



Jefferson County, West Virginia
 Department of Engineering, Planning and Zoning
Office of Planning and Zoning
 116 E. Washington Street, 2nd Floor, P.O. Box 716
 Charles Town, West Virginia 25414

File #: 23-3-Z
 Date Rec'd: 03/30/23
 Fees Paid: n/a*
 Staff Int: jth
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Zoning Map Amendment (Rezoning)

Pursuant to Article 12, a Zoning Map Amendment is a procedure to amend the official Zoning Map of the County by changing the zoning designation of a property. In order for a proposed amendment to be approved, the County Commission, with the advice of the Planning Commission, must find that the amendment is consistent with the adopted Comprehensive Plan, or if it is inconsistent, must make findings in accordance with the requirements of 8A-7-8 et seq of the WV State Code.

Property Owner Information

Owner Name: _____
 Business Name: Lutman Land Development, LLC
 Mailing Address: 67 Lutman's Lane, Kearneysville, WV 25430
 Phone Number: c/o Paul 304/676-8256 Email: c/o pjraco.consulting@gmail.com

Applicant Contact Information

Applicant Name: Same as Owner Same as owner:
 Business Name: _____
 Mailing Address: _____
 Phone Number: _____ Email: _____

Consultant Information

Name: Paul J Raco
 Business Name: P.J. Raco Consulting, LLC
 Mailing Address: P.O. Box 548, Charles Town, WV 25414
 Phone Number: 304/676-8256 Email: pjraco.consulting@gmail.com

Physical Property Details

Physical Address: Route 340/1 Lewisville Road Just West of Route 340 Vacant Lot:
 Tax District: Kabletown Map No: 29 Parcel No: 2 and 6
 Parcel Size: 66 +- Acres & 30.89 +- Acres Deed Book: 1292 Page No: 482

Current Zoning District

Industrial/Commercial

Proposed Zoning District

Residential/Light Industrial/Commercial

Substantiation for the Request

For a Zoning Map Amendment (rezoning) request, the "burden of proof" is on the applicant to show why the proposed zoning is more appropriate than the existing zoning. Accordingly, please explain how the following factors support your proposal.

Describe your proposed use/project and describe why this Zoning Map Amendment is necessary for the proposed use (and/or project) described.

N/A Planning Commission Found this property's change to the Mixed-Use Zone as being Consistent with the Comprehensive Plan. This property is located in the Preferred Growth District.

Describe how this Zoning Map Amendment will be consistent with the objectives and policies of the Comprehensive Plan.


See Attached

Discuss any change(s) of transportation characteristics (i.e. type and frequency of traffic, adequacy of existing transportation routes), and neighborhood characteristics from when the original Ordinance was adopted.

See Attached

A plat or sketch shall include the entire original parcel as it appeared on the date this Ordinance took effect. The property proposed for development shall be drawn to a reasonable scale (eg. 1" = 50', 1" = 100', or 1" = 200'). The sketch plan shall show, in simple form, the proposed layout of lots, parking areas, recreational areas, streets, building areas, and other features in relation to each other and to the tract boundaries. Contour lines, as shown on the appropriate U.S.G.S. Topographic Quadrangle Map or other data source approved by the Department, should be superimposed on the sketch plan. The source of all contour lines shall be noted on the plan. Natural features such as woods, watercourses, prominent rock outcroppings, sinkholes, and quarries shall be delineated.

The information given is correct to the best of my knowledge.


Property Owner Signature*

Date

3-29-2023

Property Owner Signature*

Date

*The **original** signature of the property owner is required. A copy of the signature will not be accepted.

A complete petition, and related fees, shall be submitted to the Office of Planning and Zoning for placement on the Planning Commission agenda at least two (2) weeks prior to the meeting date at which the petition will be presented. A copy of the application shall be submitted to the County Commission Office for inclusion on the County Commission Agenda at least one week prior to the County Commission meeting date.

Map Amendment Application
Rezoning Request
Article 12, Jefferson County Zoning Ordinance
Lutman Land Development LLC
March 30, 2023

Owners/Applicants:

Lutman Land Development, LLC
67 Lutmans Lane
Kearneysville, WV 25430

Ordinance Citation:

Article 12, Section 12.3 Jefferson County Zoning and Land
Development Ordinance

Map Amendment Definition:

“An amendment to the Zoning Map which is adopted by reference in the Zoning Ordinance that consists of a change that only applies to a specific property, changing from one existing zoning designation to another existing zoning designation. A map amendment does not permit changes, conditions or alterations to uses permitted within an existing zoning designation as all zoning designations must be uniformly applied to all property which are subject to said designation.”

