall be a minimum of 1/10 of an inch tall on paper.
2. A title block in the lower right corner to include:
  - a. The Official name of the subdivision by which it is to be recorded.
  - b. The names: "Jefferson County, West Virginia."
  - c. Tax District, Tax Map Number and Parcel Number.
  - d. Deed book number and page number.
  - e. Property Owner's name, address and telephone number.
  - f. Developer's name, address and telephone number.
  - g. Engineer and Surveyor of record's name, address and telephone number.
  - h. Sheet index on cover sheet if more than one sheet.
  - i. [State the year of the Zoning Ordinance and Subdivision Regulations and the amendment date that applies to the project.](#)
3. Tic Marks/SPCS WV North NAD83
4. North arrow, graphic scale and date.
- ~~5.~~ [4.](#) A small scale inset map showing the location of the subdivision in the County. The map shall be 1" = 2,000' scale, or other scale approved by the County Engineer.
- ~~6.~~ [5.](#) If applicable, a small scale inset map showing the general location of the subdivision section relative to other sections of the same subdivision.
- ~~7.~~ [6.](#) For the Final Plat, the subdivision perimeter boundary described by bearings and distances. The perimeter boundary shall be established by a network of traverse control having a relative error of closure of 1:7500 or better [and a note to this effect shall be placed on the plat.](#) All perimeter corners shall be permanently marked and in place.

If the survey is based on global positioning system measurements, the relative positional accuracy of the survey measurements shall not be less than that which is specified above.
- ~~8.~~ [7.](#) ~~Lot boundary lines drawn to scale and dimensioned.~~
- ~~9.~~ [8.](#) Lot boundary lines [drawn to scale, dimensioned, and](#) described by bearings and distances. Lot boundaries shall be established by a network of traverse control

having a relative error of closure of 1:7500 or better.

107. Show the location and description lot markers and permanent concrete control monuments. The lot markers and permanent concrete control monuments shall be in accordance with state law. Where possible, permanent concrete monuments should be intervisible; at least 750 feet apart; away from future roadwork; and at least 2 per section or block.
108. Show and label the building setback lines ~~and note the building setbacks~~ on the plat.
112. A number to identify each lot and numbered in logical order.
123. A key to all symbols. (Identify monuments and markers according to type and whether “found”, “set”, or “to be set”).
134. Existing easements and right-of-ways accurately identified, located, dimensioned and drawn to scale. Provide reference to deed book and page and/or plat book and page whichever applies.
145. Proposed easements and right-of-ways (roads, sidewalks, drainage, utilities, etc.) identified, located, dimensioned and drawn to scale. Roads shall be named. Road names shall be approved by the Jefferson County GIS/Addressing Office.
156. Future easements and right-of-ways that may serve at a future date to connect with adjoining properties.
167. Identification of all current adjoining properties (including properties across any road, right-of-way, or easement) by ownership, tax district, tax map number, parcel number, and deed book and page reference. Departure lines for adjoining properties shall be shown on the plat.
178. Show and identify reservations of land for public or semi-public use, if required.
189. Label and S show existing adjoining roads including the right-of-ways widths, road names and route numbers.
1920. Delineate the approximate 100-Year Floodplain and state flood plain zone and firm map number. Show any delineated wetlands that are located on or adjacent to the subdivision or site plan and reference the source of wetland degradation.
204. Area of each lot to the nearest 0.01 acre or to the nearest 100 square feet.
212. Curve data – radius, delta, arc, tangent, chord and chord bearing.
223. A computation of the total tract area and a computation of the land area included in the right-of-ways.
234. Descriptive lines ~~inside the tract boundary- existing~~:
  - Tract boundary - heavy dashed and two dotted lines
  - ~~Lot boundaries – medium solid lines~~
  - Property lines of adjacent tracts - light dashed and two dotted lines
  - Right-of-ways - ~~heavy-light~~ solid lines and two dash lines
  - Restriction lines - ~~medium-light~~ dashed lines
  - Easements and other reserved areas - ~~medium-light~~ dotted lines

Descriptive lines are to be clearly defined in the legend.

~~2524.~~ Descriptive lines ~~outside the tract boundary proposed:~~

~~Property lines of adjacent tracts — medium dashed and two dotted lines~~

Lot boundaries - ~~light-heavy~~ solid lines

Right-of-ways - ~~medium-heavy~~ solid lines and two dash lines

Restriction lines - ~~light-heavy~~ dashed lines

Easements and other reserved areas - ~~light-heavy~~ dotted lines

Descriptive lines are to be clearly defined in the legend.

*(NOTE: Descriptive lines outside the tract boundary are useful for purposes of tract location and orientation. However, such outside lines are not within the scope of the subdivision being platted and should not be given dimensions which might confuse existing descriptions on record).*

~~256.~~ A notation that states:

“The Seller of any lot within this subdivision shall provide the Buyer with a reasonable opportunity, before settlement, to determine that the lot is suitable for the construction of a septic disposal system. If, before settlement, the Buyer is denied a septic system construction permit by the Jefferson County Health Department, the Buyer may refuse to purchase the lot without penalty.”

~~267.~~ For major subdivisions, a Statement of Acceptance placed on the plat cover sheet signed and dated by the developer/subdivider. The Statement shall read:

“The developer, in signing this plat, agrees to abide by all conditions, terms and specifications provided hereon; and to complete all the improvements required by the preliminary plat.”

For minor subdivisions, a Statement of Acceptance placed on the plat cover sheet, signed and dated by the developer/subdivider/owner. The Statement shall read:

“The developer, in signing this plat, agrees to abide by all conditions, terms and specifications provided hereon.”

~~278.~~ Certification of the Surveyor of Record as to the preparation and accuracy of the plat, along with the Surveyor of Record’s professional seal and signature.

~~289.~~ Note on the plat, the West Virginia Division of Highways (WV DOH) entrance permit number and provide a copy of the approved entrance permit. If a previously approved WV DOH permit exists, provide a copy of the updated WV DOH approval letter and the existing permit and state on the cover sheet the existing permit number and the date of the approval letter.

~~2930.~~ Note on the plat, the West Virginia Bureau of Health and/or Jefferson County Health Department permit numbers for water/well and septic/sanitary sewer systems; and provide a copy of the approved plans and permits.

~~3034.~~ Such other conditions, certificates, affidavits, endorsements, dedications or agreements as may be deemed necessary by the Planning Commission.

