



AGENDA

Jefferson County Planning Commission

Tuesday, December 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 November 12, 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.
3. Request for postponement.
4. Public Hearing: Concept Plan Review for Verizon Wireless (PC File #S13-05). This property is located at 231 Trough Road in Shepherdstown. This project consists of constructing a 130' Stealth Silo telecommunications tower. The property is located in Tax District: Shepherdstown (09); Tax Map: 17; Tax Parcel: 11.
5. Public Hearing: Request by applicant Stanley Dunn (File #PCW13-11) to be represented by Appalachian Surveys, PLLC for a waiver from Section 20.201.A.2 of the Jefferson County Subdivision and Land Development Regulations. Applicant is requesting a waiver from upgrading the existing access easement from 40' to 50' along the frontage of Lot 2 as required in order to create two additional single family lots. The applicant will upgrade the remaining portion of the 40' access easement to the required 50' by creating a 10' easement along the proposed Lot 3. Property owner: Katherine Dunn and Sarah Lowery. Property location: North side of Route 1/5 (North Childs Road) ¼ mile East of Leetown Road intersection. Tax District: Middleway (07); Map: 17; Parcel: 4; Size: 7.485 acres; Zoned: Rural.

There is no public comment for the remaining items.

6. Review and approval of Meeting Schedule for 2014. Please note: the Comprehensive Plan will be submitted to the Planning Commission in May; therefore, it may be necessary to schedule additional meetings during June and July.
7. Reports from Legal Counsel and legal advice to the Planning Commission.
Active Litigation:
 - Far Away Farms
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.

- Order granting Jefferson County Planning Commission's "Motion to Reconsider".
- Letter from Ms. Junipa Contento RE: All Good Music Festival Withdrawal, 12-04-13.

13. Signing of approved Motions from previous Planning Commission meetings.

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

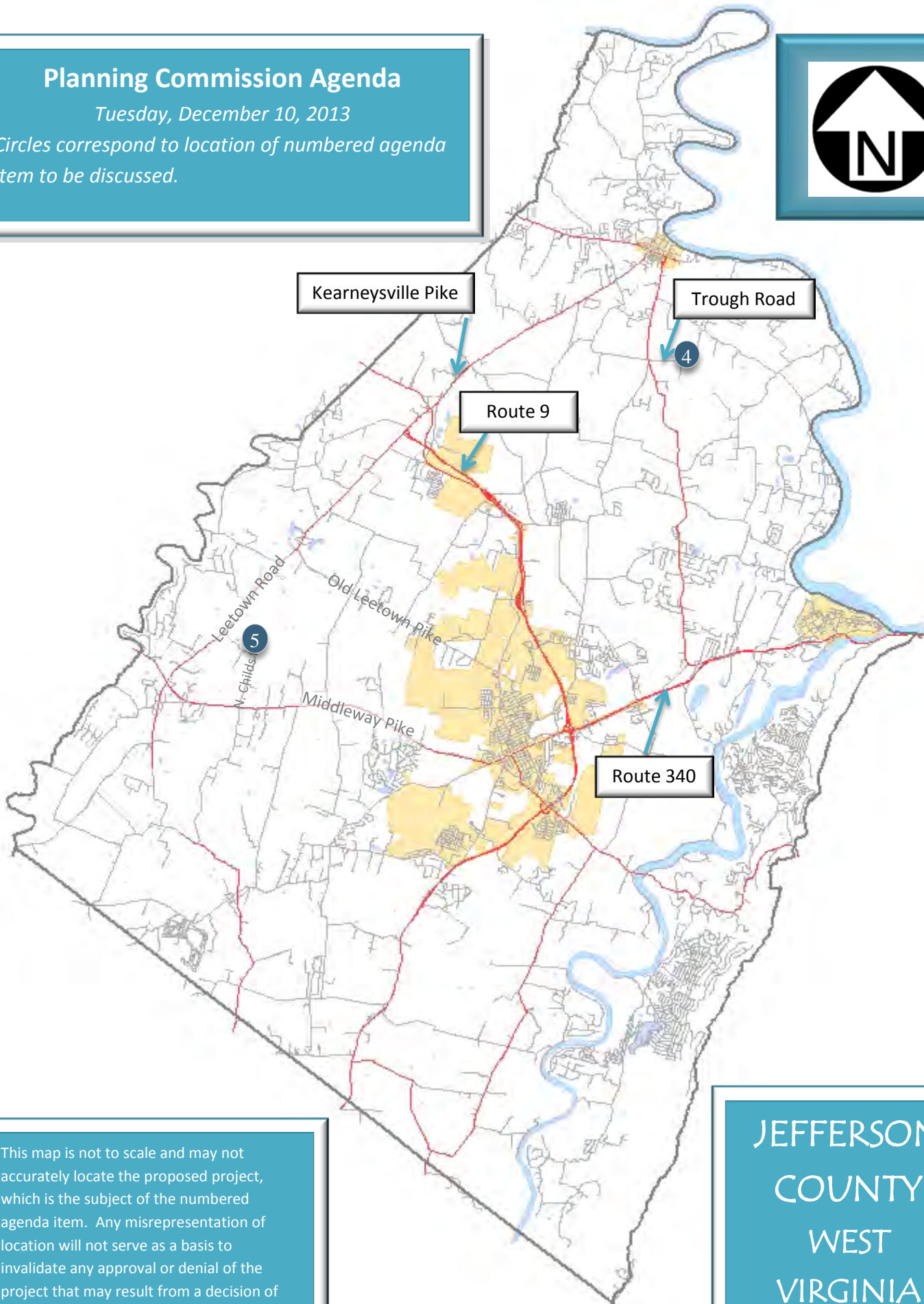
Fax Number: 304-728-8126

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, December 10, 2013

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



Kearneysville Pike

Trough Road

Route 9

Route 340

5

4

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
November 12, 2013

The Jefferson County Planning Commission met on November 12, 2013, with the following Commission members present: Paul Taylor, President; Daniel Hayes, Vice President; Gene Taylor, Secretary; Walt Pellish, Stephen Stolipher, Bill McLeod, Wade Louthan, and Darlene Truman. Staff members present included Jennifer Brockman, Director of Planning and Zoning; Seth Rivard, County Planner; Stephen Groh, Assistant County Prosecuting Attorney; and Alexandra Beaulieu, Planning Clerk.

Mr. Gary Phalen was absent without notice.

Mr. Taylor called the meeting to order at 6:58 PM.

1. **Approval of the minutes from the September 10, 2013 Planning Commission Meeting.**

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

2. **Citizen Communications.** None.

3. **Request for postponement.** None.

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.**

Mr. Rivard provided a staff report. He stated that staff supported the request and noted that the re-zoning request is in compliance with the 2004 Comprehensive Plan in that adjacent jurisdictions included a number of commercial businesses. Mr. Rivard stated that the property could be served by public water and sewer from Berkeley County.

Ms. Annette van Hilst presented the request on behalf of the Hunter Family. She distributed a paper copy of her Power Point presentation to the Planning Commission members and staff. Ms. van Hilst reviewed recent changes in the area since 1988, when zoning was first put into effect in Jefferson County. She noted the close proximity to Berkeley County commercial businesses including Liberty Business Park, Comfort Inn, Sheetz, and the Hospice Office and Care Center (currently under construction). Ms. van Hilst stated that the request was consistent with the 2004 Comprehensive Plan in that it recognized existing development surrounding the property, as well as the potential for development on the property with the ability to be served by public water and sewer, and natural gas.

Ms. Brockman read into the record a letter from Mr. John Reisenweber with the Jefferson County Development Authority which stated that the JCDA was in support of the re-zoning request. *A copy of the letter is available for review in the office of the Departments of Planning and Zoning.*

Mr. Stolipher motioned to close public comment. Mr. Gene Taylor seconded the motion, which carried unanimously.

Mr. Stolipher motioned to recommend to the County Commission approval of the Zoning Map Amendment request to change the zoning designation of the above referenced parcel from Rural to Residential-Light Industrial-Commercial.

Mr. Pellish seconded the motion, which carried unanimously.

5. Presentation by Martin Burke regarding Historic Landmarks Commission and potential Zoning Ordinance Text Amendment effort (discussion and possible recommendation).

Mr. Burke provided a PowerPoint presentation which included an overview of the history and role of the Jefferson County Historic Landmarks Commission. Mr. Burke also provided an overview of the most recent inventory, which included an update on critical historic features lost in recent years.

The Planning Commission discussed the request and determined that the concerns would be addressed by the Steering Committee in the 2014 Comprehensive Plan.

Mr. Hayes recommended that no action be taken at this time.

Ms. Truman seconded the motion, which carried unanimously.

6. Discussion and possible recommendation regarding proposed text amendment to the Zoning and Land Development Ordinance (Section 4.11) regarding landscaping between similar non-residential uses.

Ms. Brockman reviewed the recommended text amendment which specifically applied to Section 4.11A, "All commercial development adjacent to all other uses must maintain ten (10) foot side and rear yard landscape buffers". Ms. Brockman stated that staff had wanted to address an amendment to Section 4.11 for some time and that recently the Development Authority requested staff review and consider an amendment.

Mr. Rivard stated that staff recommended a reduction in the required landscaping. He reviewed the proposed amendment which included a net result over a 100 foot linear planting of 4 evergreen/deciduous trees, at least 2 of which shall be evergreen (every 25 feet); 4 ornamental trees (every 25 feet); and 12 shrubs. He requested that the PC schedule a public hearing and then forward to the County Commission for approval.

Mr. Pellish recommended staff review the amendment with the Development Authority to receive their input. He stated that the Coast Guard building in the Burr Industrial Park would be a good example because they spent around forty thousand dollars in landscaping.

Mr. Stolipher seconded Mr. Pellish's recommendation to receive JCDA's input and schedule a public hearing. The motion carried unanimously.

Mr. Paul Taylor set a public hearing for December 10, 2013.

7. Reports from Legal Counsel and legal advice to the Planning Commission.

Active Litigation:

- Far Away Farms

Mr. Groh stated that a hearing for Far Away Farms was held. He stated that he was awaiting final determination and that he would hopefully have it within the next month.

8. Director's Report.

- Update on 2014 Comprehensive Plan.

Ms. Brockman stated that the public input meetings and Stakeholders Sessions were successful. She reviewed the upcoming Steering Committee meeting dates. Ms. Brockman reviewed the current status of the proposed Zoning Ordinance text amendments related to agricultural uses and the New Zoning Categories. She noted that the date October 25, 2013 cited as the date the County Commission made their initial motion should be October 25, 2012. Ms. Brockman provided an overview of the recent

determination by the BZA regarding the Section 5.7(d), "Maximum Number of Lots Allowed" (in the Rural District). She stated that the decision of the BZA resulted in the ability of any property that was of record on October 5, 1988 to be divided to create two (2) lots and a residue every five (5) years as long as the lots could meet Health Department requirements and were a minimum of 40,000 square feet. She added that there were limitations on the number of lots that could be located on a right-of-way before a county grade road was required.

9. **Planning Commission Exchange and Liaison Reports:** None.

10. **President's Report.** None.

11. **Actionable Correspondence.** None.

12. **Non-Actionable Correspondence.**

Mr. Paul Taylor noted a letter from Mr. Todd Hooker RE: Old Standard Quarry Brownfield Development District (09-16-13) and an email received from Mr. Joe Spurgas RE: MGM Well Water Flow Test Results (10-16-13). Ms. Brockman stated that staff were working with the County Clerk to have the letter from Mr. Hooker recorded along with the Plat.