Request:

Amend the Zoning Map for these two parcels of approximately 66 and 30.89 acres in size. The amendment is from the current Industrial/Commercial District to the Rural District.

Substantiation for the Request:

1. The property is currently zoned for Heavy Industrial and Commercial Uses and the Applicants are seeking a map amendment to the Residential/Light Industrial/Commercial

District. As further explained in this package, the Applicants believe that this map change is consistent and compatible with the Envision Jefferson 2035 Comprehensive Plan. The Applicant sought a Rezoning to Rural, but the Staff and Planning Commission found that request not to be consistent with the Comprehensive Plan since the property is located in a Preferred Growth District. The Planning Commission already moved that Rezoning to this proposed Mixed-Use Zone was Consistent with the Plan and asked the Applicant to resubmit this Application requesting the Residential/Light Industrial/Commercial District;

2. There have been significant changes in this area, since the Jefferson County Zoning Ordinance was adopted in 1988. These changes include multiple rezonings north of this property which were approved by the County Commission after the Planning Commission declared them consistent with the Comprehensive Plan. This includes the rezoning of the Sunnyside Industrial Park from Industrial/Commercial to the Residential/Light Industry/Commercial District.
3. The 2015 Envision Jefferson 2035 Comprehensive Plan shows this area to be in the Route 9 Preferred Growth Area in Jefferson County. As such, the plan calls for Urban Scale Growth. The Department of Transportation has also announced that the four lane near this site is in the final stage before construction. The four lane is one of the main reasons that this area was continued to be slated for development in the 2015 Comprehensive Plan; and,
4. The Applicants believe that the current Heavy Industrial/Commercial Zoning Classification is an error in the Jefferson County Zoning Map since the property is now shown located in one of the 6 primary growth areas of Jefferson County. When the original Zoning Ordinance, the main focus for all areas along a highway and a railroad was for the property to be developed into Heavy Industrial Uses. This was still the philosophy during the 2015 rewrite of the Comprehensive Plan. As the Commission knows now, heavy industrial uses are not

the major focus of Jefferson County and this trend shifted after the 2015 Plan was adopted. The property is also located just west of Principal Arterial Road (Route 340) in the County with near direct access to the proposed four lane Route 340. The properties are shown to have direct access to Route 340 under this plan. This rezoning will allow the area to focus on Commercial if needed after the highway is constructed and will also allow limited residential lots since public water and sewer has not been constructed as anticipated by the Comprehensive Plan.

Tax District, Map and Parcel Number:

Kabletown Tax District, Map 29, Parcels 2 and 6

Deed Book Reference:

Deed Book 1292 at Page 482

Sketch Plat:

Attached

Tract Size:

Total of approximately 96.89 Acres in two parcels (66 and 30.89 acres)

Discussion on:

Comprehensive Plan compatibility of the proposed change:
Included in this Petition.

Any Change of transportation characteristics and neighborhood from when the original ordinance was adopted: Included in this Petition.

A. Comprehensive Plan Compatibility

As found on page 13 through 21 of the 2015 Comprehensive Plan, there are only 6 Preferred Growth Areas (PGAs) in Jefferson County that are targeted for urban scale growth. The subject parcels are within the Route 340 South PGA. The Comprehensive Plan was adopted in 2015 after several years of meetings throughout the County and after extensive work by the Staff, the Steering Committee, Planning Commission and County Commission. It is typical for communities that have a new Comprehensive Plan to have requests for both text and map amendments for the map and ordinances to better reflect the Plan. In this case, the initial Zoning Ordinance, the 2004 Plan and the 2015 Plan show this property slated for growth around Route 340 and the railroad from Rippon to Virginia. The Envision Jefferson 2035 Plan is more specific in that it shows this property within the Rt 340 South Preferred Growth Area and identifies the property for Commercial Development.