312. A final list of restrictive covenants and/or the declaration in accordance with the West Virginia Uniform Common Interest Ownership Act shall be submitted with the Final Plat. However, they shall not become part of the Final Plat.
323. Signature block placed on the plat cover sheet for the signature of the County Planner and the affixing of the Planning Commission's seal.
334. Provide a list of waivers on the Final Plat cover sheet in accordance with Appendix A, Section ~~4.2.A. 341.3.A.32.~~
35. ~~In the Rural District, all plats shall provide a density calculation and a notation that states one of the following statements:~~
- ~~A. "This subdivision, together with past subdivision of this property, has utilized all development potential or lots to which the \_\_\_\_\_ acre parent parcel is entitled under the terms of the Jefferson County Subdivision Regulations. No additional lots will be permitted subsequent to the approval of this plat of subdivision unless or until such time as the property may be rezoned or amendments to the County development regulations may permit additional subdivision."~~
- ~~B.A. "To date, this subdivision, together with all past subdivisions of this property, has utilized \_\_\_\_\_ development rights to which the \_\_\_\_\_ acre parent parcel is entitled to \_\_\_\_\_ under the terms of the Jefferson County Subdivision Regulations. \_\_\_\_\_ additional lots will be permitted subsequent to the approval of this plat of subdivision unless or until such time as the property may be rezoned or amendments to the County development regulations may permit additional subdivision."~~
346. Where the adjoining State Road has a right-of-way of less than 50 feet wide, either a fee simple dedication or a road improvement easement will be provided which is a minimum of 25 feet wide measured from the existing centerline of the State road right-of-way.
35. A note shall be added to the plat detailing the road and common land maintenance agreement for the proposed subdivision. Such note shall state that the road and common land is privately held and shall detail the manner in which the cost and expense of maintaining the private road easement, including snow removal, shall be shared among the lot owners, and shall note that this is not a public responsibility nor the responsibility of Jefferson County WV.
36. Please add the following note to Minor Plats: The Jefferson County E911 Addressing Ordinance states that any easement or right-of-way legally accessed by 3 or more addressable structures (not lots) shall be named. The GIS/Addressing Office shall coordinate and oversee the naming of the common easement or right-of-way upon construction of the 3rd addressable structure that accesses the previously unnamed easement or right-of-way.
37. Add a note that states: "All residential and non-residential building lots shall have stabilized construction entrances installed prior to beginning construction on the lot.

### **Sec. 1.5 Recordation of Final Plats for Minor or Major Subdivisions**

The applicant shall ~~have 180 days after approval to file and~~ record the Final Plat in accordance with W.Va. Code § 39-1-13 ~~and Section 24.104 of these Regulations for Minor Subdivisions and 24.118 of these Regulations for Major Subdivisions~~. The approval shall be become void if ~~the time frames in these Sections are not complied with.~~

~~it is not filed within the 180-day period. The following documents shall be submitted to the Office of Planning and Zoning:~~

- ~~1. One (1) Mylar copy of the Final Plat suitable for recordation and acceptable to the Clerk of Jefferson County;~~
- ~~2. Three (3) paper copies of the Final Plat;~~
- ~~3. One (1) digital copy of the Final Plat compatible with the Jefferson County GIS, as specified by the Jefferson County GIS Office requirements; and~~
- ~~4. One (1) digital and one (1) paper copy of any deed restrictions/covenants in a form suitable to the Department.~~

~~(For recordation requirements for Minor Subdivision Final Plats, see Section 24.104(E), Recordation.)~~

### **Sec. 1.6 Bonding**

All bonding and securities for such bonding (bonding shall be a minimum amount of 115% of the cost of all improvements) shall be submitted and approved during this time period.


Satisfactory bonding and surety shall be submitted, approved and in place prior to recordation of the final plat. Bonding shall be provided in accordance with the County Commission of Jefferson County's bonding policy.

The developer/subdivider shall submit an itemized estimate of the costs for completing all improvements shown on the Preliminary Plat/Plan and/or Site Plan. The estimate shall be prepared by the engineer of record. The estimate shall be in a format specified by the Chief County Engineer.

For additional site work required due to plat or plan changes approved under Appendix A, Section 1.32.B, *Plat/Plan Changes*, additional bonding shall be provided as determined by the County Engineer.

**Staff Report**  
 Jefferson County Planning Commission Meeting  
 November 14, 2017

Item #6: **Discussion and Action** to vote to accept or deny the Colonial Hills Phase IIIA (File#17-06) Preliminary Plat Application as “complete” in accordance with Sections 24.113 and 24.114 of the Subdivision Regulations for the purpose of scheduling a Public Hearing for this application at the December 12, 2017 Planning Commission meeting.

APPLICANT:	KE Colonial Hills, LLC.
OWNER:	Same as above
DEVELOPER:	Same as above
SURVEYOR/ENGINEER:	Gordon
PROPERTY LOCATION:	East side of Potomac Farms Drive (Alternate WV 45)
LEGAL DESCRIPTION:	<p style="text-align: center;">District: Shepherdstown (09); Map: 8; Parcel: 10          Zoning: Residential Growth</p> 
SURROUNDING PROPERTIES:	<p>North: Residential Growth                      South: Residential Growth          East: Residential Growth                      West: Residential Growth</p>
LOT AREA:	7.92 acres +/- of a 27.15 acre parcel
PROPOSED ACTIVITY:	61 Townhouse units, open space, stormwater management areas and construction of associated roads and utilities

**Staff Report**  
 Jefferson County Planning Commission Meeting  
 November 14, 2017

<b>PRIOR APPROVALS</b>	
Concept Plan (Phase IIIA)	Submittal: 2/17/17 PC Public Workshop/Approval: 04/11/2017
Preliminary Plat	Phase IIIA Preliminary Plat submitted: 7/6/17 Final Documentation to be deemed sufficient by staff submitted: 8/30/17 Staff approval of Preliminary Plat plan set: 11/1/17

**Introduction and Purpose**

Phase IIIA of the Colonial Hills subdivision is located east of Potomac Farms Road (Alternate WV 45) and is not yet developed. The Final Plat for Phase III of Colonial Hills, including 35 single family lots, was approved November 14, 2006 and bonded and recorded. Two of the 35 lots were planned for future commercial and one was planned for future apartment development, later amended to allow townhouses, pending separate site plan approval.

The Phase IIIA relates to the development of the lot planned for future apartment or townhouse development as 61 Townhomes. This Phase is required to process as a Major Subdivision under the 2008 Subdivision Regulations, as amended, which includes processing a Major Subdivision Concept Plan, a Preliminary Plat, and a Final Plat. The Concept Plan for this development was approved by the Planning Commission in April, 2017 which authorized the applicant to move forward with the Preliminary Plat.

**Summary of Request**

The applicant has submitted the Preliminary Plat for Colonial Hills Phase IIIA for review and approval. The Planning Commission is required to deem the application complete and schedule a Public Hearing within 45 days in accordance with the following requirements of the Subdivision Regulations.

Per Sec. 24.113 of the Subdivision Regulations, a Major Subdivision Preliminary Plat requires the Office of Planning to review the submission and determine whether it is sufficient (at least 70% of the required elements are addressed) within ten (10) days of the 45 day sufficiency and completeness review. Staff determined that, pending the submittal of the Phase 1 Archaeological Report, the application was deemed sufficient. This report was submitted on August 30, 2017, which initiated the 45 day completeness review.

