



AGENDA

Jefferson County Planning Commission

Tuesday, September 10, 2013

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.

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

1. Approval of the minutes from the August 13, 2013 Planning Commission Meeting.
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.

There is no public comment for the remaining items.

3. Request for postponement.
4. Petition by Ann, James, and Ernest Hunter for a zoning map amendment to the Planning Commission for the purpose of scheduling a public hearing within 60 days. This property is currently zoned Rural and the applicant is requesting Residential-Light Industrial-Commercial zoning. This property is located on the north side of Old Route 9 (Route 115) approximately 700 feet southeast of Berkeley/Jefferson County Line. District: Middleway (07); Tax Map: 1; Parcel: 2.
5. Comprehensive Plan overview and presentation of Clay Raines' study on residential and commercial build-out.
6. Short training presentation on major planning and zoning concepts in Jefferson County.
7. Reports from Legal Counsel and legal advice to the Planning Commission.
Active Litigation:
 - Far Away Farms
 - Cedar Air Park – Order Denying Certiorari Petition from the Circuit Court of Jefferson County.
8. Director's Report.
 - Update on 2014 Comprehensive Plan.
9. Planning Commission Exchange and Liaison Reports:
 - County Commission Meeting
 - Health Department Meeting
 - Public Service District Meeting
 - Parks and Recreation Meeting
 - Jefferson County Development Authority Meeting
 - Water Advisory Committee Meeting
 - Planning Commission Exchange
10. President's Report.
11. Actionable Correspondence.
12. Non-Actionable Correspondence.
13. Signing of approved Motions from previous Planning Commission meetings.
 - Waiver Requests for Bloomery Plantation Distillery, PCW13-07, -08, and -09.

All files are made available for public review Monday through Friday, 9:00 a.m. to 5:00 p.m. (excluding Holidays). The Planning Commission welcomes written comments at any time. Submitting a document no later than the Thursday before a scheduled meeting will provide the Commission an advanced opportunity to review your comments prior to the meeting. Please note that documentation and exhibits submitted at a Planning Commission meeting are retained as part of the official record.

Feel free to submit your comments to any of the addresses below:

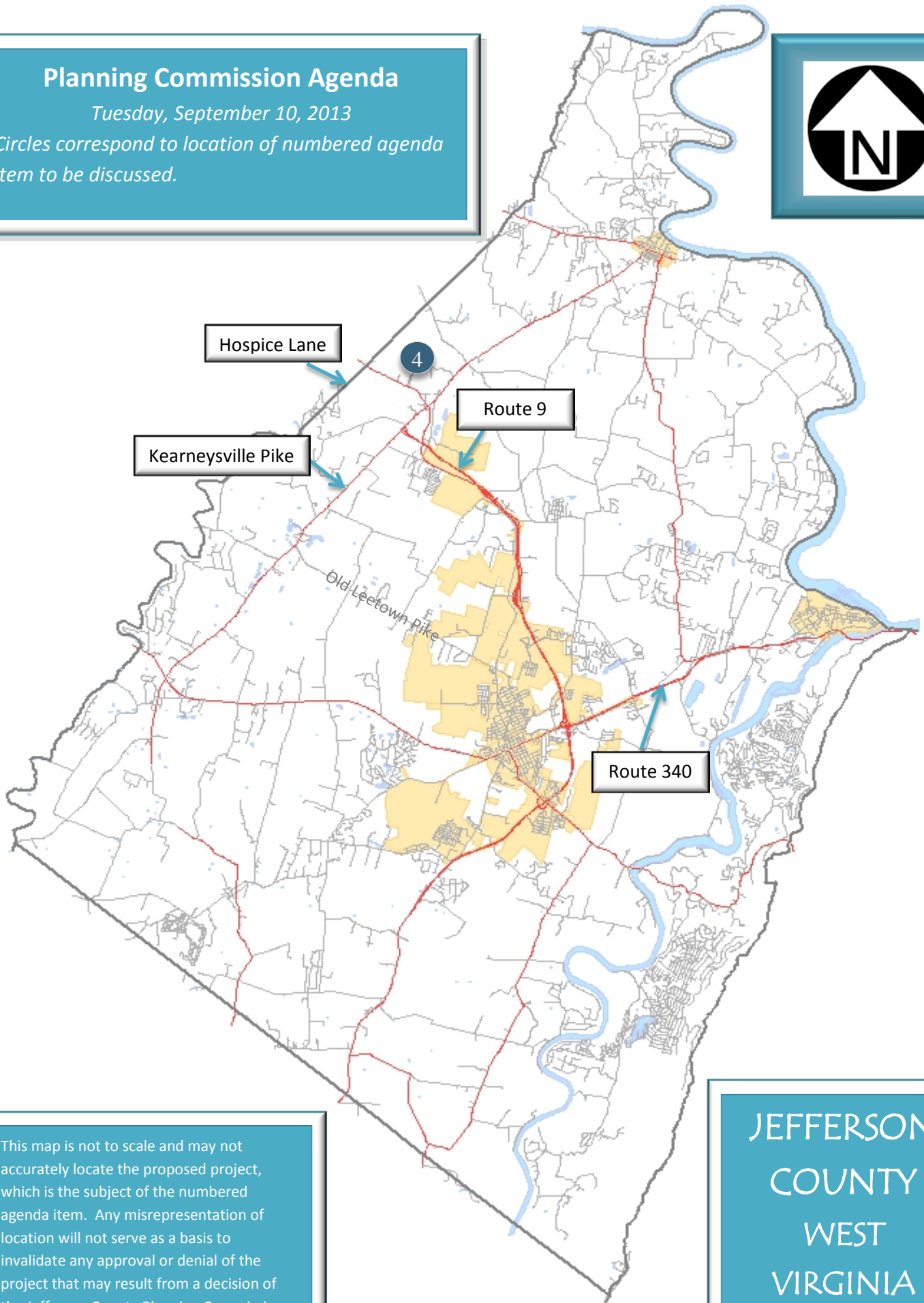
Physical Address: 116 E. Washington St., Charles Town, West Virginia 25414
Mailing Address: P.O. Box 338, Charles Town, West Virginia 25414
Email Address: planningdepartment@jeffersoncountywv.org
Fax Number: 304-728-8126

Any party desiring a transcript of these proceedings will be responsible for providing a competent stenographer at their own expense. Minutes, video and/or audio recordings of past meetings, the Jefferson County Subdivision Regulations, Zoning Ordinance and Comprehensive Plan, as well as any working proposed amendments are located on our website at www.jeffersoncountywv.org. Minutes and audio recordings of older meetings that are not on the County's website are available for review in the office.

Planning Commission Agenda

Tuesday, September 10, 2013

Circles correspond to location of numbered agenda item to be discussed.