13. **Signing of approved Motions from previous Planning Commission meetings.**

Mr. Paul Taylor signed the motion to approve the Zoning Map Amendment request from the Hunter Family. Mr. Hayes signed one of three motions to approve the waiver requests submitted by the Bloomery Plantation Distillery from August 13, 2013.

Mr. Stolipher motioned to adjourn the meeting at 8:36 PM. Mr. Hayes seconded the motion, which carried unanimously.

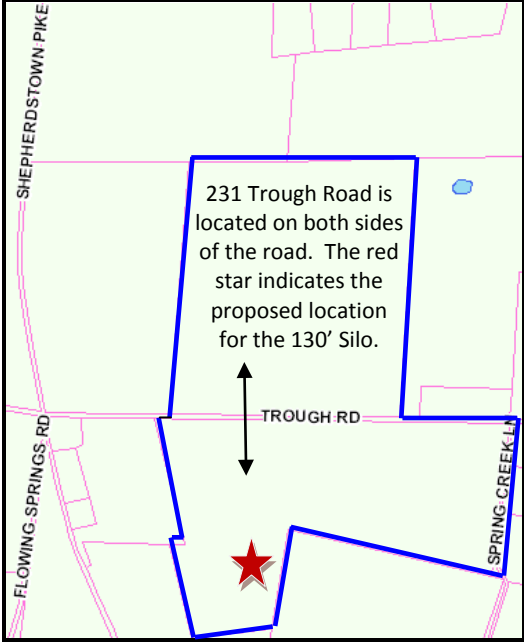
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Tab #4 in your binder.

STAFF REPORT

Jefferson County Planning Commission Meeting

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Item #7 Request by Verizon Wireless for a Concept Plan Public Hearing for a proposed New Stealth Wireless Telecommunications Tower (PC File #S13-05). (Subdivision Regulations Section 24.116, Zoning Ordinance Section 4B.7).

APPLICANT:	Diane De Laet for Verizon Wireless
OWNER:	George Randolph Welsh Jr.
DEVELOPER:	Verizon Wireless
SURVEYOR/ENGINEER:	TAI Engineering
PROPERTY LOCATION:	231 Trough Road; Shepherdstown, WV
LEGAL DESCRIPTION & ZONING DISTRICT:	<p style="text-align: center;">Tax District: Shepherdstown (09); Tax Map: 17; Parcel: 11; Size: 123.6 acres Zoning Map Designation: Rural (R)</p>  <p style="text-align: center;">231 Trough Road is located on both sides of the road. The red star indicates the proposed location for the 130' Silo.</p>
SURROUNDING PROPERTIES:	<p>Zoning Map Designation: <i>North: R South: R</i> <i>East: R West: R</i></p>
VARIANCE(S):	<p>09-19-13: BZA approved the Variance request to allow an increase of height from 120' to 130' tall stealth silo design for its wireless telecommunications facility, contingent on PC approval of Site Plan.</p>
PROPOSED ACTIVITY:	<p>New stealth Wireless Telecommunications Tower with compound area</p>

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1. Summary of Request

Verizon Wireless proposes to construct a 130' Wireless Telecommunications Tower designed as a silo structure, in addition to a 100' x 100' fenced compound area, a 12' x 30' equipment shelter, and other associated improvements. The proposed structure is showing co-location area for 3 providers, including Verizon, within the silo structure.

It should be noted that the standard Zoning and Land Development Ordinance height requirement for a tower is 100'. However, per Section 4B.7, a silo used to support antennas shall not exceed 120'. The applicant applied for a variance from the maximum height requirement of a 120' to 130' before the Board of Zoning Appeals. The request for the variance was approved by the Board of Zoning Appeals at the September 19, 2013 meeting.

2. Article 4B Purpose Statement

Section 4B.1 of the Zoning and Land Development Ordinance that regulates Wireless Telecommunications Towers states that:

“The purpose of Article 4B, Wireless Telecommunication Facilities, is to balance the needs of residents of and visitors to Jefferson County for reliable access to wireless telecommunication networks and services with the community’s desire to preserve the County’s rural, historic and agricultural character and the quality of its residential neighborhoods.”

With respect to towers designed as silos, this Section also states [emphasis added]:

“It is Jefferson County’s intent to: . . .

E. Encourage the location of new Wireless Telecommunication Towers, to the greatest extent possible, in areas where the adverse impact on the community will be minimal; and ***by encouraging the use of camouflage or concealment to create structures such as silos***, faux trees and flagpoles that mimic elements that typically are found on Jefferson County’s agricultural landscape and that appear in scale and context with their surroundings.”

3. Site Plan Category

Article 4B of the Zoning and Land Development Ordinance requires that a site plan for a proposed Wireless Telecommunications Tower be processed as a minor site plan. The ordinance also requires submittal and Planning Commission review of a Concept Plan, prior to submittal of a site plan.

The Ordinance specifies that submittal and review of a Concept Plan for a tower shall follow the review process and timeline established in Sections 24.116 – 24.118, with certain exceptions.

4. Staff Determination of Application Sufficiency

Prior to the scheduling of a Concept Plan public hearing before the Planning Commission, staff must determine that the plan submitted by the applicant is “sufficient and complete” – i.e. meeting all relevant requirements of the Subdivision and Land Development Regulations and Section 4B.7 of the Zoning and Land Development Ordinance.

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Because wireless towers have unique characteristics that distinguish them from other types of development (such as height and visual impact), the Ordinance specifies submittal requirements that are different from a standard Concept Plan. These requirements are as follows:

Zoning Ordinance Required Item	Description	Comment
a. Dimensions, use, and setbacks	Outside dimensions, use, and setbacks of all existing and proposed buildings, structures, towers, antennas, utility lines, driveways, and parking areas.	Meets ordinance requirements.
b. Height	Height of the proposed tower measured from ground level at the center of the proposed structure, and height comparison to any nearby buildings or trees, or other applicable structures and natural landforms part of the site's background and foreground landscape.	130' height of a silo meets requirements of 4B.7 with the granted BZA variance.
c. Elevations and cross-section	Elevations and Cross-Section: Display topography with all proposed facilities including tower, equipment shelter and existing buildings.	Meets ordinance requirements.
d. Antenna features	Number, size and location of proposed and existing antennas; number of co-locations possible.	Meets ordinance requirements.
e. Method of camouflage	Method of camouflage (if any).	While camouflage is not a requirement of the ordinance, the applicant has chosen to design the tower as a silo.
f. Historic structures	Locations of known historic structures.	Map provided. See page 26 of attachments.
g. Development Schedule	A description of the anticipated construction and installation schedule.	Desired start in Spring of 2014 and completion by end of 2014
h. FCC Compliance	Documentation verifying compliance with applicable Federal Communications Commission (FCC) standards and requirements to provide the proposed services.	Provided. See pages 27 and 28 of attachments.
i. Design criteria	Narrative addressing the design criteria of Section 4B.7.	Provided. See page 4 of attachments.
j. Balloon test information	Dates, address list, and notice for Balloon Test.	Provided.
k. Balloon test exhibits	Balloon Test exhibits as required in subsection G of Section 4B.7.	Provided. See pages 5 -18 of attachments.
l. Propagation maps	Propagation maps as required in subsection F of Section 4B.7.	Provided. See pages 19-25 of attachments.
m. Additional information	Any other relevant information.	No additional information provided.
n. Preferred Structures and Locations Policy	Additional application requirements of subsection H (Preferred Structures and Locations Policy)	See discussion below, and see page 4 of attachments.

Other required elements for a Wireless Telecommunications Tower Concept Plan are the same as for a site plan submittal as established in the Subdivision and Land Development Regulations, Appendix A, Sec. 1.3A, with the exception of Subsections 1.3A.20-22, 24-29, 31-35.

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5. Concept Plan Sufficiency and Completeness Review

During the time period between formal receipt of the application and the public workshop, the Concept Plan Completeness Review process takes place. Sec. 24.116 provides the standard requirements for Completeness Review. Staff determined that the Concept Plan application was “sufficient and complete” on October 24, 2013.

6. External Agency Reviews

Most external agency reviews are not applicable per Section 4B.7. As required by this section, staff notified the Jefferson County Historic Landmarks Commission of the application filing.

7. Planning Commission Public Hearing Scope of Review

For a Wireless Telecommunications Tower, the Concept Plan public hearing is the only Planning Commission meeting during which the Planning Commission reviews the proposed plan. The scope of the public hearing includes the following:

1. A demonstration of need as required by Article 4B;
2. Neighborhood compatibility;
3. Impact on cultural and historic resources;
4. Visual mitigation;
5. The submittal and design criteria of Article 4B;
6. The compatibility of the facility proposal with the Comprehensive Plan; and
7. Any relevant information presented by any person that addresses the purpose and intent of Article 4B.

These criteria are individually analyzed below.

1. **A demonstration of need as required by Article 4B**

The purpose of the “demonstration of need” requirement is for the applicant to demonstrate that the proposed tower is necessary for coverage purposes, at the proposed height and at the proposed location. Implicit in this requirement is a demonstration that there are no other feasible alternatives to building a tower, such as co-location of antennas on an existing structure.

The applicant has addressed this criteria as follows:

a. Submittal of propagation maps

Propagation maps depict cell coverage with and without a proposed tower. These maps, which are prepared by a radio frequency engineer, must be submitted with a tower application.

The “before” and “after” maps submitted show a significant, projected increase in coverage in the area between Trough Road/Gardner’s Lane and Uvilla and between

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Ridge Road and Engle Moler Road. (See pages 19-20 of attachments to this report.) The applicant has also provided propagation maps showing different options for tower placement and various heights. (See pages 21-25 of attachments to this report.)

b. Narrative addressing Preferred Structures and Locations Policy

Section 4B.7 establishes the County's policy regarding preferred types of wireless antenna support structures, as well as preferred locations for new wireless facilities. The County's stated first priority for wireless antenna placement is co-location. (This policy statement indicates a County preference, rather than a requirement).

The proposed tower application is for a new tower, not for a co-location. The documents submitted by the applicant indicate that there are no facilities on which to collocate to obtain the desired coverage.

The proposed silo is being designed for additional wireless providers to collocate within the structure. As required, the applicant has submitted an "Affidavit of Co-location," stating that the available co-location areas on the proposed tower will be made available to other carriers unless structural or other factors render co-location unfeasible.

Regarding proposed structures, the County's stated preference for structures, in order of priority, is:

- Silos
- Other Alternative Structures
- Monopoles
- Lattice Towers

The proposed tower is designed as a silo, which is identified as the County's first preference.

Regarding preferred locations for new towers, it is the County's policy to encourage location in the following areas, in descending order of priority:

- The Industrial - Commercial District
- Non-residential areas screened by existing vegetation and located outside of the Industrial - Commercial District

Staff notes that the proposed tower location is outside of the Industrial - Commercial District, in the Rural District. Existing vegetation will screen the compound and may screen the tower to the east.

2. Neighborhood compatibility

Adjacent land uses surrounding the site are used for agricultural purposes. The Zoning and Land Development Ordinance does not provide explicit standards for neighborhood compatibility.

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3. Impact on cultural and historic resources

As required, the application includes a map showing nearby historic resources. The nearest resource shown on the map is located approximately 750 feet from the tower. There are a number of other structures shown within a ½ mile as provided in the attachment on page 26.

The site for the proposed tower is not located in the Harpers Ferry Overlay District or within 1 mile of the Appalachian Trail.