Engineering, Planning and Zoning Staff have now finalized the “completeness review” and per Section 24.113 of the Subdivision Regulations, staff has placed the Preliminary Plat and application on the next regularly scheduled Planning Commission agenda for a vote to accept or deny the application as complete. The complete file containing the Preliminary Plat and application will be at the Planning Commission meeting should any members wish to review it for completeness and confirm the staff’s review.

Per Sec. 24.113(I), if the application is found complete or essentially complete, the Planning Commission shall schedule a public hearing within 45 days in accordance with Section 24.114, *Major Subdivision Preliminary Plat - Public Hearing*. If the application is incomplete, the applicant shall be notified in writing stating the reasons for denial.

**Staff Report**  
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November 14, 2017

**Preliminary Plat Contents and Review**

The Preliminary Plat submission requirements include the following (Section 24.113(B)) and the application has been deemed sufficient and complete by staff:

- Preliminary Plat
- Density Calculation and Site Resource Map
- General Location
- Preliminary Engineering Plans
- Preliminary Landscape Plans
- Transportation Impact Study
- Well and Septic Systems
- Feasibility of Water and Sewer Systems
- Special Engineering
- Historic Resource Preservation
- Proposal Description
- Stormwater Management Plan and Narrative

The Subdivision Regulations require the review of the submitted application and plat and plans by the Department of Engineering, Planning and Zoning as well as the WVDOH and the relevant Public Service Agency, in this case the Corporation of Shepherdstown. The Department is required to determine whether the density, use, and plan meet the requirements of the Zoning Ordinance and any other zoning issues and/or variances that can be identified at the Preliminary Plat submission. Additionally, the Department is required to provide a written opinion as to whether the Preliminary Plat meets the site planning criteria specified in Articles 21 and 22 of the Subdivision Regulations and whether the Concept Plan was fulfilled. The Concept Plan direction included discussion of the relationship with the Library site plan on an adjoining lot; required revisions to the stormwater plan for Phase III to serve Phase IIIA and the library; the need for the completion of Lowe Drive; and various requirements such as parking and landscape requirements in the Subdivision Regulations.

The WVDOH approval is required prior to final Preliminary Plat approval by Staff. The WVDOH approved an additional 6 townhouse sites to the existing entrance permit on 02/21/17. The WVDOH also approved a request to extend the entrance completion date until January 31, 2018 in a letter dated January 24, 2017.

The Shepherdstown Water and Wastewater Public Service Districts were required to review the preliminary engineering to determine whether water and sewer can adequately be provided for the project and whether the proposal is sufficient to handle other development in the area. Approval from Shepherdstown Water and Wastewater was received on 07/14/17.

Staff has finalized its completeness review and stamped the Preliminary Plat as approved by staff on November 1, 2017. This staff report serves as the “written opinion” that the Preliminary Plat conforms with the Zoning requirements, meets the site planning criteria specified in Articles 21 and 22 of the Subdivision Regulations, and fulfills the Concept Plan direction.

**Planning Commission Action Required**

The Subdivision Regulations require that, after staff concludes the completeness review, staff shall place the preliminary plat on the next regularly scheduled Planning Commission agenda for a vote to accept or deny the application as complete. If the application is found complete or essentially complete, the

Staff Report  
Jefferson County Planning Commission Meeting  
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Planning Commission shall schedule a public hearing within 45 days of that meeting. If the application is incomplete, the applicant shall be notified in writing stating the reasons for denial.

Section 24.113(H) further directs the Planning Commission review of Preliminary Plat and states that if the preliminary plat and application is incomplete, or the development cannot conform to the Zoning Ordinance, be serviced by public services or on-site utilities, or is otherwise impossible, the Planning Commission shall deny the same; otherwise, the Planning Commission shall find it complete and accept it. The Planning Commission may also accept the Preliminary Plat and application with the condition that the remaining items identified as necessary by these Regulations be completed prior to final Preliminary Plat approval.

Upon deeming the application complete, the Planning Commission shall schedule a Public Hearing to receive public comments, concerns, and inputs on the proposed preliminary subdivision plat within 45 days. The Commission's next regular meeting on December 12, 2017 will satisfy this requirement. A reduced copy of the complete Preliminary Plat and application will be included in the Public Hearing packet.



## JEFFERSON COUNTY, WEST VIRGINIA

### Office of Planning and Zoning

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Email: [planning\\_department@jeffersoncountywv.org](mailto:planning_department@jeffersoncountywv.org)

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## 2018 MEETING SCHEDULE JEFFERSON COUNTY PLANNING COMMISSION

Planning Commission meetings are held in the Old Charles Town Library Meeting Room located at 200 East Washington Street, at the side entrance on Samuel Street at 7:00 PM.

### Regular Meetings

January 9, 2018  
February 13, 2018  
March 20, 2018  
April 10, 2018  
May 8, 2018  
June 12, 2018  
July 10, 2018  
August 7, 2018  
September 11, 2018  
October 9, 2018  
November 13, 2018  
December 11, 2018

### Tentative Meetings\*

January 23, 2018  
February 27, 2018  
March 27, 2018  
April 24, 2018  
May 23, 2018  
June 27, 2018  
July 24, 2018  
August 21, 2018  
September 25, 2018  
October 24, 2018  
November 27, 2018

\*Tentative meetings are held if necessary to conduct Commission business or to meet required deadlines in accordance with the Planning Commission's 4<sup>th</sup> Tuesday Meeting policy (approved 11/14/17).

Such meeting can be called by the President of the Commission or by a majority vote of the Planning Commission.

Changes in the time or location of the meeting shall be noticed on the County's website at [www.jeffersoncountywv.org](http://www.jeffersoncountywv.org).

Note: If County offices have been closed due to inclement weather, or if weather conditions make travel unsafe for the public, the Planning Commission meeting may be cancelled. Please check the County's website for possible meeting updates during this time. Thank you.



# Jefferson County, West Virginia

Office of Planning and Zoning  
116 East Washington Street, 2<sup>nd</sup> Floor  
Charles Town, WV 25414

Email: [planningdepartment@jeffersoncountywv.org](mailto:planningdepartment@jeffersoncountywv.org)  
Email: [zoning@jeffersoncountywv.org](mailto:zoning@jeffersoncountywv.org)

Phone: (304) 728-3228  
Fax: (304) 728-8126

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## Planner's Memorandum Planning Commission Meeting November 14, 2017

### 1) Upcoming Zoning Ordinance and Subdivision Regulation Amendments

#### a) Landscape Standards

- Stakeholder meeting with staff held – draft amendment in progress.

#### b) Signage

- Various amendments including animated vs digital signs to be addressed; sign industry may need early input. See PC Training below.