Hospice Lane

4

Route 9

Kearneysville Pike

Old Leetown Pike

Route 340

This map is not to scale and may not accurately locate the proposed project, which is the subject of the numbered agenda item. Any misrepresentation of location will not serve as a basis to invalidate any approval or denial of the project that may result from a decision of the Jefferson County Planning Commission.

JEFFERSON
COUNTY
WEST
VIRGINIA

This information is
Tab #1 in your binder.

Draft Minutes

Jefferson County Planning Commission
August 13, 2013

The Jefferson County Planning Commission met on August 13, 2013, with the following Commission members present: Paul Taylor, President; Daniel Hayes, Vice President; Gene Taylor, Secretary; Walt Pellish, Stephen Stolipher, Darlene Truman, Wade Louthan, and Bill McCleod. Staff members present included Jennifer Brockman, Director of Planning and Zoning; Seth Rivard, County Planner; Jonathan Saunders, County Engineer; and Alexandra Beaulieu, Planning Clerk.

Planning Commission member Gary Phalen was absent without notice.

Mr. P. Taylor called the meeting to order at 7:00 PM.

1. **Welcoming of new Planning Commissioner, William McCleod.**
2. **Approval of the minutes from the July 09, 2013 Planning Commission Meeting.**

Mr. Hayes motioned to approve the minutes. Mr. Pellish seconded the motion, which carried unanimously.

3. **Approval of the minutes from the July 23, 2013 Planning Commission Meeting.**

Mr. Hayes motions to approve the minutes. Ms. Truman seconded the motion. The motion carried unanimously, with two abstentions (Mr. P. Taylor and Mr. G. Taylor).

4. **Citizen Communications (hereinafter known as CC).** None.

5. **Request for postponement.** None.

6. **CIS Amendment Public Hearing: Allstadt's Corner (PC File #07-10) to be amended to Allstadt's Corner Business Center. Property is located at the intersection of Route 340 and Millville Road, where the Flea Market is currently located.**

Mr. Rivard provided a staff report recommending the Planning Commission approve the amended CIS as proposed. He reviewed the changes as outlined within the amended CIS noting that the most significant change would be the elimination of residential lots and the creation of five non-residential lots. Mr. Rivard stated that this change would be permitted as the property was rezoned from Residential Growth to Residential-Light Industrial-Commercial on January 12, 2012.

Mr. P. Taylor invited the applicant to speak.

Mr. Michael Shepp with Appalachian Surveys spoke on behalf of applicants James and Barbara Gibson. He stated that the property was rezoned in response to the public's feedback during the initial CIS workshop indicated a need for additional commercial uses and business opportunities in the county. Mr. Shepp noted that the revised CIS includes a total of six (6) lots, of which five (5) are non-residential and the sixth lot contains the existing Allstadt's House and Ordinary. The five (5) non-residential lots will be used for flex commercial space, office buildings, retail space, etc. as permitted within the Zoning Ordinance. Mr. Shepp stated that the applicants will be required to go through two (2) distinct processes, the first being the subdivision review process which includes the CIS, preliminary plat, and final plat. He stated that the second process would require a site plan be submitted as each lot is sold. Mr. Shepp stated that he would be happy to answer questions from the commissioners.

Mr. P. Taylor opened the floor for public comment. He stated that no one signed up to speak.

Mr. Hayes motioned to close public comment. Ms. Truman seconded the motion, which carried unanimously.

Mr. G. Taylor inquired as to whether any provisions had been made to keep or re-located the existing Flea Market.

Mr. Shepp stated that the owners had not made any provisions to re-locate the Flea Market. He noted that both Wilts Fruit Stand and the Flea Market could purchase a lot to continue in their current location.

Mr. Hayes inquired as to the role of the Planning Commission with regard to the revised CIS.

Mr. Rivard stated that the Planning Commission would need to determine whether the site was a suitable location for the project and whether they approved or disapproved of the revised CIS.

Ms. Brockman stated that the Planning Commission action would not prevent the applicant from moving forward but would make it difficult for the applicant to show they are in conformance with the CIS during the preliminary and final plat stages.

Mr. Shepp stated that the Planning Commission would need to accept or reject the CIS. He noted that rejecting the CIS would not prevent the applicant from moving forward, but that if the Planning Commission were to reject the CIS they would then need to inform the applicant, under the findings of fact and conclusions of law, what changes would need to be made during the rest of the development review process to make the project acceptable.

Ms. Brockman stated that the preliminary and final plat would process under the previous ordinance. She stated that the preliminary plat would process administratively and would not go before the Planning Commission but that the final plat would require a public hearing.

Ms. Brockman confirmed that individual lots would process under the minor site plan review for administrative approval.

Mr. Hayes motioned to approve the revised CIS.

Mr. Stolipher seconded the motion.

Mr. McLeod inquired as to whether there would be additional notices provided to the public regarding the plans to commercially develop the site.

Ms. Brockman stated that there was only one notice period and that it included an ad in the paper and three (3) placards posted on the property.

Mr. McLeod inquired as to whether the public would be provided an opportunity to address the mixed use zoning and proposed plans for the site.

Mr. Rivard stated that the advertising and noticing requirements had been met as provided in the ordinance. He noted that the public was provided the opportunity to attend the public hearing and no one attended.

Ms. Brockman stated that commercial use on the lot had not appeared to be a public concern.

Mr. P. Taylor requested that Mr. Hayes re-state the motion.

Mr. Hayes stated that the motion was to accept the Community Impact Statement as written.

Mr. P. Taylor requested confirmation that the motion had been seconded.

Mr. Stolipher confirmed that the motion had been seconded.

Mr. P. Taylor called the motion to vote and stated that the motion carried unanimously.

7. **Public Hearing: Request by applicant Bloomery Plantation Distillery (File #PCW13-07, -08, and -09) to be represented by Thomas Kiefer and Linda Losey for a waiver from the following sections of the Jefferson County Subdivision and Land Development Regulations:**
- a. **PCW13-07:** Appendix B, Section 2.2: Request for waiver from the requirements for driveway width and depth.
 - b. **PCW13-08:** Appendix B, Section 9.4: Request for an increase in maximum driveway slope requirements from 8% to 20%.
 - c. **PCW13-09:** Appendix B, Section 4.3: Request for a waiver from the requirement to provide stormwater management for all areas of site that are to be disturbed.

Mr. Hayes inquired whether the waiver requests should be considered individually or as a whole.

Ms. Brockman stated that a separate motion should be made for each waiver request. She noted that the presentation could be an overview of the entire project.

Mr. Rivard provided a staff report and recommended the Planning Commission approve the waivers as requested, provided that the width of the existing driveway was no less than 13 feet.

Mr. Saunders provided an engineering report and recommended the Planning Commission deny the waivers as requested. He stated that if the Planning Commission should approve the waiver request for an increase in maximum driveway slope from the previously approved 15% to 20%, the engineering department recommended the access drive be asphalt paved.