4. Visual mitigation

The proposed tower is designed as a silo, with all antennas located on the interior of the structure.

The application does not show any landscaping around the outside of the leased compound area as existing vegetation exists on the east side of the compound.

5. The submittal and design criteria of Article 4B

Article 4B states that the required submittal elements for a Wireless Telecommunications Tower Concept Plan shall be the same as for a site plan as established in the Subdivision and Land Development Regulations, Appendix A, Sec. 1.3A (with certain exceptions). In addition, other elements are required, such as elevations and cross-section, locations of known historic structures, Balloon Test exhibits, and other information. Staff finds the application complete with regard to the required submittal elements.

Design criteria (height, color, fall zone, lighting and marking, fencing and other elements) are established in Section 4B.7.J. Staff finds that the proposed tower design meets these criteria, with the note the height has been permitted to increase via an approved variance from the Board of Zoning Appeals.

6. The compatibility of the facility proposal with the Comprehensive Plan

a. Staff Analysis

The Comprehensive Plan includes little discussion of telecommunications facilities. However there are relevant sections of the Comprehensive Plan that are impacted by telecommunications facilities.

- Page 19, Statement of Goals: “*encourage and support commercial . . . activities to provide a diversified and sound local economy.*” Telecommunications facilities provide an avenue by which residents could have the ability to telecommute.
- Page 65, note that “*Identification, as technology and other factors change and evolve, of issues that present a deterrent to successful economic development. These issues currently include:*
“*a. The need for additional infrastructure in terms of water, sewer, natural gas and telecommunications....*”

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Although telecommunications infrastructure and access to broadband internet access has improved dramatically during the past few years, surpassing the capacity of some neighboring counties, continual upgrading to state of the art facilities is a necessity if success in high tech attraction is to be achieved.”

One additional, significant mention of cell towers is included in Chapter 3, “Natural Resources” section, page 52:

The protection of scenic vistas has been the subject of public comment during this process. During the life of the 1994 Plan, which stated that scenic vistas should be protected through the purchase of easements, the Circuit Court voided the issuance of a Improvement Location Permit (ILP) for a telecommunications tower near Alstadt’s Hill, based on non-conformance with the Comprehensive Plan, although no easements were in place.

The County should identify the protection of scenic vistas as an issue to address, this is best done through the adoption of standards within the ordinances, so that all parties are aware of their rights and responsibilities in this regard.

Because the proposed tower is in the form of a silo, it appears to be compatible with the adjacent agricultural landscape.

7. Any relevant information presented by any person that addresses the purpose and intent of Article 4B

To date, staff has not received any written comments from members of the public regarding this application before the Planning Commission. However, at the Board of Zoning Appeals meeting in September 2013 there were a number of citizens who objected to the requested variance to allow the silo to be an additional 10 feet in height from the maximum permitted 120 feet.

The Planning Commission may consider testimony at the public hearing regarding the purpose and intent of Article 4B.

8. Staff Recommendation

The Planning and Zoning Department Staff finds the Verizon Wireless Trough Road “Karen” Telecommunications Tower concept plan to be:

- Complete based on the information provided related to the required criteria outlined in the Subdivision and Land Development Regulations and the Zoning and Land Development Ordinance; and
- Consistent with the Comprehensive Plan
- As provided for in the 4B of the Zoning Ordinance, Staff recommends that as a condition of approval, the fenced compound be screened by a landscaped buffer of at least 10 feet in width planted along the entire exterior perimeter of the fence, except for the east side of the

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compound. Such a buffer must contain at least one row of native vegetation and form a continuous screen at least 6 feet in height at planting.

9. Planning Commission Direction

The Concept Plan Public Hearing allows for the Planning Commission and the general public to comment on the proposed plan. The Subdivision and Land Development Regulations outline the procedure:

1. The applicant makes a short presentation.
2. Staff explains outside agency comments and whether the plan has met the standards of the Zoning Ordinance.
3. Public comment is solicited.

Following the applicant's presentation, staff's explanation and the solicitation of public comment, the Planning Commission shall:

- Review the proposed Tower for compliance with the standards in Article 4B and, if applicable, provide direction in the form of conditions relevant to the scope of the public hearing and/or unique characteristics of the proposed development site, to be addressed in the Department's approval of the site plan; and
- Determine, by a majority vote, that the Concept Plan application complies with this article, and that the application is consistent with the Comprehensive Plan.

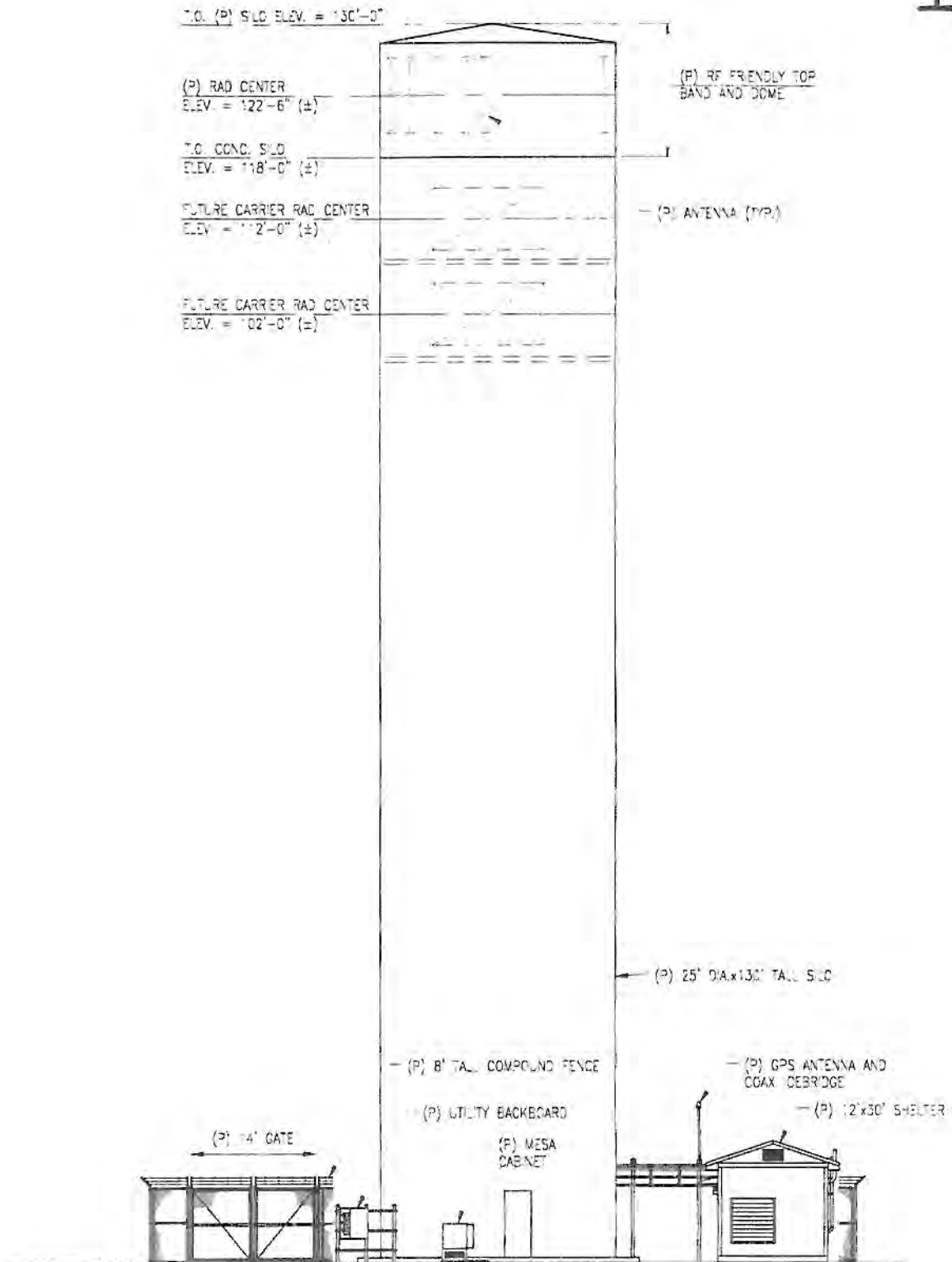
The Commission has the option of providing direction at the same meeting during which the Concept Plan public hearing takes place, or at a subsequent meeting that occurs within 14 days of the meeting at which the Concept Plan public hearing is closed.

The Subdivision and Land Development Regulations outline the direction to be provided to the applicant:

“The Planning Commission shall direct the preparation of a site plan subject to conditions to be addressed in the site plan application. The purpose of this review is to guide the developer so that when the site plan application is formally reviewed by the staff, there should not be a whole range of issues being raised for the first time. The developer shall cite conditions and demonstrate that they have been met or otherwise addressed.”

It should be noted, that the direction provided to the applicant in the Concept Plan Public Workshop shall be applicable for a period of two years, with the provision that any amendments to the Subdivision and Land Development Regulations or the Zoning and Land Development Ordinance in the second year shall be applicable.

Should the Planning Commission vote to find the application consistent with the Comprehensive Plan, the applicant will submit a minor site plan to Planning, Zoning and Engineering Departments for administrative review and approval. The site plan shall address the conditions identified by the Planning Commission.



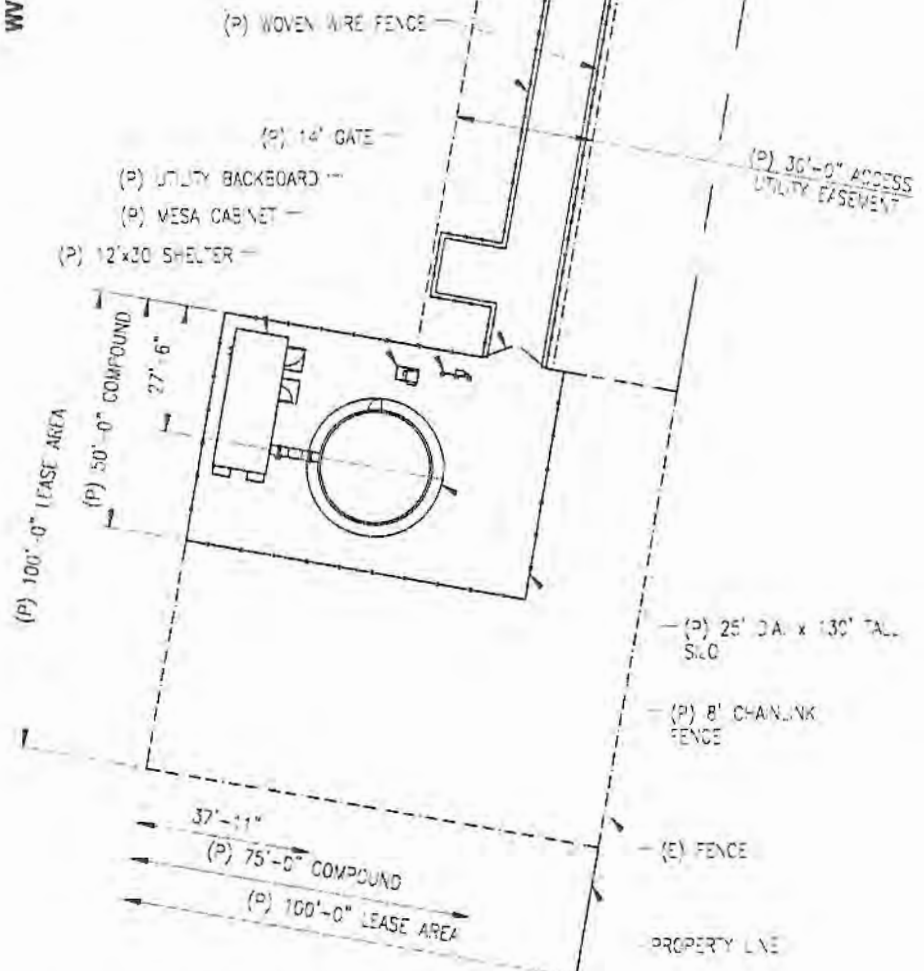
PROPOSED COMPOUND ELEVATION
SCALE: 1/16" = 1'-0"