#### c) Parking Standards

#### d) Subdivision Regulations Amendments

- STA 16-01, relating to sections requiring frequent interpretations and issues, including but not limited to processing mergers/lot line adjustments; contents of minor subdivisions, etc., has Public Hearing on November 14, 2017
- Staff initiated effort on larger amendment including reorganization of Sub Reg. sections is underway

### 2) Ethics Training

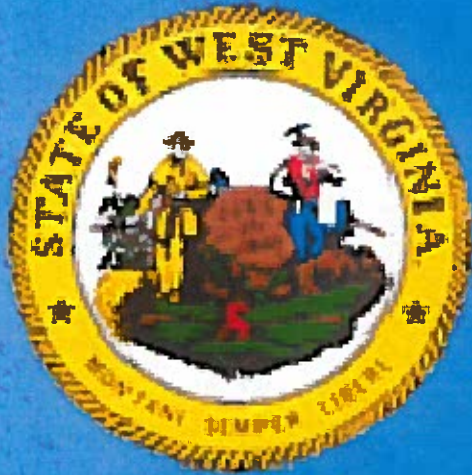
- On October 18, 2017, the Jefferson County Commission held a training for all Board and Commission members by the WV State Auditor's Office entitled "Overview of the Open Meeting Law and Ethics Act". A copy of the power point presentation used is attached.

### 3) Annual Planning Commission Training

- Training on Signage Laws set for **November 28, 2017 at 7 pm**: two part presentation with the WVU Law Clinic providing an overview of the recent Supreme Court decision and any other relevant legal input related to local sign regulations and a member of the signage industry discussing animated signs vs. electronic message boards, which also needs to be addressed in the proposed amendment.

### 4) Upcoming PC meeting

- a) Next Regular Meeting: **December 12, 2017.**



# OVERVIEW OF THE OPEN MEETINGS LAW AND ETHICS ACT

Presented by:

Martin J. Wright, Jr.  
General Counsel  
WV State Auditor's Office

Jefferson County Commission  
October 18, 2017

Contact info:

(304) 558-2251  
[marty.wright@wvsao.gov](mailto:marty.wright@wvsao.gov)



# WHAT IS THE ETHICS COMMISSION?

## WV ETHICS COMMISSION

- Administrative agency under the Dept. of Administration
- Created in 1989
- 9 members, appointed by Governor
- Meetings are 1<sup>st</sup> Thursday of every month



## Jurisdiction

- Ethics Act
- Open Meetings Act
- School Board eligibility
- Administrative Law Judge Code of Conduct
- Lobbyists
- Financial Disclosure Statements

## WV ETHICS COMMISSION



### Agency Mission

- Advice
  - Informal
  - Formal Advisory Opinions
- Training
- Investigations and Complaints



# OVERVIEW OF THE OPEN GOVERNMENTAL PROCEEDINGS ACT



## OPEN GOVERNMENTAL PROCEEDINGS ACT

- W.Va. Code § 6-9A-1 et seq.
- Also called the Open Meetings Act



## OPEN MEETINGS



1975 – Open Meetings Act approved

Applies to all governing bodies of public agencies

Includes County Commission, City Council, and Committees, etc.

## OPEN MEETINGS



1999 – Legislature gave a Committee within the Ethics Commission authority to issue formal advisory opinions



## OPEN MEETINGS



Compliance requires taking certain actions

- before,
- during, and
- after a meeting.



## Key Provisions of Open Governmental Proceedings Act (W.Va. Code § 6-9A-1 et seq.)

- DEFINITIONS
- MEETING NOTICES
- AGENDA ITEMS
- EXECUTIVE SESSIONS
- PUBLIC INVOLVEMENT
- VIOLATIONS

## What Constitutes a Meeting?



A "meeting" is defined by the Act as

the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official action.

W.Va. Code 6-9A-2(5)

## "GOVERNING BODY"

- "Governing body" means the members of any public agency having the authority to make decisions for or recommendations to a public agency on policy or administration

## "QUORUM"

- "Quorum" means the gathering of a simple majority of the constituent membership of a governing body, unless applicable law provides for varying the required ratio.

## "DECISION"

- "Decision" means any determination, action, vote or final disposition of a motion, proposal, resolution, order, ordinance or measure on which a vote of the governing body is required at any meeting at which a quorum is present.

## "OFFICIAL ACTION"

- "Official action" means action which is taken by virtue of power granted by law, ordinance, policy, rule, or by virtue of the office held.



## Express Exceptions to "Meeting" Definition

The term "meeting" does not include:

- (A) Any meeting for the purpose of making an adjudicatory decision in any quasi-judicial, administrative or Court of Claims proceeding;
- (B) Any on-site inspection of any project or program;
- (C) Any political party caucus;
- (D) General discussions among members of a governing body on issues of interest to the public when held in a planned or unplanned social, educational, training, informal, ceremonial or similar setting, without intent to conduct public business even if a quorum is present and public business is discussed but there is no intention for the discussion to lead to an official action; or
- (E) Discussions by members of a governing body on logistical and procedural methods to schedule and regulate a meeting.



## "General Discussion"

- Planned or unplanned
- Social, educational, training, informal, ceremonial or similar setting
- Without intent to conduct public business and  
No intention for the discussion to lead to an official action.



## "General Discussion"

- Some guidelines:
  - If discussion is about something that will lead to official action, either right then or at a later time, the meeting must be noticed.
  - Does not prevent a quorum of members of the governing body from going to the mayor's house for barbecue.
  - Does prevent a quorum of members of the governing body from going to the mayor's house for barbecue and a discussion about the new budget.

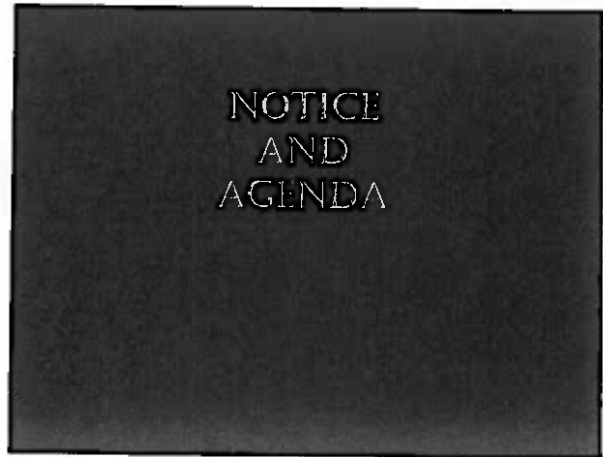


## EMERGENCY MEETING

W.Va. Code § 6-9A-2(2)

"Emergency meeting" means any meeting called by a governing body for the purpose of addressing an unexpected event which requires immediate attention because it poses

- (A) An imminent threat to public health or safety,
- (B) An imminent threat of damage to public or private property; or
- (C) An imminent material financial loss or other imminent substantial harm to a public agency, its employees or the members of the public which it serves



## NOTICE AND AGENDA

Please Notice This



The Open Meetings Act requires advance notice of the date, time, and place of the meeting, including any committee meeting, and an agenda of all matters to be considered and/or discussed



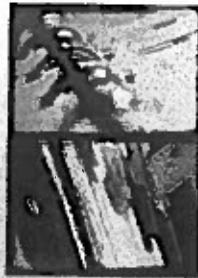
## Meeting Agenda

- "Regular meeting" agendas must be made available **THREE** business days in advance (unless you meet every week, then two days).
- "Special meeting" agendas must be made available **TWO** business days in advance.
- The agenda must be made available at the organization's place of business by close of business on the first day.