Mr. Groh clarified that engineering was recommending asphalt only for the steep grade section of the driveway. Mr. Saunders affirmed.

The Planning Commission members discussed issues that could arise if the waiver request for a reduction in the required minimum depth of stone from nine (9) to six (6) inches was approved. It was noted that the property owners would be responsible for regular maintenance and would be liable if any accidents would occur on the driveway.

Mr. P. Taylor invited the applicant to speak.

Ms. Linda Losey requested that the Planning Commission consider the three waiver requests which would allow the Distillery to maintain the rural aspect of their farm. She stated that the driveway entrance would be widened and paved according to commercial standards and that the waiver request related to the driveway was for the section at the steep grade. Ms. Losey stated that it was in the best interest of the county to preserve the natural resources of the property, including the historic trees.

Mr. P. Taylor opened the floor for public comment.

Mr. Rob Losey stated that the heaviest truck utilizing the driveway was the weekly propane truck and noted that limousines and coach buses access the driveway without any issues.

Mr. John Reisenweber stated that the county should support the preservation of the Losey's farm business. He stated that the creation of the new Route 9 drastically reduced traffic along Route 115, which runs in front of the Distillery entrance.

Mr. Garland Armstrong stated he was Mr. Thomas Weller's Power of Attorney. He stated that Mr. Weller was an adjoining property owner located off to the right side near the

Distillery's entrance. Mr. Armstrong stated that several accidents had occurred on the road in the past. He requested that the Losey's widen and pave the driveway entrance.

Mr. Losey stated that he and Ms. Losey planned to upgrade the entrance of the driveway to meet commercial standards.

Mr. Eric Donnel stated he was in support of the waiver as requested by the applicant.

Mr. P. Taylor noted that no one else was signed up to speak for the public hearing.

Mr. Hayes motioned to close public comment.

Mr. Stolipher seconded the motion, which carried unanimously.

Mr. Stolipher motioned to approve all three waivers as requested.

Mr. Hayes inquired on the traffic flow to the Distillery.

Mr. Losey stated that there were occasional deliveries from UPS/FedEx trucks and that there was a weekly propane delivery. He noted that there was full line of sight from the bottom to the top of the hill. Mr. Losey estimated that two-way traffic occurred a dozen times over a weekend.

The Planning Commissioners discussed the proposed increase in impervious area. It was determined by staff that based on the site plan, which proposed a parking area of seven (7) spaces near the building, that the overall increase in impervious area would be roughly 10% or approximately 2,000 square feet. It was noted that the increase would be nominal and that the existing trees and rock outcroppings served as natural buffers.

Ms. Brockman stated that in order to implement the stormwater management component they would have to disturb trees and rock outcroppings, which would create more drainage issues and sedimentation. She stated that it was important for the Planning Commission to consider the nuances unique to the Distillery.

Mr. Stolipher restated the motion to approve all three waivers as requested.

Mr. Pellish seconded the motion, which carried unanimously.

8. **Request withdrawn by applicant:** *Public Hearing: Request by Jefferson County Parks and Recreation (PCW13-10) for a waiver from Appendix B, Section 3.1.A and Appendix A, 1.3.A.24 of the current Jefferson County Subdivision and Land Development Regulations requiring a permit from the Jefferson County Health Department prior to approval of the Preliminary or Final Plat.*
9. **Discussion and possible recommendation regarding the proposed text amendments to the following sections of the Zoning and Land Development Ordinance: 2.2, 4.10, 5.7, 5.8, 8.5, 9.5, 10.5, 11.1, and 12.2. Review comments compiled from June 11, 2013 meeting.**

Ms. Brockman reviewed comments compiled from the June 11, 2013 Planning Commission meeting.

The Planning Commissioners discussed the need to keep the regulations flexible.

Mr. Stolipher motioned to send the proposed amendments to the County Commission with a recommendation for approval.

Mr. Pellish seconded the motion, which carried unanimously.

Mr. P. Taylor called for a recess 8:37 PM. Mr. P. Taylor called the meeting to back to order at 8:42 PM.

10. Discussion and possible recommendation regarding the Proposed Stormwater Management Ordinance and Text Amendments for the Subdivision and Land Development Regulations and to amend such other articles, sections, subsections, and provisions of the regulations as necessary to implement and maintain consistency with the foregoing amendments.

Mr. Erik Genga with Delta Development Group reviewed public comments received since the July 9, 2013 public hearing meeting. Mr. Genga confirmed that the only comments received were those submitted by Gordon and Associates and Mike Wiley during the previous meeting.

Mr. Goodwin stated that there were two opportunities for the public to submit comments related to the Stormwater Management Ordinance prior to the July 9, 2013 Planning Commission Public Hearing and that at each meeting there were 3-4 stakeholders in attendance. He noted that the comments provided during those two meetings were incorporated into the draft version of the Stormwater Management Ordinance that came before the Planning Commission for review.

Mr. Hayes motioned to forward the revised Subdivision Regulations and the Stormwater Management Ordinance as presented on August 13, 2013 to the County Commission with a recommendation for approval.

Ms. Truman seconded the motion. The motion carried unanimously, with one abstention (Mr. McLeod).

11. Reports from Legal Counsel and legal advice to the Planning Commission. None.

12. Director's Report.

- **Update on 2014 Comprehensive Plan.**

Ms. Brockman stated there was still a need for volunteers to participate in the fair by sitting at the booth. She requested that any of the Planning Commissioners who may be interested contact staff.

Ms. Brockman updated the Planning Commissioners on the status of the US 340 South study. She stated that on July 11, 2013, action was postponed as the result of budget concerns.

13. Planning Commission Exchange and Liaison Reports: No updates.

14. President's Report. No updates.

15. Actionable Correspondence. None.

16. Non-Actionable Correspondence. None.

17. Signing of approved Motions for US Coast Guard Waiver Requests PCW13-04, -05, and -06.

Mr. Hayes motioned to adjourn the meeting at 9:42 PM.

Mr. G. Taylor seconded the motion, which carried unanimously.

This information is
Tab #4 in your binder.



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

116 East Washington Street, 2nd Floor, P.O. Box 338

Charles Town, WV 25414

File Number: #713-01

Staff Initials: AB

Application Fee: \$ 6,350.00

www.jeffersoncountywv.org/government/departments/planning-and-zoning-department.html

Email planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

Email zoning@jeffersoncountywv.org

Fax: (304) 728-8126

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. All Amendments to the Zoning Map require a Public Hearing to be held by the Planning Commission for the purpose of making a recommendation to the County Commission. Subsequently, all recommended map amendments require a Public Hearing before the County Commission prior to a final determination.