	REV	DATE	DESCRIPTION	BY	APP.	KAREN TROUGH RD. SHEPARDSTOWN, WV PROPOSED COMPOUND ELEVATION
	A	7/27/11	ISSUED FOR REVIEW	SGR	LE	
	B	7/27/11	ADDED CHANGING	SGR	LE	
DRAWN BY: SGR CLIENT: VERIZON WIRELESS SCALE: AS NOTED CHECKED BY: LE SHEET NUMBER: REV. DATE: 11/27/11 APPROVED BY: LB JOB NO.: 11-0548						LE-3 B

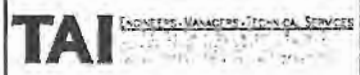
File Location: u:\recon\11-0548-kare\3-Drawing\0-jenae\Draws\11-0548_1.dwg
 Date Last Saved: 11/22/2011-3:08pm By: BRozonek Date Plotted: 11/22/2011-3:08pm By: BRozonek



WV GRID, NORTH ZONE



PROPOSED COMPOUND PLAN
SCALE: 1"=40'



REV.	DATE	DESCRIPTION	BY	APP.
A	11/22/11	ISSUED FOR REVIEW	BOB	LE
B	11/22/11	PROPOSED COMPOUND	BOB	LE

KAREN
TROUGH RD.
SHEPHARDSTOWN, WV
PROPOSED COMPOUND PLAN

DESIGNED BY: BOB	CLIENT:	SHEET NUMBER:	REV:
SCALE: AS NOTED (CHECKED BY: BOB)	WV ZONE: NONE ISS.	LE-2	B
DATE: 11/22/11	APPROVED BY: I.B. (JOB NO. 11-0548)		

File Location: J:\elecon\11-0548-Karen\3-Drawings\9-lease\Corner\11-0548-11.dwg
Date Last Saved: 11/22/2011 3:08pm By: BRozansk Date Plotted: 11/22/2011 3:07pm By: BRozansk



- b. Describe any alternatives that have been considered that might avoid, minimize, or mitigate any adverse effects. Explain the Applicant's conclusion regarding the feasibility of each alternative.

Verizon Wireless understands that architecturally and historically significant buildings, structures and sites are present within the Visual Effects APE. The Subject Property currently consists of a working farm improved with three on-site silos and other silos are situated on farms within the surrounding area. Consequently, Verizon Wireless proposes to construct the facility as a stealth silo in order to meet its coverage needs while preserving the site location and surrounding area's rural, agricultural setting and use. Please note that based on Verizon Wireless' site selection process as well as coverage and capacity requirements, no existing structures are available that would make collocation a feasible alternative.

In order to meet Verizon Wireless' coverage requirements, by necessity the proposed stealth silo will be taller than those that exist on the Subject Property and within the Visual Effects APE. As substantiated by the photo simulations (attached), the proposed stealth silo, aided by the surrounding topography and set-back on the property (approximately 1,000 feet), will aid with the perception of scale of the facility. The proposed facility will be located at the maximum distance possible from the adjacent Shepherdstown Battlefield site while still providing the necessary minimal coverage needed in this area. As a result, the stealth silo may appear taller than other local examples but is unlikely to appear out of place to casual observers and will not be distinguishable as a telecommunications facility by the general public.

Additionally, Verizon Wireless completed an Alternatives Analysis to document its evaluation of alternate locations for the proposed facility. The viability of the following sites was considered and rejected by Verizon Wireless for the reasons described below:

- **Pritchard Property:** The site lies between Rt. 230 (Shepherdstown Road) and Flowing Springs Road. Verizon Wireless conducted a Drive Test on this site and it was accepted. However, Mr. Pritchard, the land owner, was unable to complete a Lease Agreement with Verizon Wireless for financial reasons.
- **Welsh Property (#2):** The land owner of the currently-proposed site location, Mr. G.R. Welsh also owns property to the north of the current Trough Road site. However, this site was rejected by the Verizon RF engineers as being too far north of Rt. 230 and at a lower elevation. The distance and topography of the site would have required a taller structure, thus increasing the visibility of the proposed tower from historic properties in the surrounding area.
- **Renaud Property:** The site is located on Trough Road. The land owner declined Verizon Wireless' proposal to lease the land.
- **Meadows Property:** The site is located off Trough Road, east of Rt. 230. The land owner declined Verizon Wireless' proposal to lease the land.
- **Duncan Property:** The site is located on Rt. 230, south of Trough Road. The land owner declined Verizon Wireless' proposal to lease the land.
- **Fieschman Property:** The site is located on Shepherdstown Road. The land owner declined Verizon Wireless' proposal to lease the land. Additionally, the property is improved with a historic residence which may have precluded its use.

Finally, in order to further mitigate the proposed stealth silo's potential visual impacts on historic properties Verizon Wireless evaluated the facility's expected coverage capabilities at heights of 80 feet and 100 feet. As illustrated by the coverage maps appended to this Attachment, at heights below 130 feet a coverage hole results to the south of the proposed site along Rt. 230. Also, according to Verizon Wireless, a reduction in the girth of the proposed stealth silo would limit the versatility of the antenna designs, thus limiting the ability to optimize the desired network. Verizon Wireless has sought to minimize the proposed telecommunication facility's visual impacts on the surrounding historic properties by proposing to construct a stealth silo at the minimum height for which their operation objectives can be achieved (130 feet).



Site Name: Karen 11289
Wireless Communication Facility
Trough Road
Shepherdstown, WV 25443
Jefferson County

Photograph Information:
View From Front of House
Site Not Visible





Site Name: Karen 11289
Wireless Communication Facility
Trough Road
Shepherdstown, WV 25443
Jefferson County

Photograph Information:
View From Left Side of Barn
Showing the Existing Site



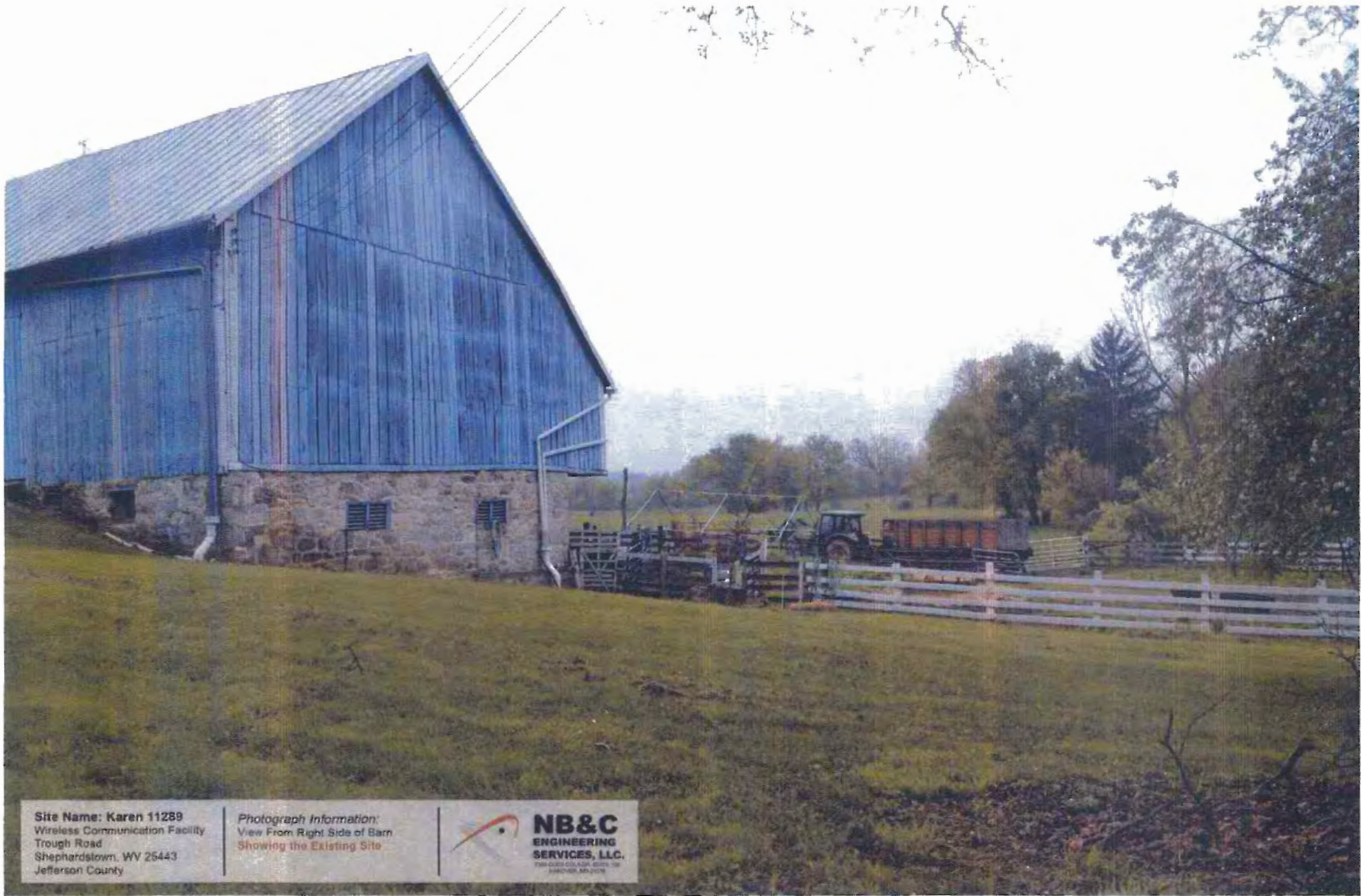


Site Name: Karen 11289
Wireless Communication Facility
Trough Road
Shepherdstown, WV 25443
Jefferson County