## Meeting Agenda

- List all items requiring official action on the agenda
- Official action involves anything requiring a vote of the governing body either at this meeting or a future meeting



## Meeting Agenda

- Agendas must give reasonable notice to the public of every issue to be discussed
- Items must be specific enough to put the public on notice of intended action
- Vague headings are insufficient, e.g.,
  - Old Business
  - New Business
- Open Meetings Advisory Opinion 2008-17



## Meeting Agenda

- "Personnel" is also too vague a description
- Instead, use "filling position of office manager," or "open sealed bids for XYZ project"



## Notice and Agenda

- Agendas need not be published in paper- only made available
- Including the notice and agenda on the agency's website is recommended
- Posting a notice in a public place meets the minimum requirements



## Amending Agenda

- The agenda may be amended up to TWO business days before the meeting
- The amended agenda must be made available to the public and media in the same manner as the original agenda
- The only circumstance under which the agenda may be amended during a meeting is if an emergency arises
- OMAO 2006-25



## Meeting Agenda

- Routine matters that arise after the deadline to amend an agenda must be held over to the next regular or special meeting
- If an agenda is amended due to an emergency, both the meeting agenda and the meeting minutes must explain the facts and circumstances of the emergency.

## EXECUTIVE SESSION



## Executive Session

W.V. Code § 2-2-4

- May only go into executive session for a reason permitted by the Open Meetings Act
- There must be a corresponding agenda item.
- The motion to go into executive session must identify the reason for entering the session.
- Majority vote is required

## EXECUTIVE SESSION



- (1) To consider acts of war, threatened attack from a foreign power, civil insurrection or riot;
- (2) To consider:
  - (A) Matters arising from the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of a public officer or employee, or prospective public officer or employee unless the public officer or employee or prospective public officer or employee requests an open meeting; or
  - (B) For the purpose of conducting a hearing on a complaint, charge or grievance against a public officer or employee, unless the public officer or employee requests an open meeting. General personnel policy issues may not be discussed or considered in a closed meeting. Final action by a public agency having authority for the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of an individual shall be taken in an open meeting.
- (3) To decide upon disciplining, suspension or expulsion of any student in any public school or public college or university, unless the student requests an open meeting.

## EXECUTIVE SESSION



- **Personnel – most common exemption**
- **Hiring, firing, promoting, transfer, discipline or compensation of an employee**
- **Employee may request open session, if asked to meet in executive session**

## EXECUTIVE SESSION



- **General personnel matters are not exempt and must be discussed in open meeting**
- **Examples: Across-the-board pay raise; supplemental health insurance; creating new positions**

## EXECUTIVE SESSION



- (4) To issue, effect, deny, suspend or revoke a license, certificate or registration under the laws of this state or any political subdivision, unless the person seeking the license, certificate or registration or whose license, certificate or registration was denied, suspended or revoked requests an open meeting;
- (5) To consider the physical or mental health of any person, unless the person requests an open meeting;
- (6) To discuss any material the disclosure of which would constitute an unwarranted invasion of an individual's privacy such as any records, data, reports, recommendations or other personal material of any educational, training, social service, rehabilitation, welfare, housing, relocation, insurance and similar program or institution operated by a public agency pertaining to any specific individual admitted to or served by the institution or program, the individual's personal and family circumstances;
- (7) To plan or consider an official investigation or matter relating to crime prevention or law enforcement;
- (8) To develop security personnel or devices;

## EXECUTIVE SESSION





- (9) To consider matters involving or affecting the purchase, sale or lease of property, advance construction planning, the investment of public funds or other matters involving commercial competition, which if made public, might adversely affect the financial or other interest of the state or any political subdivision. Provided, That information relied on during the course of deliberations on matters involving commercial competition are exempt from disclosure under the open meetings requirements of this article only until the commercial competition has been finalized and completed. Provided, however, That information not subject to release pursuant to the West Virginia freedom of information act does not become subject to disclosure as a result of executive sessions;
- (10) To avoid the premature disclosure of an honorary degree, scholarship, prize or similar award;
- (11) Nothing in this article permits a public agency to close a meeting that otherwise would be open, merely because an agency attorney is a participant. If the public agency has approved or considered a settlement in closed session, and the terms of the settlement allow disclosure, the terms of that settlement shall be reported by the public agency and entered into its minutes within a reasonable time after the settlement is concluded;
- (12) To discuss any matter which, by express provision of federal law or state statute or rule of court is rendered confidential, or which is not considered a public record under the meaning of the freedom of information act as set forth in article one, chapter twenty-nine-b of this code.

## MEETING PROCEDURES



## MEETING PROCEDURES

- Members may participate by telephone
- Public present at meeting must be able to hear what is said over the phone



## MEETING PROCEDURES

- May not vote by secret or written ballot
- Voting must take place by verbal statement or show of hands



## PUBLIC COMMENT

- Public comment periods are recommended, but not mandatory
- May not require speaker to sign up more than 15 minutes in advance

## PUBLIC COMMENT

- May set time limits for speakers
- If item requires official action, place on agenda for next meeting

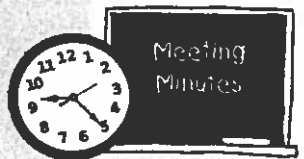





# MEETING MINUTES

## Meeting Minutes

Minutes required for all meetings, including committee and sub-committee meetings, but not executive sessions

- OMAO 99-09







## Minutes

W Va. Code § 6-9A-5

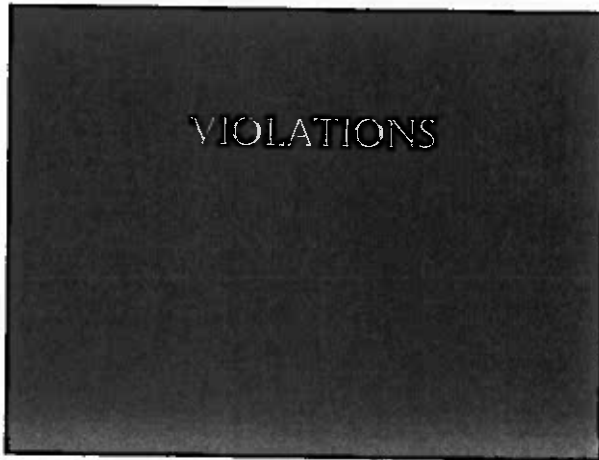

- Meeting minutes must be made available within a "reasonable time"
- "Reasonable time" defined by OMAO 2010-04 as "close of business on the next business day following [the next meeting]"
- If material changes to the minutes are necessary, then the minutes should be available no later than three business days following the next meeting
- Draft minutes are encouraged, but not required, to be made available for public inspection



## Minutes

The Open Meetings Act specifies the information required to be in the minutes



- The date, time and place of the meeting;
- The name of each member of the governing body present and absent;
- All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition, and
- The results of all votes and, upon the request of a member, pursuant to the rules, policies or procedures of the governing board for recording roll call votes, the vote of each member by name

## Violations


W.Va. Code § 6-9A-6 and 7

- An intentional violation is a criminal misdemeanor subject to prosecution by the county prosecutor and up to a \$500 fine (\$1,000 for additional violations)
- May also be liable to wronged parties in civil court (within 120 days of action)
- Court may annul vote taken in violation of Act.