Property owner information

Name of Property Owner: Ann Hunter, James Hunter and Ernest Hunter c/o Ann Hunter

Mailing Address: P.O. Box 123

City: Shenandoah Junction State: WV Zip Code: 25442

Phone Number: 304/876-6078 Email: mesa_1@frontiernet.net

Applicant contact information

Applicant Name: Hunter Family c/o Ann Hunter

Mailing Address: P.O. Box 123

City: Shenandoah Junction State: WV Zip Code: 25442

Phone Number: 304/876-6078 Email: mesa_1@frontiernet.net

Applicant representative

Name of Representative: Annette Van Hilst, R.A., The Crossroads Group

Address of Representative: 22 Van Clevesville Road

City: Kearneysville State: WV Zip Code: 25430

Phone Number: 571/428-7054 Email: agvh@frontiernet.net

Physical property details

Physical Property Address: N Side of Old Rt 9 (Rt 115) approx 700 Ft SE of Berkeley/Jefferson County Line

City: Kearneysville State: WV Zip Code: 25430

Tax District: Middleway Map No: 1 Parcel No: 2

Parcel Size: 107 Acres Deed Book: 1033 Page No: 658

RECEIVED

AUG 14 2013

JEFFERSON COUNTY PLANNING,
ZONING & ENGINEERING

Current Zoning District	Rural (R-A)	Residential I Growth (R-G)	Industrial Commerical (I-C)	Residential-Light Industrial-Commercial (R-L-C)	Village (V)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<u>Proposed</u> Zoning District	Rural (R-A)	Residential I Growth (R-G)	Industrial Commercial (I-C)	Residential- Light Industrial- Commercial (R-L-C)	Village (V)
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

For a Zoning Map Amendment 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 (and/or project) and describe why the Zoning Map Amendment is necessary for the proposed use (and/or project) described.

Attached

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

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.

Attached

Do you request that the Planning and Zoning Staff present the petition to the Planning Commission for the purpose of setting the public hearing date?

Yes, I request that the Planning and Zoning Staff present the petition

No, I prefer to present the petition

Plat or Sketch Plan (provide as an attachment to this application)

The plat or sketch must be pursuant to Zoning Ordinance, Section 7.4 (b). The sketch plan 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 should be superimposed on the sketch plan. Natural features such as woods, watercourses, prominent rock outcroppings, sinkholes and quarries shall be delineated.

Is Plat or Sketch Plan attached?

Yes No

Original signature of all property owners is required. The information given is correct to the best of my knowledge (Please attach additional signature page if needed).

Ann H. Hunter Aug. 14, 2013
Signature of Property Owner Date

Received By Date

James O. Hunter, Jr. Aug. 14, 2013
Signature of Property Owner Date

Received By Date

The Planning Commission is required to set a public hearing on the proposed Zoning Map Amendment within 60 days of the date upon which a complete petition is presented to the Planning Commission at a Planning Commission Meeting. A complete petition, and related fees, shall be submitted to Departments 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. Upon request, Planning and Zoning staff can present the petition to the Planning Commission on behalf of the applicant for purpose of setting the public hearing date. At the conclusion of the Planning Commission's Public Hearing, or at the next regular Planning Commission meeting, the Planning Commission shall make a recommendation to the County Commission regarding approval or disapproval of the requested Map Amendment. This recommendation shall be forwarded to the County Commission within four (4) weeks of final Planning Commission action.

The Planning Commission finds this request consistent/inconsistent with the Comprehensive Plan by a vote of _____ for and _____ against, this day of _____, _____, _____.

Recommended *Not Recommended*

The County Commission finds this request consistent/inconsistent with the Comprehensive Plan by a vote of _____ for and _____ against, this day of _____, _____, _____.

Approved *Disapproved*

Final Determination/Other Comments

Is Plat or Sketch Plan attached?

Yes

No

Original signature of all property owners is required. The information given is correct to the best of my knowledge (Please attach additional signature page if needed).

Ernest A. Hunter 8-19-13

Signature of Property Owner

Date

Christina D. Chalmers 8-27-13

Received By

Date

Signature of Property Owner

Date

Received By

Date

The Planning Commission is required to set a public hearing on the proposed Zoning Map Amendment within 60 days of the date upon which a complete petition is presented to the Planning Commission at a Planning Commission Meeting. A complete petition, and related fees, shall be submitted to Departments 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. Upon request, Planning and Zoning staff can present the petition to the Planning Commission on behalf of the applicant for purpose of setting the public hearing date. At the conclusion of the Planning Commission's Public Hearing, or at the next regular Planning Commission meeting, the Planning Commission shall make a recommendation to the County Commission regarding approval or disapproval of the requested Map Amendment. This recommendation shall be forwarded to the County Commission within four (4) weeks of final Planning Commission action.

The Planning Commission finds this request consistent/inconsistent with the Comprehensive Plan by a vote of _____ for and _____ against, this day of _____, _____, _____.

Recommended

Not Recommended

The County Commission finds this request consistent/inconsistent with the Comprehensive Plan by a vote of _____ for and _____ against, this day of _____, _____, _____.

Approved

Disapproved

Final Determination/Other Comments

RECEIVED

AUG 27 2013

JEFFERSON COUNTY
PLANNING ZONING AND ENGINEERING

713-01

MAP AMENDMENT PETITION
Article 12, Jefferson County Zoning Ordinance
Hunter Family:
Ann Hunter
James Hunter
Ernest Hunter
August 14, 2013

Owner:

Hunter, et. al.
c/o Ann Hunter
P.O. Box 123
Shenandoah Junction, WV 25442

Applicant:

Ann Hunter
James Hunter
Ernest Hunter
P.O. Box 123
Shenandoah Junction, WV 25442

Ordinance Citation:

Article 12 of the Jefferson County Zoning and Development Review Ordinance as amended on November 10, 2011.

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.”



Substantiation for the Request:

1. The property owned by the Hunter family is currently zoned Rural and the Applicants are seeking a map amendment to the Residential/Light Industrial/Commercial District. As explained in this Petition, the Applicants believe that this change is consistent and very much compatible with the 2004 Jefferson County Comprehensive Plan;
2. There have been significant changes in this area, since the Jefferson County Zoning Ordinance was adopted in 1988. These changes include the availability of Public Water and Sewer, a significant rezoning directly north of this property approved by the County Commission and additional growth in the area. These changes are further explained in this Petition; and,
3. The Applicants believe that the Rural Zoning classification is an error in the Jefferson County Zoning Map since the property is located on a Primary Road (Route 9) as defined in the Comprehensive Plan.