Photograph Information:
View From Left Side of Barn
Showing the Proposed Silo



NB&C
ENGINEERING
SERVICES, LLC.
THE AREA OF LARGE SCALE AND
INFRASTRUCTURE PROJECTS

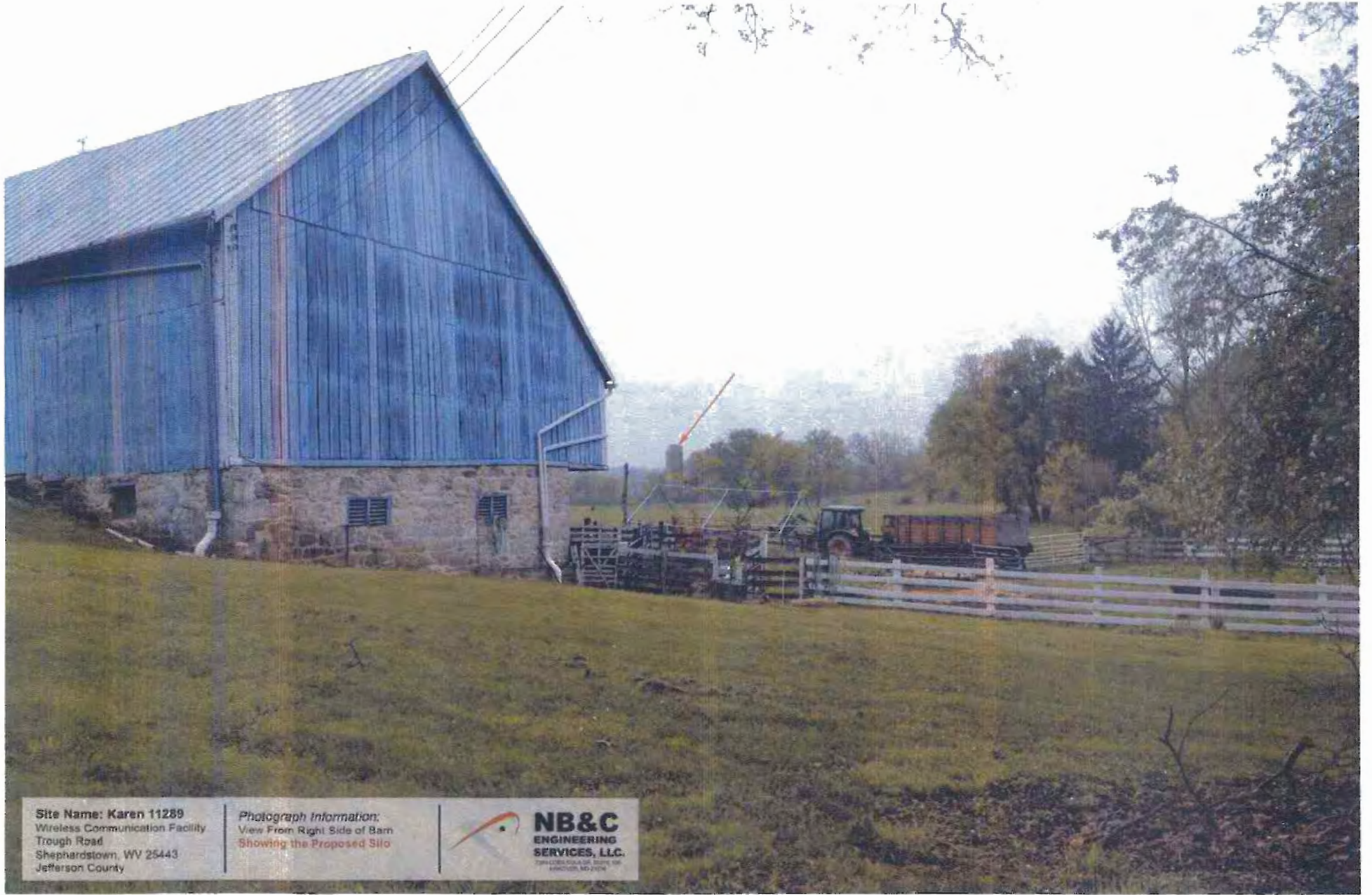


Site Name: Karen 11289
Wireless Communication Facility
Trough Road
Shepherdstown, WV 25443
Jefferson County

Photograph Information:
View From Right Side of Barn
Showing the Existing Site



NB&C
ENGINEERING
SERVICES, LLC.
7200 OLEF COLLEGE BLVD. SUITE 100
MARTINSBURG, MD 21659



Site Name: Karen 11289
Wireless Communication Facility
Trough Road
Shepherdstown, WV 25443
Jefferson County


Photograph Information:
View From Right Side of Barn
Showing the Proposed Silo





Site Name: VZW Karen
Wireless Communication Facility
Trough Road
Shepherdstown, WV


Photograph Information:
102 Trough Rd
View from the Northwest
Showing the Proposed Site

**NETWORK BUILDING
& CONSULTING, LLC**



Site Name: VZW Karen
Wireless Communication Facility
Trough Road
Shepherdstown, WV


Photograph Information
152 Trough Rd
View from the Northwest
Showing the Proposed Site

 **NETWORK BUILDING
& CONSULTING, LLC**



Site Name: VZW Karen
Wireless Communication Facility
Trough Road
Shepherdstown, WV


Photograph Information
547 Trough Rd
View from the Northeast
Showing the Proposed Site


**NETWORK BUILDING
& CONSULTING, LLC**



Site Name: VZW Karen
Wireless Communication Facility
Trough Road
Shepherdstown, WV


Photograph Information:
547 Trough Rd
View from the Northeast
Showing the Proposed Site

 **NETWORK BUILDING
& CONSULTING, LLC**



Site Name: VZW Karen
Wireless Communication Facility
Trough Road
Shepherdstown, WV


Photograph Information:
1641 Gardners Lane
View from the Northwest
Showing the Proposed Site

 NETWORK BUILDING
& CONSULTING, LLC



Site Name: VZW Karen
Wireless Communication Facility
Trough Road
Shepherdstown, WV

Photograph information:
164 Gardners Lane
View from the Northwest
Showing the Proposed Site

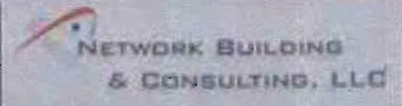
 NETWORK BUILDING
& CONSULTING, LLC



zoomed view

Site Name: VZW Karen
Wireless Communication Facility
Trough Road
Shepherdstown, WV


Photograph Information:
Historic Marker
View from the West
Showing the Proposed Site





Site Name: VZW Karen
Wireless Communication Facility
Trough Road
Shepherdstown, WV

Photograph Information:
Shepherdstown Pike North
View from the Northwest
Showing the Proposed Site

 NETWORK BUILDING
& CONSULTING, LLC

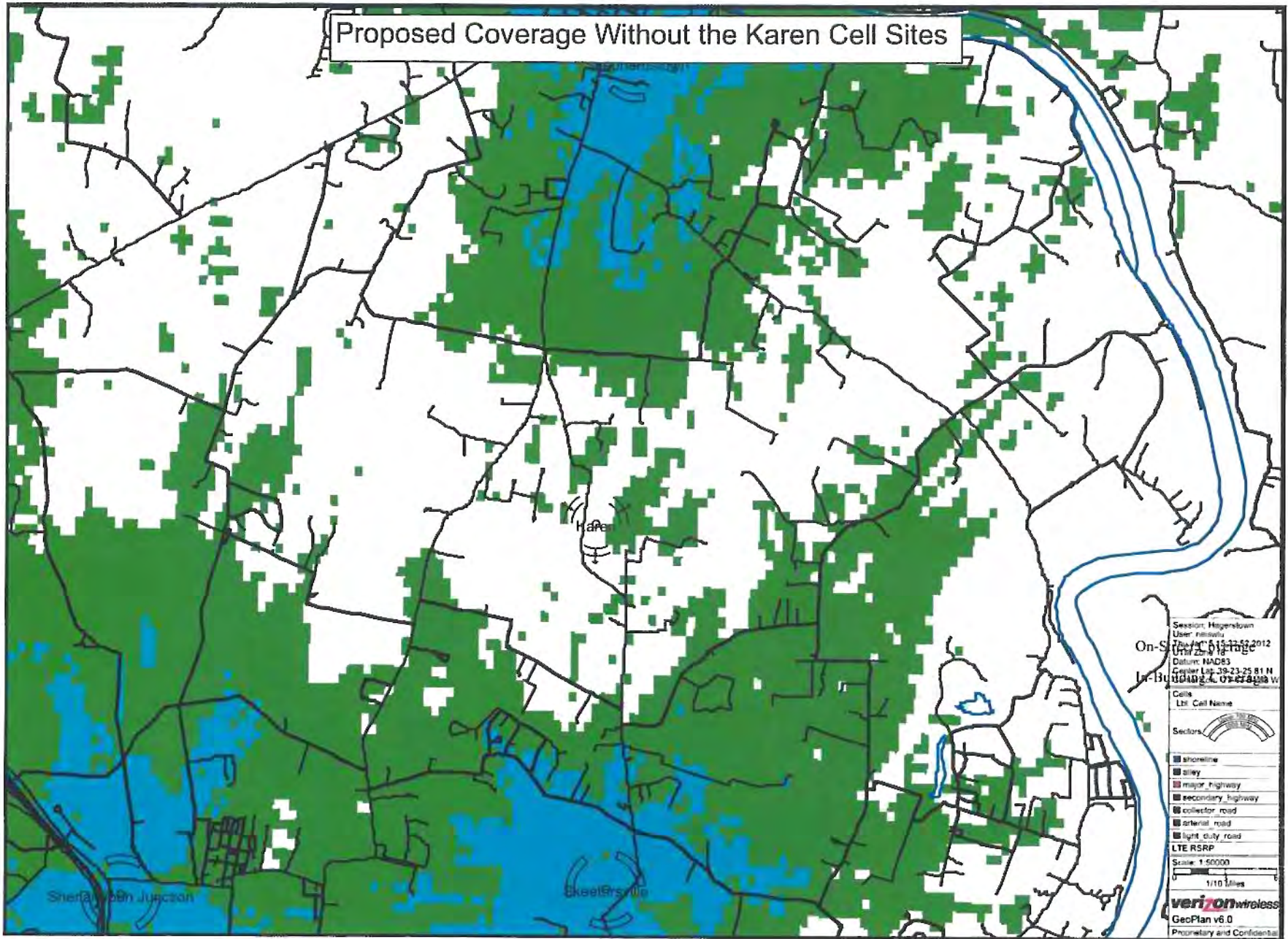


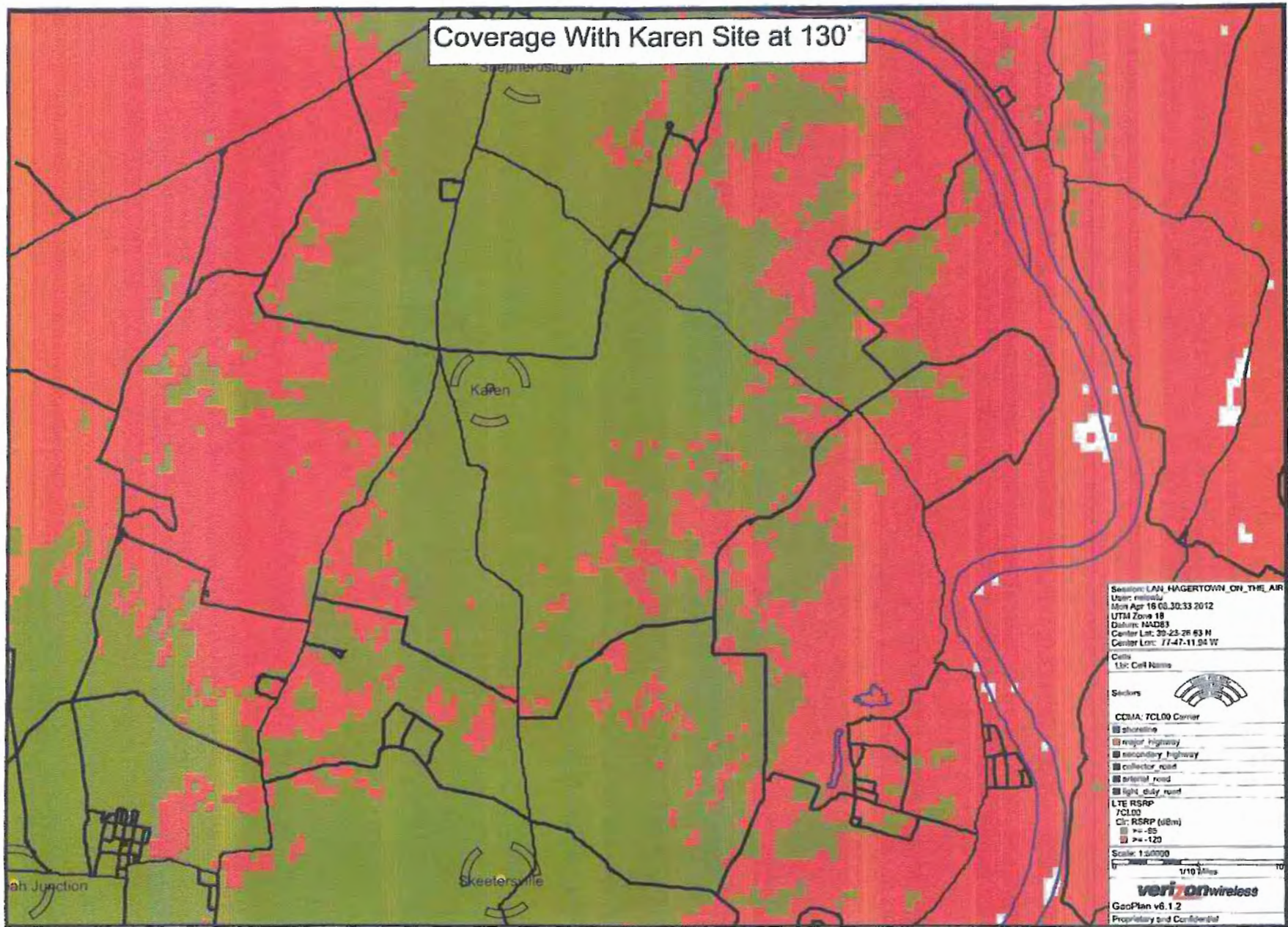
Site Name: VZW Karen
Wireless Communication Facility
Trough Road
Shepherdstown, WV