## Random Points



- A gathering where a quorum of the governing body meets with staff is a "meeting" within the scope of the Act.
  - W.Va. Code § 6-9A-2(s)
  - OMAO 2011-02
- One member of the body meeting with staff is not governed by the Act.
- Same rules apply to a subcommittee meeting
  - OMAO 99-09



## Key Opinions

- O.M.A.O. 2005-10 (Cure Opinion)
- O.M.A.O. 2009-04 (FAQ summary)


# OPEN MEETINGS

- Any questions?

# OVERVIEW OF THE ETHICS ACT

## THE ETHICS ACT



- Applies to public servants in state, county & municipal government
- Applies to executive, legislative & judicial branches
- Applies to elected and appointed officials, full & part-time employees
- Does not apply to contractors or private organizations receiving government funds

## Key Provisions of The Ethics Act (W.Va. Code § 6B-2-5)


- USE OF PUBLIC OFFICE FOR PRIVATE GAIN
- GIFTS
- INTERESTS IN PUBLIC CONTRACTS
- CONFIDENTIAL INFORMATION
- PROHIBITED REPRESENTATION
- LIMITATION ON PRACTICE BEFORE BOARD/AGENCY/DEPT
- EMPLOYMENT BY REGULATED PERSONS/ VENDORS
- VOTING
- LIMITATIONS ON COMPENSATION/ EXPENSES

## USE OF PUBLIC OFFICE FOR PRIVATE GAIN

W.Va. Code § 6B-2-5(b)

"A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person."

## USE OF OFFICE FOR PRIVATE GAIN



- May not use public resources to conduct private business
- More than a *de minimis* use of public resources violates the Act
- The most frequently violated
- Generates the most inquiries and Advisory Opinion requests

## USE OF OFFICE FOR PRIVATE GAIN



- Do not use public resources or subordinate staff for your own private use
- Do not use your public position for your or a family member's private benefit

## USE OF OFFICE FOR PRIVATE GAIN



### Public Money and Resources

- May not use public monies for personal benefit
- May not use public resources for your or another's benefit
- May not use public agency's tax exempt status for personal use

## USE OF OFFICE FOR PRIVATE GAIN



### P cards

- May not use P card to buy personal items
- May not use P card to buy personal items and then repay your agency
- May not give your card to another to buy items



## Use of Office for Private Gain



### PAYING FOR MEALS

Generally, the Ethics Act prohibits public agencies from using public funds to purchase meals for employees.



In some cases, a State board may do so if the primary benefit is to the board. (A.O. 2012-27)

## Use of Office for Private Gain



### ENDORSEMENTS

- Do not endorse commercial products.
- Do not list your agency as a "satisfied customer."
- E.g., Division Director of State agency that regulates motor vehicles may not be in a car dealership commercial.  
• A.O. 2005-10

## SELLING TO SUBORDINATES



- The Act prohibits supervisors from directly soliciting subordinates to buy from them
- Employees may purchase in response to a public advertisement



## NEPOTISM

## NEPOTISM

- ▶ The **Private Gain Rule** governs the employment of immediate family members.
- ▶ Ethics Commission has Legislative Rule that provides guidelines on hiring
  - ▶ 155 C.S.R. § 6
  - ▶ Legislative Rule was amended in 2017 Session to expressly provide prohibition



## Use of Office for Private Gain

### Nepotism

- ▶ 3.1 As used in this section, the term "nepotism" means favoritism shown or patronage granted in employment or working conditions by a public official or public employee to relatives or persons with whom the public official or public employee resides.



## Use of Office for Private Gain

### Nepotism

- ▶ (4) A public official or public employee may not knowingly and intentionally influence, attempt to influence, show favoritism or grant patronage in the employment or working conditions of his or her relative or a person with whom he or she resides. Provided, That as used in this subsection, "employment or working conditions" shall only apply to government employment. Provided, however, That government employment includes only those governmental entities specified in subsection (a) of this section.

W.Vs. Code §8-2-6(b)(4)

## NEPOTISM

- ▶ General rule – independent third party should make decision.
- ▶ Division of Personnel has rules which restrict an employee from directly supervising a family member.
- ▶ Each agency may impose stricter standards.

## LIMITATIONS ON USE OF A PUBLIC OFFICIAL'S NAME OR LIKENESS

**Limitations on Public Official's Name or Likeness**

- May not use name or likeness on trinkets
  - examples- magnets, mugs, cups, keychains, bags
  - W.Va. Code § 6B-2B-2(f)
- May
  - ✓ Purchase and distribute with private funds and on own time
  - ✓ Use minimal funds to purchase pens or pencils for ceremonial signings
  - W.Va. Code § 6B-2B-2(a)

**Limitations on Public Official's Name or Likeness**


- May not use name or likeness on educational material (W.Va. Code § 6B-2B-2(d))
- Educational material defined as publications, guides, calendars, handouts, pamphlets, reports or booklets... It includes information... about the office, services the office provides to the public, updates on law... (W.Va. Code § 6B-2B-2(d))

**Limitations on Public Official's Name or Likeness**

- May not use public funds, public employees, or public resources to distribute, disseminate, publish or display the public official's name or likeness for the purpose of advertising to the general public. (W. Va. Code § 6B-2B-2(b))
- Name or likeness may:
  - be used when reasonable to relay specific public safety or emergency information;
  - Appear on agency's social media and website provided it complies with § 6B-2B-3

**Limitations on Public Official's Name or Likeness**


- May use name on letterhead, envelopes, reports, certificates, office signs, press releases
- A.O. 2005-29: The prohibition against public officials using their names/likenesses for purposes of advertising does not prohibit use of name on official letterhead, envelopes and business cards that are used in the performance of usual duties.