Tax District, Map and Parcel Number:

Middleway Tax District, Map 1, Parcel 2

Deed Book Reference:

Deed Book 1033 at Page 658

Sketch Plat:

Attached

Tract Size:

107 Acres per deed (104.33 Acres per tax map)

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

One of the most compelling indications that the requested map amendment is consistent and compatible with the 2004 Comprehensive Plan is the fact that the rezoning of the *adjacent* property to the north was determined to be consistent with the Comprehensive Plan. In 2005, just months after the adoption of the new 2004 Comprehensive Plan, both the Jefferson County Planning Commission and County Commission found that the rezoning of the adjacent 191 acre F. O. Day property was consistent with the Comprehensive Plan. The F. O. Day property did not have direct access onto (old) Route 9, while the Hunter property has a long and direct frontage to old Route 9 (now called Route 115). When the Day property was determined to be consistent with the Plan, new Route 9 was not near completion.

The Comprehensive Plan contains policies, narrative and recommendations that support this map amendment. Some of the Policies found on page 8 of the Comprehensive Plan State:

- *This Plan encourages new development patterns that foster mixed-use neighborhoods so that a sense of community begins at the subdivision level.'*

In this case, this property is located in a neighborhood that has long been mixed-use. Baker Heights has been the home of the Veteran's Administration Center for decades and the Liberty Business Park has been there for many years. The Liberty Business Park includes the IRS and the Coast Guard. Furthermore, this property is adjacent to 191 acres that the Jefferson County Commission rezoned to Commercial/Industrial in 2005. Finally, the subject property abuts the proposed new Hospice of Eastern Panhandle operations and in-house care facility.

The property is only approximately a half a mile from the mixed-use community of Baker Heights and less than a mile from the Kearneysville Village District. Likewise, Kearneysville is also a mixed-use community.

The requested rezoning would allow the Applicants the flexibility of marketing the property to either residential users to provide needed housing for employees of the nearby VA Center and the Liberty Business Park; or, to business park developers to continue the commercial expansion of the area for other office buildings. From an economic development standpoint, it would behoove Jefferson County to allow the continued expansion of a business park on the Jefferson County side of the 'line'. Since this type of growth is being developed in the area, Jefferson County should start taking advantage of it.

The Residential/Light Industrial/Commercial District designation would allow a mix of commercial and offices uses, while allowing residential units to house the employees in the same area.

- *This Plan encourages economic development so that residents can live and work in the County.'*

Currently, there is very little vacant land in Jefferson County that is zoned for commercial/office and mixed-use development. The requested change to the mixed-use zone will allow a mixture of these uses to stimulate economic development on Jefferson County's side of the County line.

In the Plan's Statement of Goals found on page 19, the Plan encourages growth and development in areas where infrastructure and public facilities are available. In this case, the property has access to Berkeley County's Public Water and Wastewater Treatment Facilities. In addition to Public Water and Sewer, natural gas is located very close to this property. A current primary goal of the Jefferson County Development Authority is to encourage the expansion of the availability of natural gas into Jefferson County. If permitted to develop into a business park or mixed use development, this property could be a key stepping stone for extending natural gas into Jefferson County. The property is also located within minutes of the Short Road interchange onto the new four lane Route 9. These qualities make the property an ideal candidate for a map amendment.

Finally, the Plan's goals also support commercial activities in the County; in addition to the protection of private property rights. The Hunter family chose not to speculate during the land rush last decade because they wanted to wait until such time that Route 9 was completed and other growth and development took place in the area. As a matter of fact, in the proposed zoning ordinance in 2008, this land was proposed to be zoned as a business park. That in itself is evidence that the County planners believed that this property was prime land for economic development.

The 2004 Comprehensive Plan includes numerous recommendations. However, only several of them are pertinent to this request.

Comprehensive Plan Recommendations:

Recommendation 3.01 on Page 24:

"When adjusting the Zoning Ordinance and Map to conform with the recommendations of this Plan, the County should look closely at the adjacent jurisdictions permitted uses or their fringes..."

Comment:

In this case, the adjacent jurisdiction is Berkeley County. Although Berkeley County is not zoned, Jefferson County should not ignore the fact that this area has developed into a hotbed of economic development. Because of Berkeley County's economic growth in this area, this neighborhood is now served by Public Water and Sewer. Also, this area has direct access to a primary road (old Route 9) and is just a short drive along good roads to a major interchange on the new four lane Route 9.

There is also a brand new large Sheetz Store and a new Food Lion that were constructed to serve this neighborhood. These two commercial entities are just over the Berkeley border from the subject property. Again, it would be unwise to continue to watch Berkeley County reap the economic benefits of this growth and not allow the same in Jefferson County simply because of the County line.

Recommendation 3.18 on Page 64:

"The County should continue to pursue new industrial and commercial development in order to diversify its economy, increase the tax base and thereby mitigate the problems of increasing residential growth, and provide quality employment opportunities in the workforce."

Comment:

Again, this area has been permitted to develop into a mixed use of residential subdivisions, a business park that contains good federal government jobs and commercial businesses that locate where growth is indicated. Jefferson County is adjacent to this growth and should capitalize on the economic gains that Berkeley County has enjoyed in the same area.

According to page 71 of the 2004 Comprehensive Plan, there is a very small percentage of land that is zoned for commercial or mixed-use in Jefferson County. This percentage is estimated at approximately 5 percent. It is very difficult to achieve the goal of pursuing new industrial and commercial development if the County doesn't create new commercial and mixed-use zones. Because of the adjacent zoning in Jefferson County and the development in this area of Berkeley County, this property would be an ideal parcel of land to include in the mixed-use zone. Besides the proximity to the adjacent development, it also has access to good infrastructure, including water, sewer and roads.

Based on the preceding two major recommendations in the 2004 Comprehensive Plan, this map amendment is consistent and compatible with the Plan.

B. Change of Neighborhood

This area of Jefferson County and the adjacent area on Berkeley County have changed significantly since the Zoning Ordinance was adopted in 1988. The following are examples of these changes:

1. The Liberty Business Park was developed on the Berkeley County side of the line and contains major Coast Guard and IRS facilities. This park is less than a ¼ of a mile from the subject property.
2. With the development of the Liberty Business Park, Public Water and Sewer were extended into the area.
3. Several residential developments have been built in this area including Quail Ridge Subdivision and Chapel View Subdivision.
4. Quad/Graphics, a very large industrial printing and distribution facility, was built in Baker Heights in the 90s.
5. In 2005, the County Commission rezoned the 191 acre F.O. Day property which borders this property to the North. The Day property was zoned Rural and the County Commission approved a map amendment to Commercial/Industrial. Two things to note regarding the differences between the properties is that the Hunter property has better access, since it directly fronts Old Route 9, and the new Route 9 wasn't even built when the Day rezoning was approved. As mentioned, both the Jefferson County Planning and County Commissions found this map amendment to be consistent with the 2004 Comprehensive Plan. There have been significant changes to the neighborhood even since the Day rezoning was approved. These changes are described below.
6. The new expanded Sheetz Store was just built in the neighborhood (approximately a ¼ mile away). Ironically, it was relocated from Jefferson County.
7. A new Food Lion (within eyesight) was built almost adjacent to the Hunter property in the neighborhood just on the Berkeley side of the line. New grocery store construction is usually indicative of the growth potential of a neighborhood.