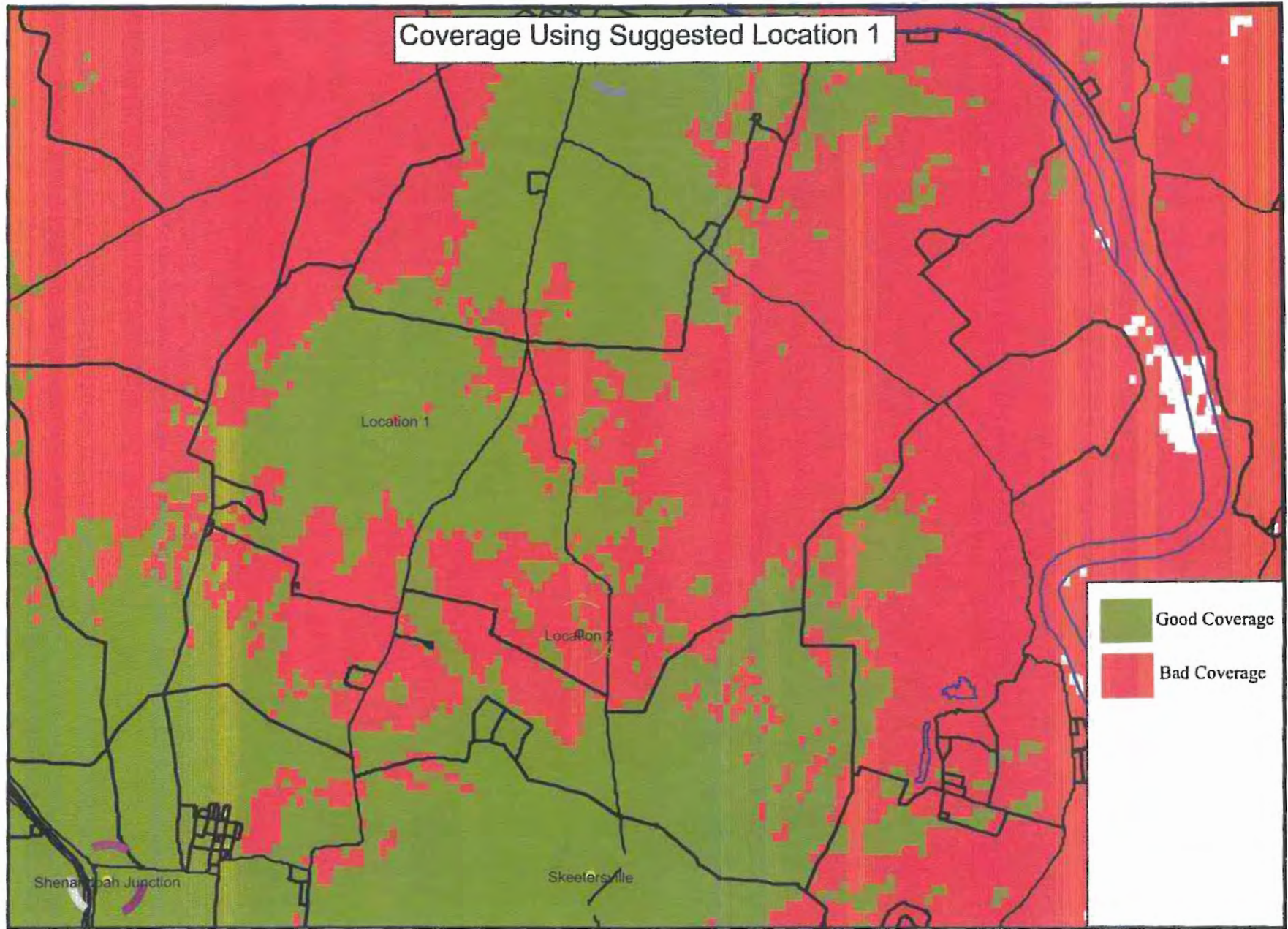
Photograph Information:
Shepherdstown Pike South -
Spring Retreat
View from the Southwest
Showing the Proposed Site