Regarding the history of Land Use Regulations and Comprehensive Plans in Jefferson County, this area was slated for Commercial and Industrial development in the original ordinance because of Route 340 and the Railroad in this corridor. The area was also put into a PGA because of the expectation that Public Water and Sewer would be extended to this area from Charles Town when Route 340 was expanded to four lanes. After 35 years, the road expansion appears primed to happen. As expressed in the recent Rezoning of the Sunnyside Industrial Park north of this property, there is little to no interest from anyone for commercial or industrial development in this area. The market does not support commercial or industrial development in this area and the public does not support industrial development in the area. The interest for commercial may be enhanced with the improved road.

So, in fact for the last 35 years, these properties remain undeveloped, the road has not expanded, water and sewer has not become available, and the owners can't even convey a family transfer of land for a relative to build a house because it isn't permitted in the current zone. Essentially, the value of the property has not grown as in other Preferred

Growth Areas, because regardless of the size, neither commercial nor industrial users are interested and the owner cannot subdivide or put more than one house on the parcels. As such, these parcels remain vacant 66 and 30 acre parcels that are taxed, but not able to be utilized better for enhanced taxes.

The type of use that the 1988 County Commission envisioned when it was adopted has not come to fruition because of the shift in Heavy Industrial priorities. Furthermore, as stated in the following section of the Comprehensive Plan, this property will be west of the four lane preferred route if it does get built, so the area should most likely all be rezoned. From simply a professional planning standpoint on the original zoning of the area and the last Comprehensive Plan, this area should be reassessed based on the Highway and the shift away from Heavy Industrial uses.

Again, the Jefferson County Envision Comprehensive Plan indicates that this area is in the 340 South Preferred Growth Area and as such is an area that should develop into a mixture of uses.

Page 17 of the Comprehensive Plan describes the various categories of land, including PGAs as follows:

“Land Use Activity Areas

This Plan details four broad types of land use activity within Jefferson County where development is to be targeted over the planning horizon of Envision Jefferson 2035.

Four Comprehensive Types of Land Use Activity within the Designated Areas

- Urban Growth Boundaries
- Preferred Growth Areas (PGAs)**
- Villages
- Rural/Agricultural Areas

The first two area types addressed below, Urban Growth Boundaries (UGB) and **Preferred Growth Areas (PGA) (including one**

residential growth area), are the sections of Jefferson County where urban scale development is to be targeted over the planning horizon of Envision Jefferson 2035.” Emphasis Added.

In this case, the subject property is in a Preferred Growth Area (PGA), but certainly Urban Scale Growth or Heavy Industrial Uses are not what comes to mind in the area south of Rippon to the Virginia line. This area is better for commercial uses and rural type of housing that would be permitted with the rezoning.

A definitive section of the Envision Jefferson 2035 that supports this map amendment is found on Page 21 and 22 that describes this PGA:

“c. US 340 South PGA (portions of the corridor beginning north of Rippon continuing south to the Clarke County Line):

The proposed highway widening, and realignment is expected to create some additional growth pressures along this corridor.

Additionally, a percentage of the property along the western edge of US 340 South is currently zoned Industrial Commercial. Localized water and sewer service may need to be utilized for higher intensity development to occur along this corridor. It is recognized that the proposed US 340 alignment is not yet finalized and that land use decisions may need to move with the corridor, or a small area plan may be needed for this location if the final alignment is significantly different from the proposed configuration.

The West Virginia Division of Highways has identified a preferred alignment out of multiple alternatives and recently made minor adjustments to the preferred alignment choice. However, a Record of Decision, the legally binding conclusion, has been published at this time. The possibility for changes to the current preferred alignment is possible. In creating the land use recommendation for this area, the preferred alignment was used to make future land use decisions. The current preferred alignment is shown to the east of the existing US 340 right-of-way. This area does not have any public water and sewer infrastructure which future development will need for site development.”

It is clear that this section specifically recognizes that this area needs further work with the WVDOH on the highway expansion. This is finally happening. Furthermore, these two lots will have close access to the new widened highway. These parcels and the lack of access to public utilities, are more appropriately destined for a small minor or family subdivision and commercial development that can be sustained in the area. This is especially true since there are no major developments in the area. Many people from Jefferson County stop on the Virginia side of the border at the Convenience, Fuel, and Cigarette Outlet just south of the site.

Based on these portions of the Comprehensive Plan, this map amendment is consistent and compatible with the Plan. In this case, the Consistency with, and Compatibility to the existing Comprehensive Plan is more related to what didn't happen in this area and thus has rendered the properties nearly unusable for the past 35 years as Heavy Industrial.