8. The Comfort Suites Hotel was built very close to the subject property.
9. Hospice of the Panhandle has chosen the adjacent property to the northwest for its headquarters and a multi-bed in-house care facility. This facility was a project that was approved by both Jefferson and Berkeley Counties since it straddles the County line. The project which includes over 25,000 square feet of office space and a very large inpatient center is located in both Jefferson and Berkeley Counties. It is also directly accessed from old Route 9. Interestingly, the Hospice property requested a variance to reduce the setback for the complex almost in half along the Hunter property and the Hunter family had no problem with the variance being granted. Needless to say, that development is now very close to the Hunter property line. This project is also nearing completion.
10. The new Route 9 was completed with direct four lane access to Route 81. This route is approximately one mile from the subject property and has a major interchange that services the area. Old Route 9 (Route 115), still considered a Primary Road by the Comprehensive Plan, services the Hunter property and leads into Short Road that has direct access to the new interchange. The property is nearly in between two major interchanges (Shepherdstown Exit and Short Road Exit) to the new four lane Route 9. This makes the property ideal for development.

Summarizing the Change of Neighborhood, it is essential to note the following:

1. Availability of Public Utilities:

Public Water and Wastewater facilities serve this area. Natural gas service is also available in this area and any growth would help facilitate the expansion of natural gas (a priority of the JCDA and its Industrial Park) into Jefferson County. One of the major goals of the Comprehensive Plan states that the Plan should:

‘Encourage growth and development in areas where sewer, water, schools, and other public facilities are available or can be provided without unreasonable costs to the community’.

This is certainly an area to achieve this goal. Even in the proposed new Comprehensive Plan process, the preferred growth areas have been mentioned to be located where public water and sewer and good road access is already available. This property definitely meets that criteria. This is another reason that the previous planners picked this property to be in a commercial business park district.

2. Growth in the Corridor:

Since the adoption of the original Zoning Ordinance in 1988, this area has grown considerably. The significant growth includes: Quail Ridge and Chapel View Subdivisions; Hospice Offices and Treatment complex; large Sheetz; Food Lion; Quad/Graphics in Baker Heights and the Liberty Business Park. These types of developments along with the existing growth in the Kearneysville and Baker Heights area illustrate that mixed-use development along old Route 9 is very much consistent with the Comprehensive Plan; especially since most of these came after the Plan was adopted in 2004. The map amendment for the subject property would ideally fit into this neighborhood's mixed use.

C. Change of Transportation Characteristics:

There have been positive changes in the transportation and traffic characteristics in this area. Old Route 9 was very much enhanced just north of the property when Quad/Graphics was developed in Baker Heights. The road was widened and improved to accommodate the large volume of tractor trailer traffic associated with that industry.

However, the major change in transportation characteristics is the finished Route 9. It is the direct four lane link to Route 81 that Jefferson County had been endorsing for many years. This road has opened up both trade routes and commuter routes in and out of Jefferson County. As mentioned previously, The Hunter property has access via good roads (old Route 9 (Route 115)) to both the Short Road and Shepherdstown interchanges onto new Route 9. The Hunter property is located in between these interchanges. The new Route 9 and Public Water and Sewer in this area make this property an ideal property for a mixed-use development.

These changes and improvements to the transportation system have taken place since 1988 when the Zoning Ordinance was adopted; and, most of them have taken place since the 2004 Comprehensive Plan was written. While the Comprehensive Plan is being updated these road improvements should be included in the new Plan. All of these improvements have had a very positive effect on the transportation characteristics and traffic flow in this area and neighborhood. The new Route 9 should be recognized as a driving force for the new preferred growth areas. Accordingly, these changes should have a positive effect on this Petition for a map amendment.

D. Error in the Original Zoning Map

Listed below are several reasons why the Hunter property should have been zoned for development in 1988. These reasons have already been discussed in detail in this Petition. However, all of these were true in 1988 when the Zoning Ordinance was adopted. They were also true in 2004 when the Comprehensive Plan was adopted. These are some of the reasons that the adjacent property was rezoned in 2005 and that the Hunter property was shown as a business park on the adopted Zoning Map in 2008. However, irrespective of the error on the Zoning Map, these reasons alone would support the requested map amendment to the mixed-use classification:

1. The property is located on a Primary Road as defined by the Comprehensive Plan. There are only two roads defined as Primary Roads in Jefferson County (Route 340 and old Route 9 (Route 115));
2. The property has access to public water and public wastewater services; and,
3. The property is located between two unincorporated mixed-use communities (Baker Heights and Kearneysville).

Add the other compelling factors including the development of: the Liberty Business Park; Residential Subdivisions; the large Sheetz store, the new Food Lion, Hospice of the Panhandle; and, the new Route 9 and there is no reason why this property should remain zoned 'Rural'.

E. Conclusion:

The Hunter family respectfully requests that the County Commission approve this map amendment to the Jefferson County Zoning Map. This Petition cites many reasons why the map amendment should be approved. These reasons include: the consistency of the request to the 2004 Comprehensive Plan; the recent actions of the County Commission regarding rezoning the adjacent property; the fact that the property should always have been classified as a business or mixed-use district; the positive changes in the transportation characteristics in the area, especially the construction of Route 9; the changes in the neighborhood from when the original zoning ordinance was adopted (including the development of a business park nearly across the street; and, the fact that the property has access to Public Water and Sewer. This map amendment will change the zoning classification on the Applicant's property from the Rural District to the Residential/Light Industrial/Commercial District.

Ann H. Hunter

Ann Hunter

Aug. 14, 2013

Date

James O. Hunter, Jr.