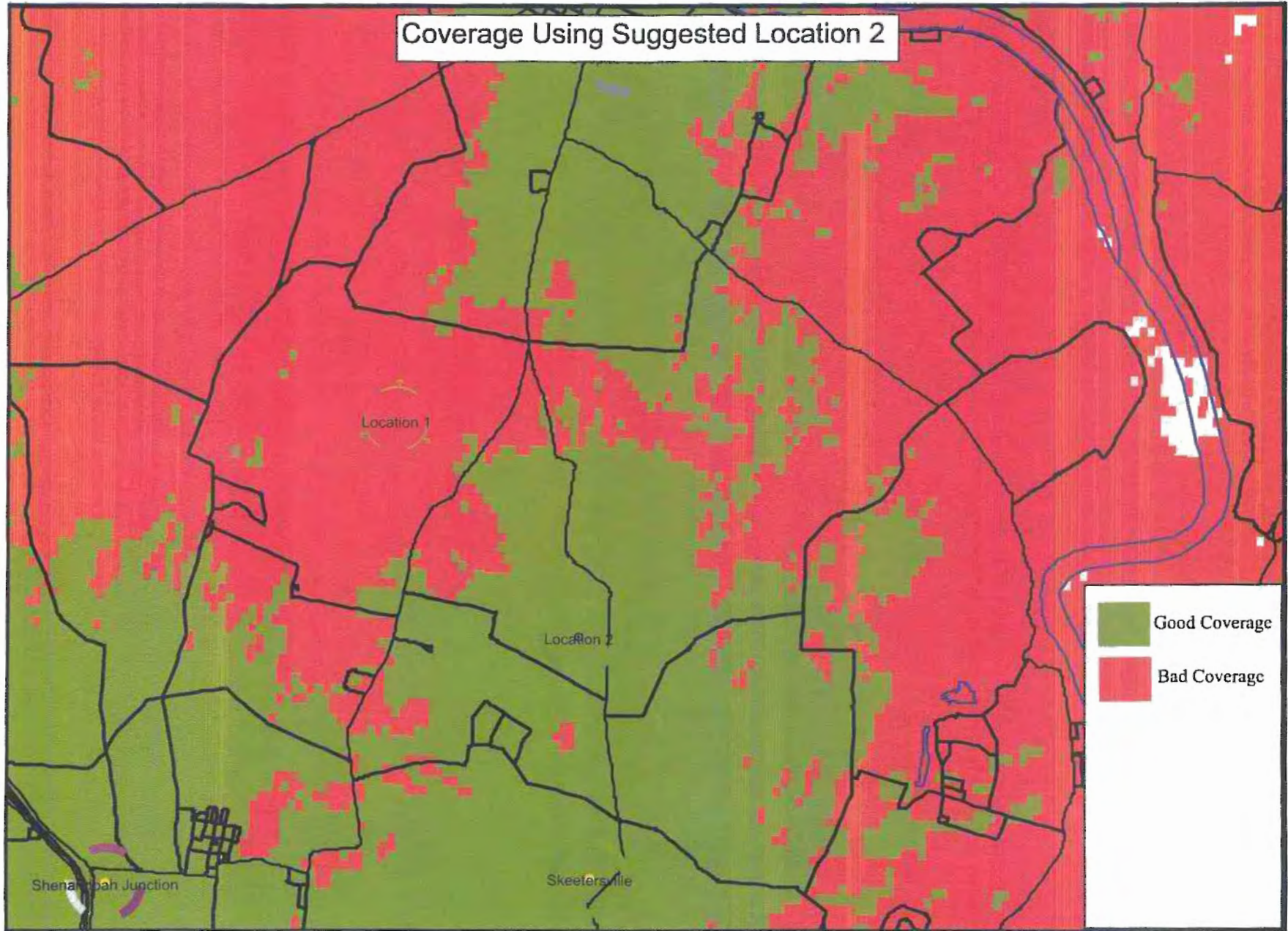


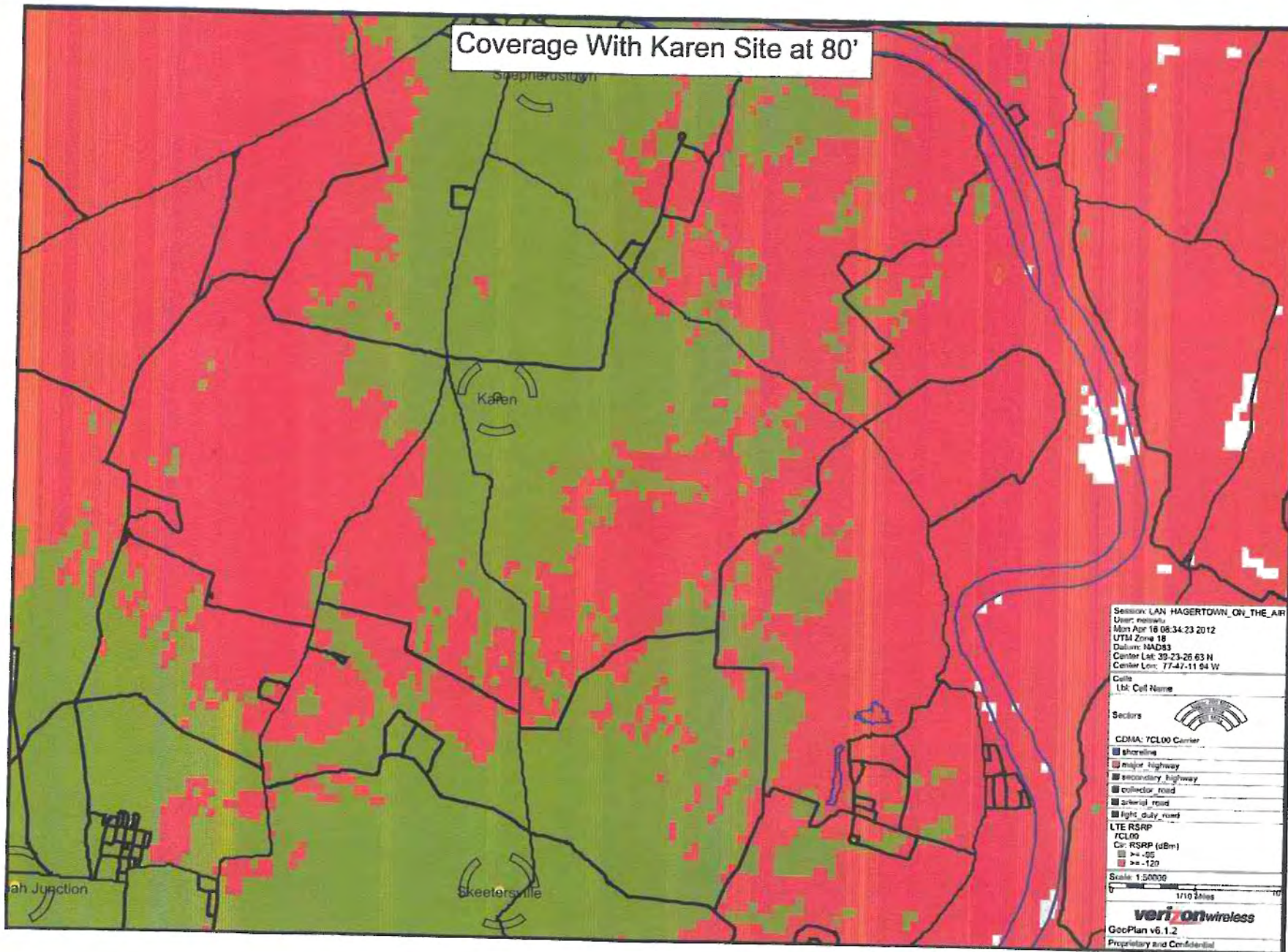
**NETWORK BUILDING
& CONSULTING, LLC**

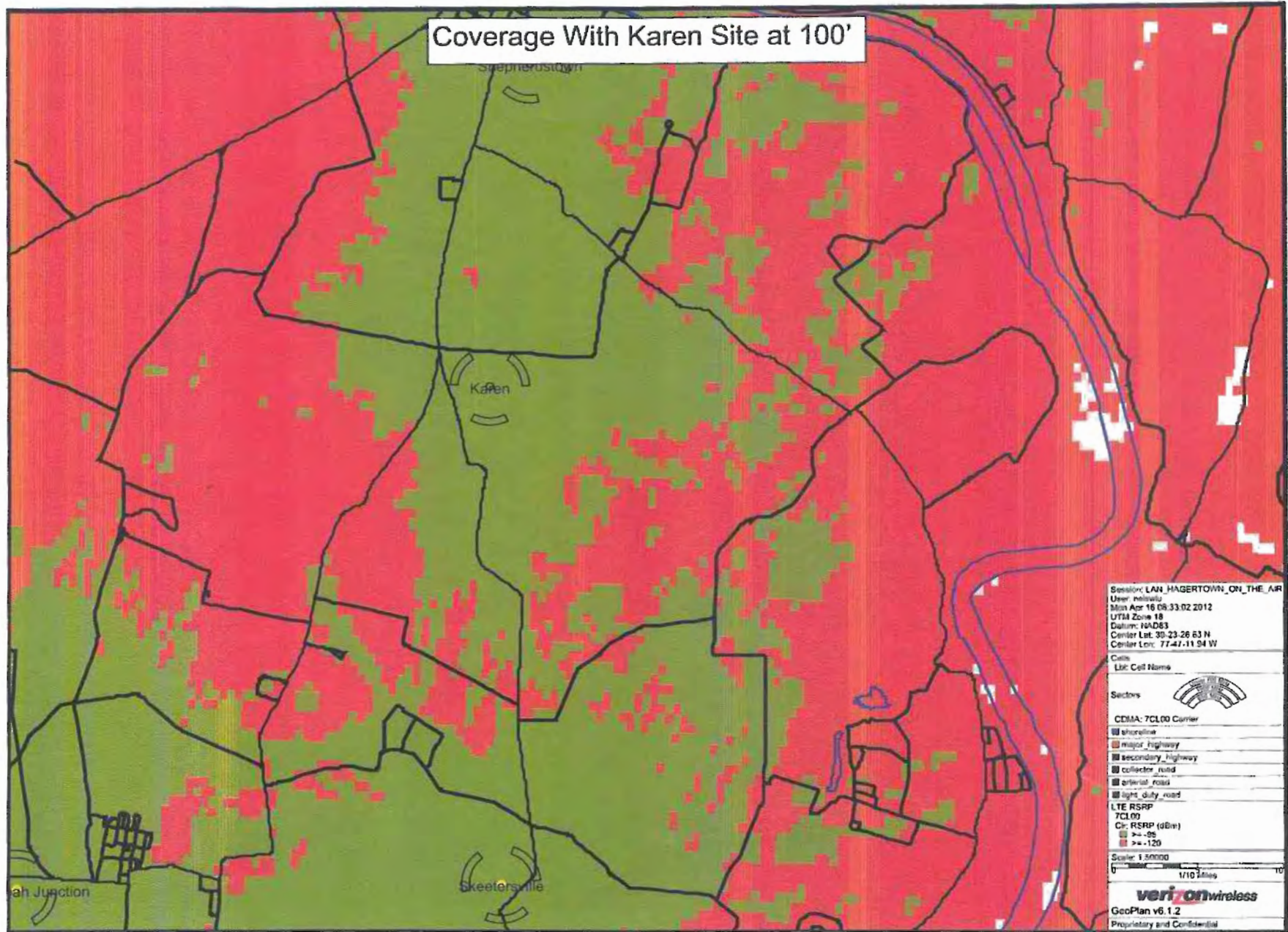


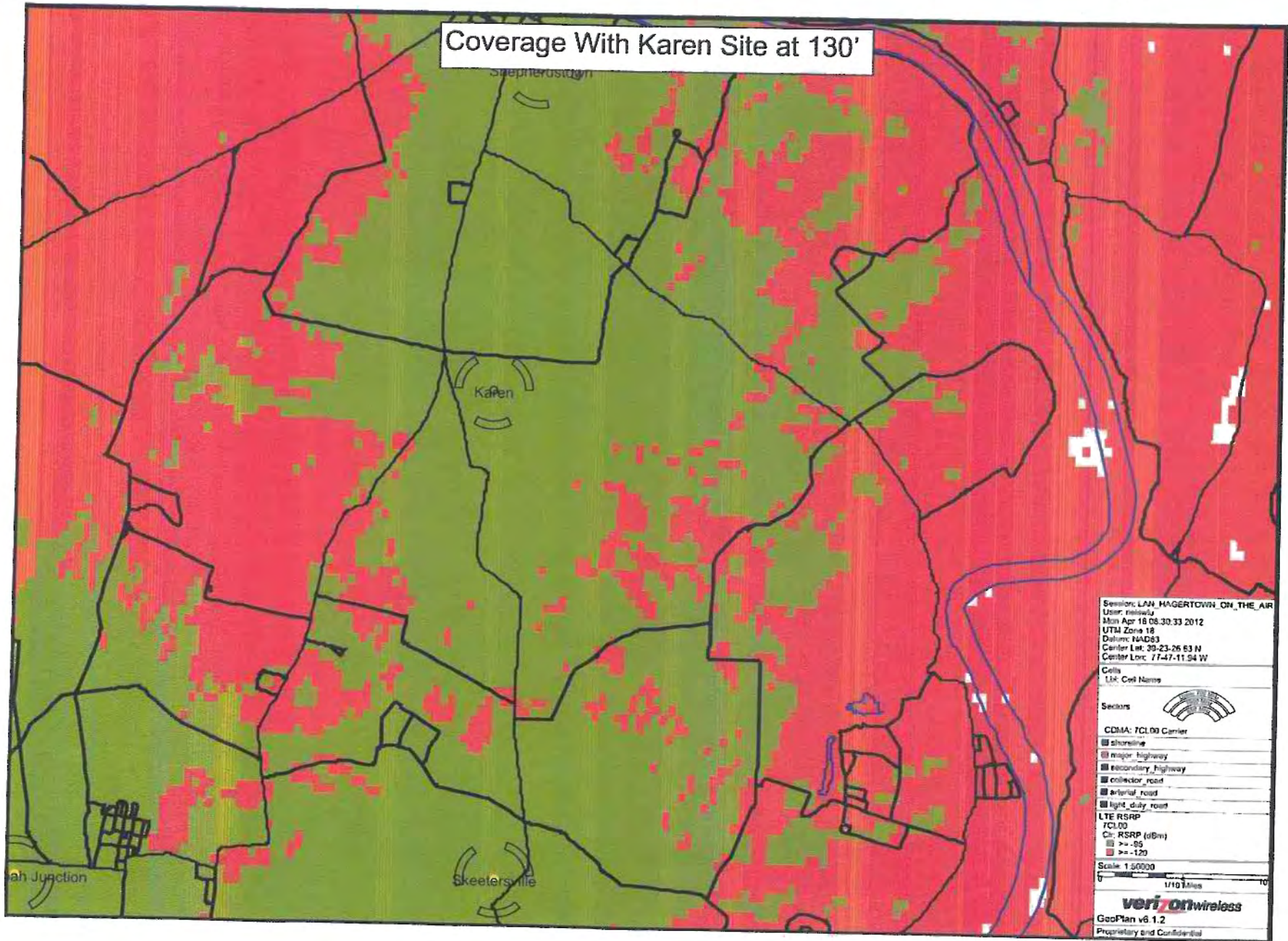


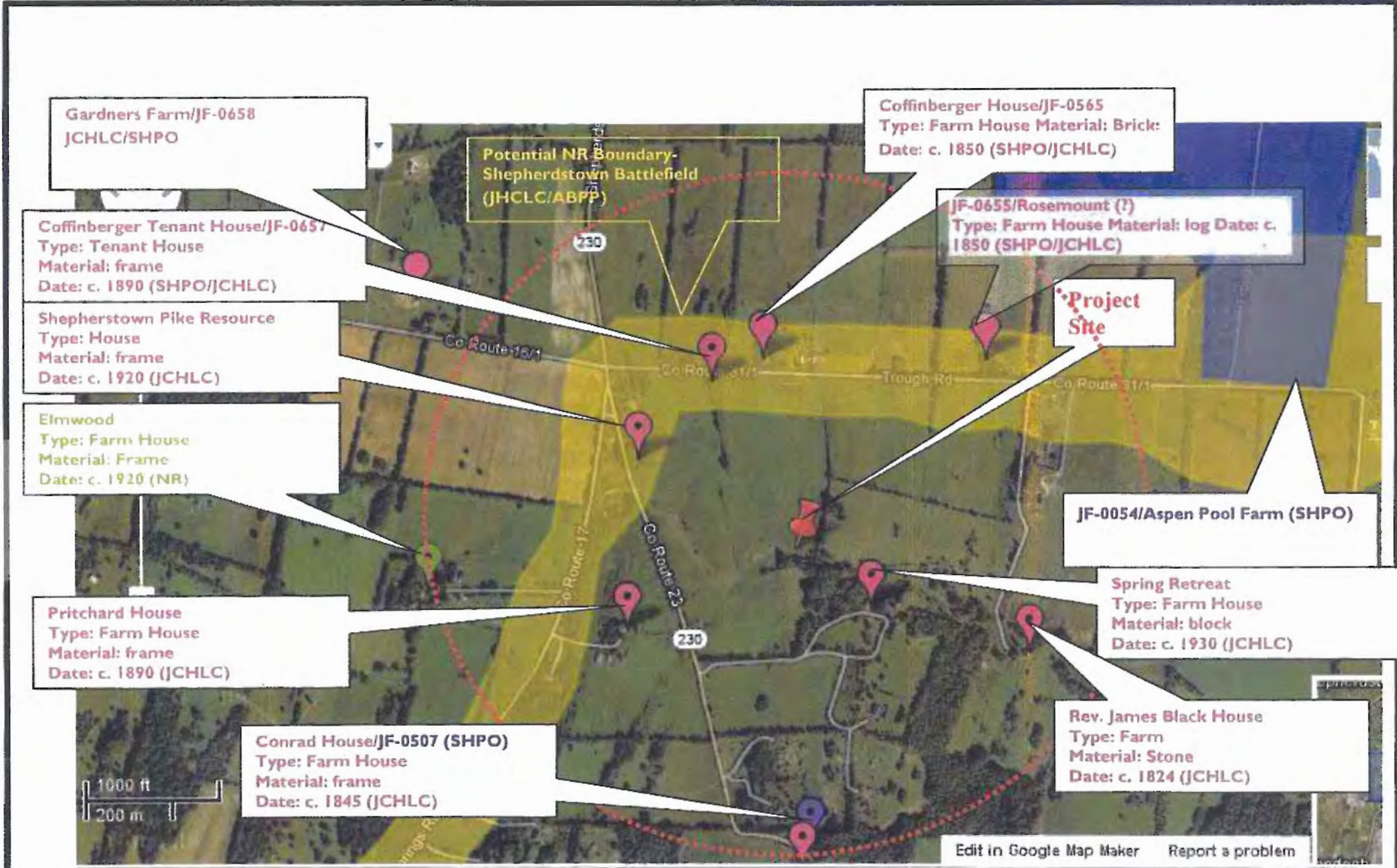












EBI
CONSULTING
HISTORIC RESOURCES MAP

11289/KAREN
Trough Road
SHEPHERDSTOWN, WV 25443
MAP IMAGE GOOGLE MAPS
EBI Project Number: 61114907
Circle indicates half-mile radius



September 5, 2012

Jefferson County Historic Landmarks Commission
Attn: Mr. John Allen
P.O. Box 23
Charles Town, WV 25414

Subject: Submission Packet, FCC Form 620, for proposed New Tower Project
11289 / Karen
Trough Road, Shepherdstown, Jefferson County, WV 25443
EBI Project Number: 61114907

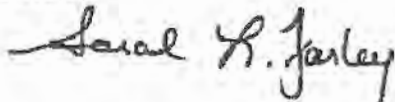
Dear Mr. Allen:

In accordance with the Federal Communication Commission (FCC) National Environmental Policy Act (NEPA) rules and Section 106 of the National Historic Preservation Act (NHPA), the above-referenced telecommunications project is being evaluated by EBI for its potential effects to districts, sites, buildings, structures, or objects significant in American history, architecture, archeology, engineering, or culture that are listed, or potentially eligible for listing in the National Register of Historic Places (NRHP). Based on EBI's review of the characteristics and location of the proposed project, the project does not meet the exclusions stated in the "Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission," dated September 2004 ("Nationwide Agreement"); therefore, the project is required to undergo Section 106 review with the State Historic Preservation Office.

In accordance with the Nationwide Agreement, please find the attached Submission Packet, FCC Form 620, which presents the details on the proposed project as well as efforts that have been taken to identify, assess, and make determinations of effect on the impacts of the proposed project on Historic Properties.

On behalf of Verizon Wireless, I would like to thank you again for participating in the project meeting in April and for your assistance with identifying alternative sites for investigation. After reviewing the enclosed report please do not hesitate to contact me if you have any questions or concerns about the project or the information contained in this Submission Packet.

Sincerely,



Ms. Sarah L. Farley
Architectural Historian

January 10, 2012

The Journal
207 W. King Street
Martinsburg, WV 25402
glass@journal-news.net

**Subject: Request for Public Notice
EBI Project #61114907**

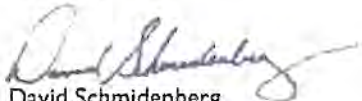
EBI Consulting (EBI), on behalf of Cellco Partnership and its controlled affiliates doing business as Verizon Wireless (Verizon Wireless), would like to place the following ad in your paper for print on the next available weekday. Please send a tearsheet of the ad to the address noted on the letterhead. The following is the text of the Public Notice:

Cellco Partnership and its controlled affiliates doing business as Verizon Wireless (Verizon Wireless) is proposing to construct a 130-foot stealth silo telecommunications tower in the vicinity of Trough Road, Shepherdstown, WV 25443. Public comments regarding potential effects from this site on historic properties may be submitted within 30-days from the date of this publication to: Project 61114907-SLF c/o EBI Consulting, sfarley@ebiconsulting.com, 6876 Susquehanna Trail South, York, PA 17403 or via telephone at 717-449-4085.

I have included my credit card number in an email to your office. Please reference **EBI Project #61114907** on any correspondence pertaining to this project, to ensure prompt processing.

Please e-mail or call me with any questions or concerns regarding this publication. Thank you for your time.

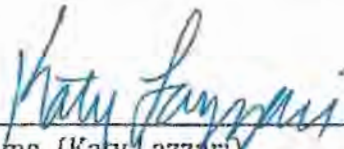
Sincerely,



David Schmidenberg
Project Scientist
Phone: (717) 428-0401 x 1220
Fax: (717) 428-0403
Email: dschmidenberg@ebiconsulting.com

Affidavit

In accordance with §4B.7 (H)(4)(a) of the Jefferson County Zoning and Land Development Ordinance, Cellco Partnership dba Verizon Wireless does affirm that subject to exceptions for structure height, topography, or other factors which make co-location unfeasible, the tower proposed wireless telecommunications facility to be located at 231 Trough Rd. will be available for co-location.



Name (Katy Lazzari)

12/4/13
Date

Specialist-Regulatory/Real Estate
Title


This information is
Tab #5 in your binder.

Staff Report
 Jefferson County Planning Commission Meeting
 December 10, 2013

Stanley Dunn Waiver Request (PCW13-11)

Item #6 Request by applicant Stanley Dunn, on behalf of property owners Katherine Dunn and Sarah Lowery, to be represented by Appalachian Surveys, PLLC for a waiver from the following section of the Jefferson County Subdivision and Land Development Regulation:

- a) Section 20.201.A.2: “**Access.** All other lots, regardless of the zoning district, shall have motor vehicle access to a road right-of-way 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.”

APPLICANT:	Stanley Dunn
OWNER:	Katherine Dunn and Sarah Lowery
DEVELOPER:	Same as above
SURVEYOR/ENGINEER:	Appalachian Surveys, PLLC