The importance of the Future Land Use Guide when making Map Amendment decisions is outlined on Page 15 of the Plan:

“By creating a Future Land Use Map/Guide, a community provides clarification for property owners related to their potential development on their site. The review of all zoning map amendment requests shall include consideration of all of the recommendations created as part of this Plan. All zoning map amendments shall be in conformance with the Future Land Use Guide and the recommendations of this Plan.”

This section of the Plan allows for predictability of future land uses in Jefferson County. This section is also consistent with the original Zoning Ordinance adopted in 1988 and several Comprehensive plans in between. While the plan is usually used for predictability of land use for the public purchasing in an area of the County, it is also used by owners and purchasers when planning for the future. In this case, the area was slated for development by the County but has not developed in that direction. No utilities were extended to the area and the DOH decision on the highway has been pending for over 20 years. Just now has the

DOH moved forward with the plans to make this a viable rezoning request, especially to lose the Heavy Industrial component.

To carry through what the County adopted in 2015 in this Preferred Growth Area, the requested rezoning would be consistent with the statements that indicate that the area should be studied again depending on the highway. In this case, the owner would like to have these properties downzoned from an Industrial standpoint and to allow a limited amount of Minor Subdivisions that are consistent with septic and well since Public Utilities are not foreseeable in the future.

The Plan encourages growth and development in areas where infrastructure and public facilities are available. These parcels will finally have access to proper highway infrastructure and therefore should be supported in the applicant's request to be rezoned. The Residential/Light Industrial/Commercial Zone is a viable and useful zone that allows for limited mixed uses. Current Planning practices have moved in the direction of mixed uses that are consistent with urban centers and towns. It allows for neighborhoods to be able to serve themselves both residentially and commercially. Contrary to recent reports, the mixed use zone is not a prohibited zone in the Comprehensive Plan. The County Commission did not prohibit the zone to be used in rezonings. The plan merely makes a statement that this zone should be discouraged in lieu of other new zones that were being developed. A typical Zoning Ordinance in a traditionally zoned community sometimes has more than 50 zoning districts. Jefferson County's Ordinance only has 12 zones and two or three don't even have any land in the zone. In order for Jefferson to be able to totally do away with the currently permitted mixed-use zone, the ordinance would need to be expanded to include many more zones that allow for a much more variety of uses. The mixed use zone is the only zone in the Jefferson County Ordinance that allows a property owner some flexibility in using and marketing their property.

Based on the preceding recommendations from the Envision Jefferson 2035 Comprehensive Plan, this map amendment is consistent and compatible with the development goals of the Plans.

B. Change of Neighborhood

This area of Jefferson County has changed a bit since the Zoning Ordinance was adopted in 1988 and the Comprehensive Plan in 2015. While Public Utilities have not been extended, the widening of Route 340 has finally been approved to move forward. Accordingly, the Envision Jefferson Plan suggests that this area be reevaluated, especially since this property has access to one of the new interchanges.

The following are changes in the neighborhood that would specifically support the requested change from Industrial and Commercial to the Mixed-Use District:

1. Availability of Public Utilities and Services:

Public Water and Public Sewer have not become available in this neighborhood. The lack of availability of utilities is a change for what was envisioned in this neighborhood in the 35 years since 1988. As such, the commercial and smaller, large lot residential would still be supported in the area, but the Heavy Industrial aspect of the current zone would not be:

‘This Plan recommends that new development will take place in areas where infrastructure exists and the extension of services to growth in outlying areas will occur in accordance with the goals and objectives of this Plan.’ (Page 27)

Again, this would allow commercial/retail/residential, but not heavy industrial uses.

2. Lack of Industrial Growth in the Corridor and the PGA:

Since the adoption of the original Zoning Ordinance in 1988, this area has not developed as Industrial as envisioned in the original ordinance. Again, the original Zoning Ordinance and subsequent

(including current) Plans relied on the belief that the Railroad, along with the expansion of the highway and utilities, would support Industrial Growth in this area. That hasn't happened. The significant growth has occurred in the other Preferred Growth Areas and Urban Growth Boundary. The new plan should add PGAs in other areas of the County that are growing.

However, other uses and other zones are supported in this Preferred Growth Area such as limited residential and commercial uses. This is especially true now that the highway expansion is happening. The Plan shows this area as a PGA and is permitted to develop, just not industrially which this rezoning will address.