James Hunter

Aug. 14, 2013

Date

Ernest Hunter

Date

Ernest M Hunter

James Hunter

8-19-13

Date

Ernest Hunter

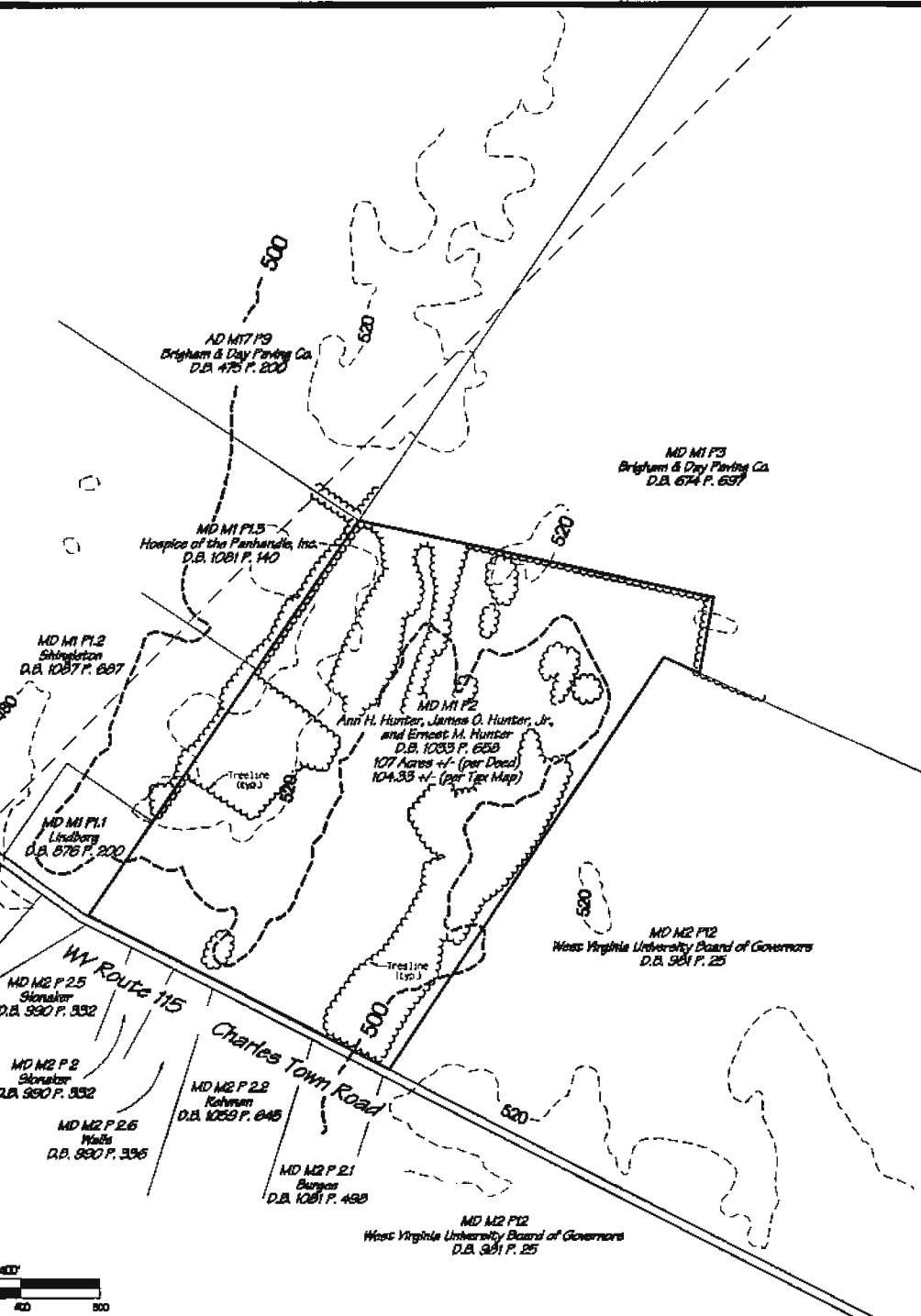
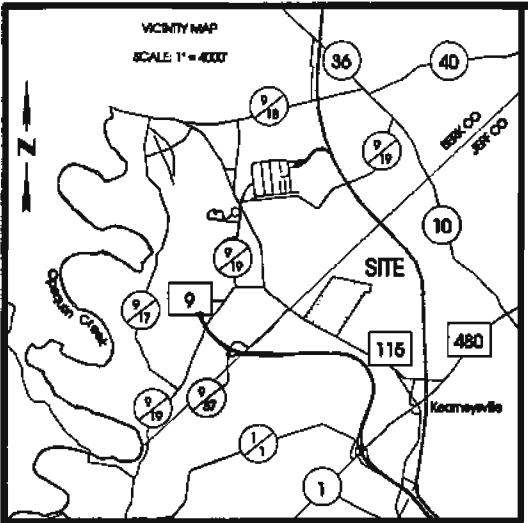
Date

Received by Christina Chalmers 8-27-13

RECEIVED

AUG 27 2013

JEFFERSON COUNTY
PLANNING ZONING AND ENGINEERING



NOTE:
Contours are approximately 1800, 20-foot interval.

BERKELEY COUNTY
JEFFERSON COUNTY



Sketch Showing
**Proposed Rezoning of
Hunter Property**

Middleway District
Jefferson County, WV
08 August 2013
Scale: 1" = 400'

Appalachian Surveys, PLLC

401 S. RADFAX BOULEVARD, SUITE 3
RABUN, WV 2608-1611
PHONE: 304.794.0008
FAX: 304.794.5010
WWW.APPALACHIANSURVEYSPLLC.COM

This information is
Tab #7 in your binder.

S. Grah

In the Circuit Court of Jefferson County, West Virginia

RECEIVED

SEP 04 2013

JEFFERSON COUNTY PLANNING,
ZONING & ENGINEERING

RECEIVED

AUG 26 2013 MD

JEFFERSON COUNTY
CIRCUIT CLERK

Cedar Air Park Holdings, LLC
Petitioner

v. 11-C-460
Judge Sanders

Jefferson County Planning Commission, a public body,
Respondent

COPY

Order Denying Certiorari

On this 28th day of Aug, 2013, after having reviewed and considered the Petition filed in this matter and the response thereto, makes the following findings:

Failure Service Adverse Parties

1. West Virginia Code §8A-9-2 requires notice to all adverse parties to sustain an appeal. West Virginia Code §8A-9-2 requires service on the Planning Commission and also personal service upon "any property owner appearing at the hearing before the planning commission . . . in opposition to the petitioner."
2. The information transcript provided by the Petition clearly shows that various landowners appeared and opposed the matter. The official minutes of the proceedings verify that members of the public appeared in opposition. [Official Application File page 18-20]

3. At the hearing below, strong opposition was raised. A large part of the opposition was by Timothy Foltz, in whose name the application was filed, noticed and advertised, who appeared to dispute the use of his name as petitioner and to dispute legal ownership by the instant Petitioner. In addition, several landowners in the subdivision appeared and disputed various aspects of the application. [Official Application File Pages 18-20]
4. Neither Foltz nor any of the people who appeared in opposition have been served with the instant Petition.
5. The Petitioner¹ has failed to provide such service and notice as required under the Code to all adverse parties. Since the matter was filed on the 7th day of December 2011, more than 18 months have passed and proper service has not been made upon any adverse party other than the Respondent. More than 120 days has passed since this matter was initiated and the Petitioner has failed to serve all parties are required by statute. Pursuant to WVRCP 4(k)² that Court “shall dismiss the action without prejudice” as to that defendant. The instant matter is not a simple civil action demanding money damages where a theory of joint and several liability would allow judgment to be entered against less than all parties involved. This matter requests a statutory remedy which would affect all adverse parties. Thus, failure to follow the statutory notice and service requirements requires this Court dismiss the action.
- 6.