**Limitations on Public Official's Name or Likeness**

**Websites**

Picture – OK on home page and section devoted to biographical information




Name – OK throughout website if reasonable and the primary purpose is to promote the agency's mission

- W.Va. Code § 6B-2B-3

**Limitations on Public Official's Name or Likeness**

**Social Media, e.g., Facebook, YouTube**

Name and Picture – OK if reasonable, incidental and its primary purpose is to promote agency's mission and services




W.Va. Code § 6B-2B-3

**Limitations on Public Official's Name or Likeness**

**Other**

- Do not place on publicly owned vehicles
- Do not use on table skirts/banners



**Limitations on Public Official's Name or Likeness**

**Existing Items**


- May not continue to distribute to public
- May donate when appropriate
- May remove or cover public official's name or likeness
- May seek an exemption if there is an undue hardship or a significant financial impact in order to bring items into compliance

**Key Provisions of The Ethics Act  
(W.Va. Code § 6B-2-5)**

- USE OF PUBLIC OFFICE FOR PRIVATE GAIN
- GIFTS


**GIFT LIMITATIONS**

- The Ethics Act prohibits public servants from accepting gifts from interested persons, under certain circumstances.




**GIFT LIMITATIONS**

- General rule - may not accept gift from an interested party in excess of \$25
- 2008 Legislative Rule clarifies that this means \$25 from one source in a calendar year



**GIFT LIMITATIONS**

- May accept tickets to sporting events if ticket value is \$25 or less
- May only accept ticket to sporting event over \$25 if performing an official or ceremonial duty



## GIFT LIMITATIONS

- No \$ limit on food and beverages if host is present
- Public agencies may adopt stricter limits



## OFFICE PARTIES

- These rules apply to baby showers, retirement parties, etc.
- Don't solicit for your own party.
- Your co-workers should not solicit from interested parties such as vendors.
- Don't use public funds for food or gifts.
- Limit public time spent on party.



## PUBLIC EMPLOYEE RECOGNITION EVENTS

## PUBLIC EMPLOYEE RECOGNITION GUIDELINE

- Permissible to use public funds to recognize public employees if it serves a public purpose of promoting employee morale through recognition of achievement
- Responsibility for deciding whether it is an appropriate use of public funds lies with the head of the State Agency or the appointed board to whom the head of Agency reports.

## PUBLIC EMPLOYEE RECOGNITION GUIDELINE

- May be used to purchase:
  - Light refreshments
  - Meals
  - Mementos of appreciation
- May spend up to \$25 per employee per fiscal year  
*Example: If have 10 employees, then can expend \$250 of public funds (\$25 x 10 employees)*
- May be allocated between one or more events which are held to recognize employees

## RETIREMENT GIFTS AND EVENTS

### RETIREMENT GIFTS & EVENTS GUIDELINE

- Applies to public servants who are retiring from public service, transferring to another public agency, resigning to return to private sector or completing their last term of office
- General Rule: May use up to \$100 of public funds for plaque or other commemorative item

### RETIREMENT GIFTS & EVENTS GUIDELINE

- Absent specific legislative authority, may not spend public funds to pay for meals, food, or beverages at an event recognizing a departing public servant
  - Any meals, food or beverages must be purchased using private funds collected in accordance with guideline
- May not use public funds to underwrite any rental or related fees associated with event held at an off-site location

### MISCELLANEOUS RULES RELATING TO GIFTS

### PANEL OR SPEAKING ENGAGEMENT

- If you are invited to speak at an event or as a member of a panel, you may accept the following REASONABLE expenses:
  - Food
  - Travel
  - Lodging
- You may not accept expenses for amenities (e.g. golf or spa treatments)
- Depending on situation, you may accept reasonable expenses for your spouse or significant other to attend



### EDUCATIONAL SEMINAR

- May accept reduced rate or have third party pay for it if:
  - The seminar meets 5-part test which establishes that ultimate benefit is to the agency.
  - 158 C.S.R. §7.3
- Third party may NOT pay cost of guests, e.g., your spouse and children



### GIFT RULES CHARITABLE SOLICITATIONS

W.Va. Code § 6B-2-5(c)

Gifts may only be solicited for a charitable purpose, such as the United Way. Employer may impose stricter standards.



Government employees may not solicit contributions from a subordinate.



### SOLICITING FOR FUNDRAISING

- May sell Girl Scout cookies at the office, under strict limitations.
- No coercion
- No more than *de minimis* amount of public time and resources to conduct non-agency related activities
- Employer may prohibit altogether.

See A.O. 2014-16



### WHAT DO YOU THINK?

- May a public employee accept two free airlines tickets won at a drawing?
- The entity that provided the prize is a State vendor.
- Employee has little to no influence over her employer's contract with vendor.
- Door prize drawing was random.

### Key Provisions of The Ethics Act (W.Va. Code § 6B-2-5)

- USE OF PUBLIC OFFICE FOR PRIVATE GAIN
- GIFTS
- INTERESTS IN PUBLIC CONTRACTS

### PROHIBITED INTERESTS IN PUBLIC CONTRACTS

W.Va. Code § 6B-2-5(d)



- Elected public officials and full-time employees may not have a financial interest in a public contract under their authority or control (\$1000 threshold)
- Ethics Commission has discretion to grant an exemption to the public entity based upon undue hardship



### PROHIBITED INTEREST IN AGENCY CONTRACT

W.Va. Code § 6B-2-5(d)

- Part-time appointed officials are not subject to prohibition, but must recuse themselves if a conflict arises.
  - New provision added in 2017 Legislative Session
- County officials - different rule  
(W.Va. Code § 61-10-15)

### PROHIBITED INTEREST IN AGENCY CONTRACT

W.VA. CODE § 61-10-15



- W. Va. Code § 61-10-15 prohibits county officials from having personal financial interests, directly or indirectly, in a contract, purchase or sale over which their public position gives them voice, influence or control.
- CRIMINAL PENALTY

### Key Provisions of The Ethics Act (W.Va. Code § 6B-2-5)

- USE OF PUBLIC OFFICE FOR PRIVATE GAIN
- GIFTS
- INTERESTS IN PUBLIC CONTRACTS
- CONFIDENTIAL INFORMATION

### CONFIDENTIAL INFORMATION

W.Va. Code § 6B-2-5(e)

"No present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person."



### CONFIDENTIAL INFORMATION

• Aside from administrative penalty, improper disclosure is a criminal misdemeanor



### Key Provisions of The Ethics Act (W.Va. Code § 6B-2-5)

- USE OF PUBLIC OFFICE FOR PRIVATE GAIN
- GIFTS
- INTERESTS IN PUBLIC CONTRACTS
- CONFIDENTIAL INFORMATION
- PROHIBITED REPRESENTATION

### REVOLVING DOOR- PROHIBITED REPRESENTATION

• A public servant may not appear in a representative capacity before their current or former agency on a matter in which they were personally and substantially involved



### Key Provisions of The Ethics Act (W.Va. Code § 6B-2-5)

- USE OF PUBLIC OFFICE FOR PRIVATE GAIN
- GIFTS
- INTERESTS IN PUBLIC CONTRACTS
- CONFIDENTIAL INFORMATION
- PROHIBITED REPRESENTATION
- LIMITATION ON PRACTICE BEFORE BOARD/AGENCY/DEPT