C. Change of Transportation Characteristics:

There have been positive changes in the transportation and traffic characteristics north of this area since the time of the adoption of the Zoning Ordinance. Route 340 was expanded to 4 lanes north of Rippon over 25 years ago. The County has been waiting for the expansion of Route 340 to be completed to the Virginia line, and that is about to happen.

These changes and improvements to the transportation system near this site has not taken place since 1988 when the Zoning Ordinance was adopted. However, since the Comprehensive Plan was adopted in 2015, the potential of this road improvement has been taken into consideration in the Envision Jefferson 2035 Comprehensive Plan. Accordingly, the Comprehensive Plan already acknowledges the highway elements are key to this area developing as a major growth area. In the meantime (the past 35 years), the owners' hands have been tied with respect to doing even a minor subdivision of a Parent to Child transfer of land. These delays in upgrading the road does have an effect on the ability to develop in this PGA. This occurrence supports the rezoning of the property to continue to support commercial, while allowing residential and disallowing the heavy industrial uses.

D. *Error or Change of Conditions From the Original Zoning and Subsequent Plans*


One justification for a map amendment/rezoning in West Virginia is the consistency of the request with the Comprehensive Plan. But other justifications generally include a change of neighborhood, or a change in conditions since the Zoning Ordinance was adopted. This Application has discussed some of the reasons that this property should not have been zoned for Heavy Industry when the original ordinance was adopted and definitely not after the Envision Jefferson 2035 Plan was adopted.

In this case, the error in the original zoning ordinance is that all of the area south of Rippon could not feasibly develop into commercial and industrial uses simply because it was located between a railway and Route 340. That would be impractical without additional services and infrastructure. Furthermore, County Government and the County public's thoughts on the types of permitted Industry has changed since 1988. This doesn't appear to be the preferred location for heavy industry in Jefferson County anymore. Accordingly, the property should be allowed to develop into commercial and residential uses to take advantage of the PGA designation.

Finally, the change of conditions from the original Zoning Ordinance and the Comprehensive Plans that followed after 1988 is simply that all of these Plans anticipated infrastructure construction and the continued desire to have industry in this area which has changed. It is time to let the property owners have a say in what the zoning and use of their property should be. In this case, the Applicant is simply requesting a reversion to commercial with the ability to do some limited number of large lots or family transfers.