¹ This is certainly not the fault of current counsel only recently entered his appearance. Prior counsel had more than 120 days until their appearance was struck by the court to obtain service.

² *Time limit for Service.*—If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. WVRCP 4(k)

No Basis for Issuance of Writ of Certiorari

7. West Virginia Code §8A-9-1 et seq. grants this Court the authority to review decisions of the Respondent Planning Commission to determine if its actions were “illegal in whole or in part.” §8A-9-1(b)(1). The general standard of review requires the Court presume that the actions of a board of zoning appeals were proper. The West Virginia Supreme Court of Appeals held that “on appeal there is a presumption that a board of zoning appeals acted correctly, a reviewing court should reverse the administrative decision where the board has applied an erroneous principle of law, was plainly wrong in its factual findings, or has acted beyond its jurisdiction.” Syl. pt. 5, Wolfe v. Forbes, quoted in Maplewood Estates Homeowners Ass'n v. Putnam Cnty. Planning Comm'n, 218 W. Va. 719, 720, 629 S.E.2d 778, 779 (2006).
8. The Petitioner, claims ownership of a parcel of land in Jefferson County, West Virginia, presented an application to modify a pre-existing subdivision. An engineer employed by the Petitioner submitted the application in the name of “Timothy Foltz” as the landowner. The required legal notice listed “Timothy Foltz” as the owner of the subject property. The public agenda for the meeting again listed Foltz as the owner.
9. At the November 8th, 2011, hearing, Timothy Foltz appeared and stated that he did own the subject property, he did not apply for the change in the subdivision. He requested the application be withdrawn or at least delayed.
10. The Petitioner appeared at the same public hearing and stated that the LLC owned the property and had inadvertently applied, noticed and advertised the application in the name of Foltz. The Petitioner claimed Foltz was a former owner who had been stripped of ownership. The Petitioner did not submit any deed or other official document to the Planning Commission to validate its last-minute claim of ownership.

11. The Planning Commission staff report expressly conditioned approval of the application “the applicant is the legal owner,” [Official Application File page 18-20]
12. After a contentious hearing, the Planning Commission denied the application due to “insufficient information” as to ownership of the property. [Official Application File page 18-20]
13. The Petitioner submitted with the Petition filed with this Court various documents to show it is the lawful owner of the subject property. The Petitioner did not submit any ownership documents at the hearing before the Planning Commission.
14. West Virginia Code requires that advanced notice of all final plat public hearings. W.V Code 8A-5-8(c) In addition, the Open Meetings Act requires proper advanced notice for lawful action upon an agenda item. WV Code §6-9A-3.
15. This Court must grant the Planning Commission a presumption of correctness and can only reverse the finding below upon a finding of legal error or if the factual findings were plain error. Proper public notice of a final plat public hearing is required for any final plat public hearing. W.V Code 8A-5-8(c). After careful consideration of the official application file and an informal transcript of the proceedings submitted by the Petitioner, the Court finds no clear factual error in denying the application for insufficient information as to ownership of the subject property. At the very least, a reasonable Planning Commission could find that it lack sufficient information as to ownership and property application under the facts that transpired at the November 8th, 2011 hearing. The application, the newspaper publication and the public agenda were listed in the name of “Timothy Foltz” not the Petitioner.
16. The Court has reviewed the claimed legal error by the Petitioner, de novo, and finds none. The Petition asserts theory of legal error by the Planning Commission: “West Virginia Law, which requires that an application be approved unless the Staff Report finds violations of the Subdivision Regulations.” This incorrect claim turns the law

on this head: the Planning Commission is the body appointed by the County Commission and charged by law to make determination as to whether a plat meets all legal requirements for approval. WV Code §8A-5-6. The Petitioner's misstatement of the law would make the Planning Commission utterly superfluous: if the Planning Commission's own employees decide an application is complete, then the Planning Commission must approve the application regardless of testimony received at the public hearing, regardless of any legal or factual disputes raised at the meeting and regardless of the actual state of the application.

17. Furthermore, applicable case law requires this Court grant the Planning Commission a presumption of correctness. "Maplewood Estates Homeowners Ass'n v. Putnam Cnty. Planning Comm'n, 218 W. Va. 719, 720, 629 S.E.2d 778, 779 (2006)(on appeal there is a presumption that a board of zoning appeals acted correctly, a reviewing court should reverse the administrative decision where the board has applied an erroneous principle of law, was plainly wrong in its factual findings, or has acted beyond its jurisdiction."). This Court is required to defer to the appointed Planning Commission the not to the staff which works for the appointed body.

WHEREFORE, after consideration of the pleadings and the record below, it is hereby ORDERED that the Petition for Certiorari be, and hereby is, DENIED. The clerk shall send a certified copy of this order to counsel of record and strike this matter from the active docket of this Court.

2 cc's:
Cedar Air Park
c/o B. Haynes
S. Guah
8.29.13
BL



Hon. David H. Sanders, Judge of the 23rd Circuit

CLERK OF COURT
JUDICIAL SYSTEM
CLERK OF COURTS
DEPARTMENT OF CORRECTIONS

B. Crank

This information is
Tab #8 in your binder.



Jefferson County, West Virginia

Departments of Planning and Zoning

116 East Washington Street, 2nd Floor

Charles Town, WV 25414

Email: planningdepartment@jeffersoncountywv.org
zoning@jeffersoncountywv.org

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

Director's Report September 10, 2013 Planning Commission Meeting

1) Envision Jefferson 2035 Update

- a) County Fair input
- b) Next steps:
 - Stakeholders Sessions – Friday, September 27, 2013 (four 1½ hour sessions)
 - Third Series of Public Meetings – Land Use Map – “What and How”:
 - Monday, October 21, 2013: South Jefferson Elementary
 - Wednesday, October 23, 2013: Shepherdstown Middle School
 - Future Land Use Map and Recommendations

2) Recent CC Actions Relevant to Planning:

- a) Request by the Planning Commission that the County Commission Reconsider their Motion of 10/25/13 Regarding the Proposed Zoning Ordinance Text Amendment Related to New Commercial and Industrial Zoning Categories (09/05/13; CC voted to schedule a CC workshop to review changes since last Public Hearing and schedule a new Public Hearing – date tbd).
- b) Minor Amendments to the Jefferson County Zoning and Land Development Ordinance Sections 2.2, 4.10, 4A.5, 5.7, 5.8, 8.5, 8.14(new), 8.15 (new), 9.5, 10.5, 11.1, 12.2 and Appendix C (Agricultural Use and Other Amendments) (09/05/13; Voted to Schedule Public Hearing – date tbd).

3) Upcoming CC Actions Relevant to Planning:

- a) Public Hearings related to items above – dates to be determined.

4) Upcoming PC Meetings

- a) October 8, 2013.
- b) October 15 or October 29, 2013 (tentative for Zoning Map Amendment Public Hearing).