## LIMITATIONS ON PRACTICE

### ● W.Va. Code § 6B-2-5(g)

No elected or appointed public official and no full-time staff attorney or accountant shall, during his or her public service or public employment or for a period of one year after the termination of his or her public service or public employment . . . , appear in a representative capacity before the governmental entity in which he or she serves or served or is or was employed in the following matters:

## Key Provisions of The Ethics Act (W.Va. Code § 6B-2-5)

- USE OF PUBLIC OFFICE FOR PRIVATE GAIN
- GIFTS
- INTERESTS IN PUBLIC CONTRACTS
- CONFIDENTIAL INFORMATION
- PROHIBITED REPRESENTATION
- LIMITATION ON PRACTICE BEFORE BOARD/AGENCY/DEPT
- EMPLOYMENT BY REGULATED PERSONS/ VENDORS

## SELLING AND BUYING FROM PERSONS YOU REGULATE

### W.Va. Code § 6B-2-5(h)

- May not seek employment with or seek to purchase or sell or lease real or personal property from any person who:
  - (1) Had a matter on which you or a subordinate took regulatory action within the last 12 months;
  - (2) Currently has a matter before your agency on which you or a subordinate is working.
- May apply for an exemption.

## OUTSIDE EMPLOYMENT

- Full-time public servants may not work for vendors if they exercise authority or control over a contract with that vendor



## OUTSIDE EMPLOYMENT

- "Exercising authority or control" includes:

- (1) drafting bid specifications;
- (2) selecting vendor;
- (3) conducting inspections;
- (4) approving payment.



## OUTSIDE EMPLOYMENT

- Cannot conflict with current employment.
- Must work on own time.
- Cannot get paid for something that is part of your public job duties.
- May not work for someone you regulate.
- Consult with your supervisor or the Division of Personnel to ensure compliance with the government entity's rules

## MOONLIGHTING

- Public agencies may adopt stricter limitations governing off-duty or secondary employment



## Key Provisions of The Ethics Act (W.Va. Code § 6B-2-5)

- USE OF PUBLIC OFFICE FOR PRIVATE GAIN
- GIFTS
- INTERESTS IN PUBLIC CONTRACTS
- CONFIDENTIAL INFORMATION
- PROHIBITED REPRESENTATION
- LIMITATION ON PRACTICE BEFORE BOARD/AGENCY/DEPT
- VOTING

## VOTING

- The voting rules apply to anyone who serves on a governing body of a public agency
- Includes elected, appointed, full-time and part-time officials



## VOTING PROVISIONS

W.Va. Code § 6B-2-5(j)

Public officials . . . may not vote on a matter:

- (A) In which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with which they are associated means a business of which the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stocks of any class.
- (B) If a public official is employed by a financial institution and his or her primary responsibilities include consumer and commercial lending, the public official may not vote on a matter which directly affects the financial interests of a customer of the financial institution . . . (\$15,000 or more)

## VOTING PROVISIONS

W.Va. Code § 6B-2-5(j)

Public officials . . . may not vote on a matter:

(C) The employment or working conditions of the public official's relative or person with whom the public official resides.

(D) The appropriations of public moneys or the awarding of a contract to a nonprofit corporation if the public official or an immediate family member is employed by, or a compensated officer or board member of, the nonprofit: *Provided*, That if the public official or immediate family member is an uncompensated officer or board member of the nonprofit, then the public official shall publicly disclose such relationship prior to a vote on the appropriations of public moneys or award of contract to the nonprofit; *Provided, however*, That for purposes of this paragraph, public disclosure shall mean disclosure of the public official's, or his or her immediate family member's, relationship to the nonprofit (i) on the agenda item relating to the appropriation or award contract, if known at time of agenda, (ii) by the public official at the meeting prior to the vote, and (iii) in the minutes of the meeting.

## VOTING PROVISIONS

W.Va. Code § 6B-2-5(j)

A public official may vote:

- (A) If the public official, his or her spouse, immediate family members or relatives or business with which they are associated are affected as a member of, and to no greater extent than any other member of a profession, occupation, class of persons or class of businesses. A class shall consist of not fewer than five similarly situated persons or businesses.
- (B) Matter affects a publicly traded company (provided meets exceptions)

## VOTING

- May not vote on employment of a relative



## VOTING

- "Relatives" include husband, wife, son, daughter, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, grandmother, grandfather, & grandchild



## VOTING

- May not vote to award contract to a business with which you or an immediate family member is associated



## VOTING

- "Immediate family members" includes spouse with whom you are living, dependent children, dependent parents and dependent grandchildren



## RECUSAL

- W.Va. Code § 6B-2-5(j)(3)

For a public official's recusal to be effective, it is necessary to excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests, and recusing him or herself from voting on the issue.

- ◆ Be sure to reflect recusal in meeting minutes



## Key Provisions of The Ethics Act (W.Va. Code § 6B-2-5)

- USE OF PUBLIC OFFICE FOR PRIVATE GAIN
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- LIMITATION ON PRACTICE BEFORE BOARD/AGENCY/DEPT
- VOTING
- LIMITATIONS ON COMPENSATION/ EXPENSES

## LIMITATIONS ON COMPENSATION

- W.Va. Code § 6B-2-5(l)

As a general rule, a public employee may not receive additional compensation from another publicly-funded state, county or municipal office or employment for working the same hours.



## DOUBLE DIPPING

- May not receive compensation from two public sources for working the same hours - can't be on two time clocks at the same time



## LIMITATIONS ON EXPENSES

- W.Va. Code § 6B-2-5(m)

"No public official or public employee shall knowingly request or accept from any governmental entity compensation or reimbursement for any expenses actually paid by a lobbyist . . . or actually paid by any other person."

## VIOLATIONS OF THE ETHICS ACT

## COMPLAINTS FOR VIOLATIONS OF THE ETHICS ACT

- Any citizen may file a complaint
- Complaints must be verified
- Ethics Commission may initiate a complaint based on credible evidence that a material violation has occurred

## ABOUT THE PROBABLE CAUSE REVIEW BOARD

- 3 Members appointed by Governor and Approved by Senate
- Similar to a grand jury
- Proceedings are confidential unless and until Review Board enters an Order finding Probable Cause
- Review Board's work ends with Probable Cause or Dismissal

## GIVING FALSE INFORMATION



"Any person who knowingly gives false or misleading material information to the Commission or who induces or procures another person to give false or misleading material information to the Commission is subject to administrative sanction by the Commission[.]"

-W.Va. Code § 6B-2-10(f)

## SANCTIONS & PENALTIES

● Ethics Commission must find guilt beyond a reasonable doubt

● Available sanctions include :

- (1) cease and desist order;
- (2) public reprimand;
- (3) monetary fine up to \$5,000.00 (per offense);
- (4) order of restitution;
- (5) costs of the investigation; and
- (6) recommendation for termination or removal.



## WV ETHICS COMMISSION



● Any questions?



## WEST VIRGINIA ETHICS COMMISSION

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