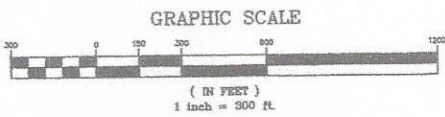
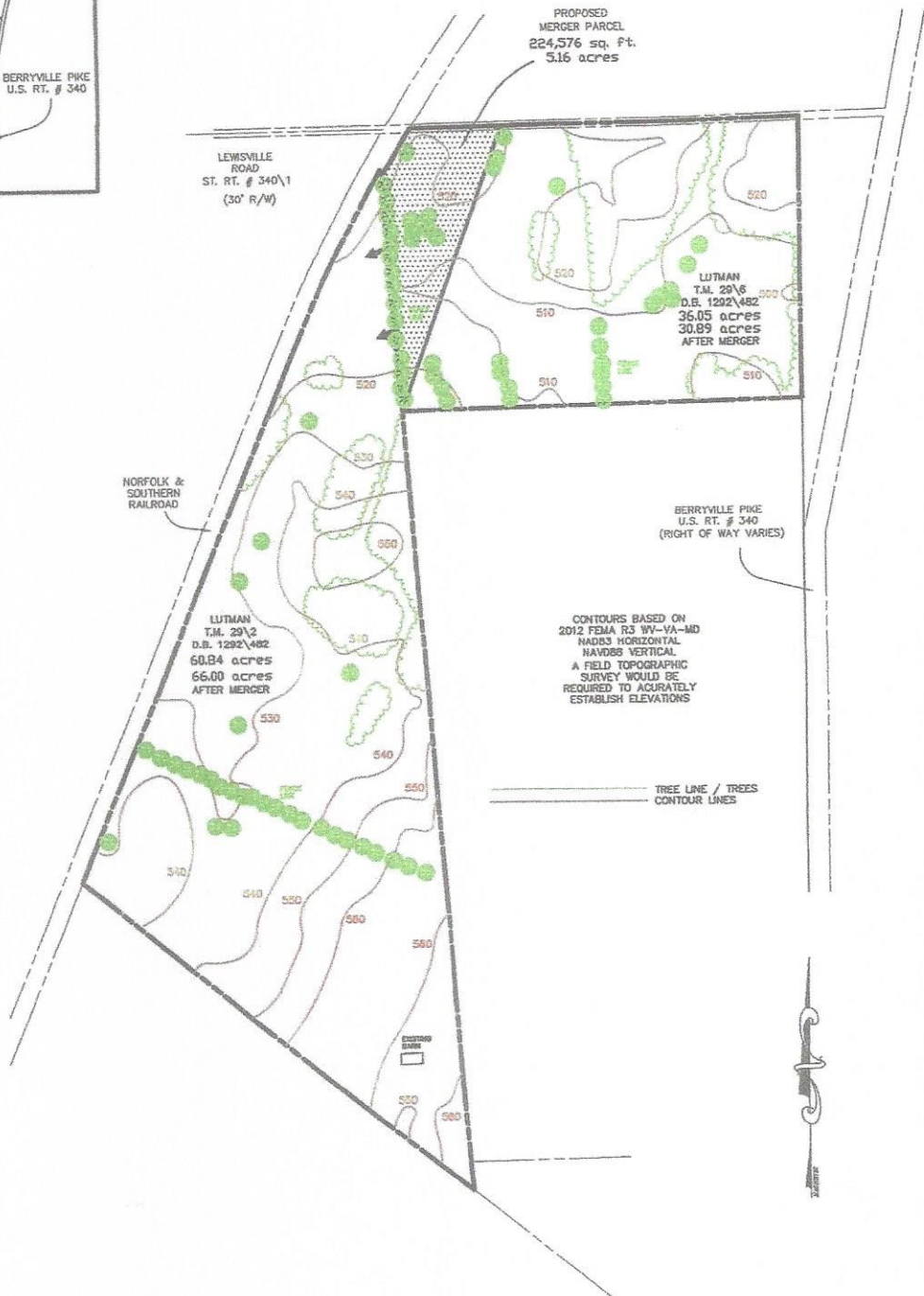
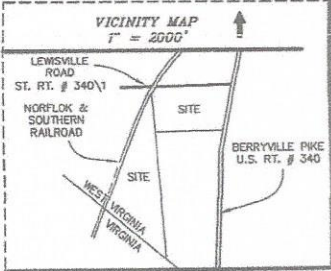
E. Conclusion:

The Applicant respectfully requests that the County Commission approve this map amendment to the Jefferson County Zoning Map. This Application cites many reasons why the map amendment should be approved. These reasons include: the consistency of the request to the Envision Jefferson 2035 Comprehensive Plan and the original Zoning Ordinance in that the required elements envisioned to make this a Preferred Growth Area has not materialized for industrial growth; the changes in the neighborhood from when the original zoning ordinance was adopted including the recent rezoning of the Sunnyside Industrial Park from Industrial/Commercial to Residential/Light Industrial/Commercial District on Wheatland Road; the fact that the area is located in a Preferred Growth Area in the new Plan; the news that the Highway widening is on a direct path for construction; and, the Planning Commission and Staff have indicated in their reports and action that this area's change to the Mixed-Use zone is consistent with the Comprehensive Plan. This map amendment will change the zoning classification on the Applicant's property from the Industrial/Commercial District to the Residential/Light Industrial/Commercial District.



David Lutman, Lutman Land Development LLC

3-29-2023
Date



LUTMAN REZONING SKETCH PLAT
TAX MAP 89 PARCELS 2 & 6 KABLETOWN DISTRICT

JEFFERSON COUNTY, WEST VIRGINIA
T.M. 29 PARCELS 2 & 6 DEED BOOK 1292 PAGE 482
KABLETOWN DISTRICT, JEFFERSON COUNTY, WEST VIRGINIA.

PROPERTY STANDING IN THE NAME OF LUTMAN LAND DEVELOPMENT LLC, AS RECORDED
IN THE OFFICE OF THE COUNTY CLERK OF JEFFERSON COUNTY IN DEED BOOK 1292 PAGE 482.
SURVEYOR: PETER H. LORENZEN - P.O. BOX 316, SUMMIT POINT, WV, 25448.
(304) 728-6093

OWNER: LUTMAN LAND DEVELOPMENT LLC \ DEVELOPER: 67 LUTMANS LANE, KEARNEYSVILLE, WV, 25430
(304) 702-2500

DWG # GANSLER DATE 12-12-22