PROPERTY LOCATION:	North side of North Childs Road; East of Leetown Road Intersection
LEGAL DESCRIPTION & ZONING DISTRICT:	<p style="text-align: center;">Tax District: Middleway (07); Tax Map: 17; Parcel: 4 Lot Size: 7.49 acres Zoning Map Designation: Rural (R-A)</p> 
SURROUNDING PROPERTIES:	<p style="text-align: center;">Zoning Map Designation:</p> <p style="text-align: center;"><i>North:</i> Rural <i>South:</i> Rural <i>East:</i> Rural <i>West:</i> Rural</p>
PROPOSED ACTIVITY:	<p>Applicant is proposing to create two additional single family residential lots from the residue. The existing right-of-way is 40 feet. The requested waiver is to permit two lots to take access to an existing 40 foot right-of-way where widening is not possible, and then upgrade the existing 40 foot right-of-way (located within the perimeter of the residue) to 50 feet where they have control over the property.</p>

Staff Report
 Jefferson County Planning Commission Meeting
 December 10, 2013

APPROVALS	
PRIOR SUBDIVISION (PC File #95-16)	08/08/95: PC approved Final Plat Subdivided property into Lots 1, 2, and 3 (Residue).
Appeal of Zoning Administrator (AP13-01)	09/19/13: BZA overturned Zoning Administrators determination regarding 2 lots every 5 years in the Rural District.
APPROVED ACTIVITY:	Residential

Background

The applicant is proposing to subdivide a portion of the residue lot, which will result in two additional single family lots that are approximately 2 acres in size, and a remaining residue lot that will be approximately 3.516 acres. The proposed subdivision will utilize an unnamed 40 foot wide access easement. The proposed divisions are not for parent-to-child lots. See Image 2 below.

In 1995, the applicant created 2 lots and a residue. At that time, no more than 2 lots and a residue could be off a single access point, without requiring upgrades to the access road. There is an unnamed access easement of 40 feet for which the three lots have access. See Image 1 below.

In 2008, a new set of Subdivision Regulations were adopted. These regulations permitted up to 4 lots and a residue on a 50 foot access easement, versus the 1979 Subdivision Ordinance which permitted 2 lots and a residue on a 40 foot right-of-way. Under the 1979 Subdivision Ordinance, once an applicant exceeded the 2 lots and a residue on a 40 foot right-of-way, the development was classified as a major subdivision and the right-of-way was required to be improved to a 50 right-of-way as well as construction of a County grade road. Since the applicant did not create a 50 foot right-of-way in 1995 when the 2 lots and a residue were platted, it appears the applicant did not intend to do further divisions at that time.

The Request

The applicant has requested a waiver from the Jefferson County Subdivision and Land Development Regulations per:

- Section 20.201.A.2: “All other lots, regardless of the zoning district, shall have motor vehicle access to a road right-of-way 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.”

This section of the Subdivision Regulations requires a 50 foot wide access easement from which all lots take access. Currently the access is only 40 feet wide and there are 2 lots and a residue.

The applicant is not able to upgrade the 40 foot right-of-way to 50 feet for a portion of the length of the access easement, since there are different property owners on each side of the existing access easement. The applicants are proposing to upgrade the existing 40 foot right-of-way (located within the perimeter of the residue) to 50 feet where they have control over the property.

Waiver Criteria

The following criteria, as outlined in Section 24.300 of the amended 2008 Subdivision Regulations, have to be met in order to have a waiver granted.

Staff Report
Jefferson County Planning Commission Meeting
December 10, 2013

The design of the project will provide public benefit in the form of reduction in County maintenance cost, greater open space, parkland consistent with the County parks plan, or benefits of a similar nature.

In this instance, the County does not maintain any of the roads and no open space or parkland will increase or decrease from the request. The waiver has no effect.

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

It does not appear that adjacent property owners will have their property impeded by granting of the waiver.

The waiver, if granted, will be in keeping with the intent and purpose of these Regulations.

The waiver, if granted will not be in keeping with the intent and purpose of the Subdivision Regulations. The purpose of the Regulations is to provide adequate and quality access that can be upgraded as the number of lots increase. The Regulations were created for this specific purpose. The 1979 Subdivision Ordinance also required improvements and upgrades past a specific threshold for the same purpose as the current Subdivision Regulations. This is in keeping with decades of land development standards in the County.

The waiver, if granted, will result in a project of better quality and/or character.

In this instance, the quality and/or character will not be affected in any significant way. The waiver has no effect.

Staff Recommendation

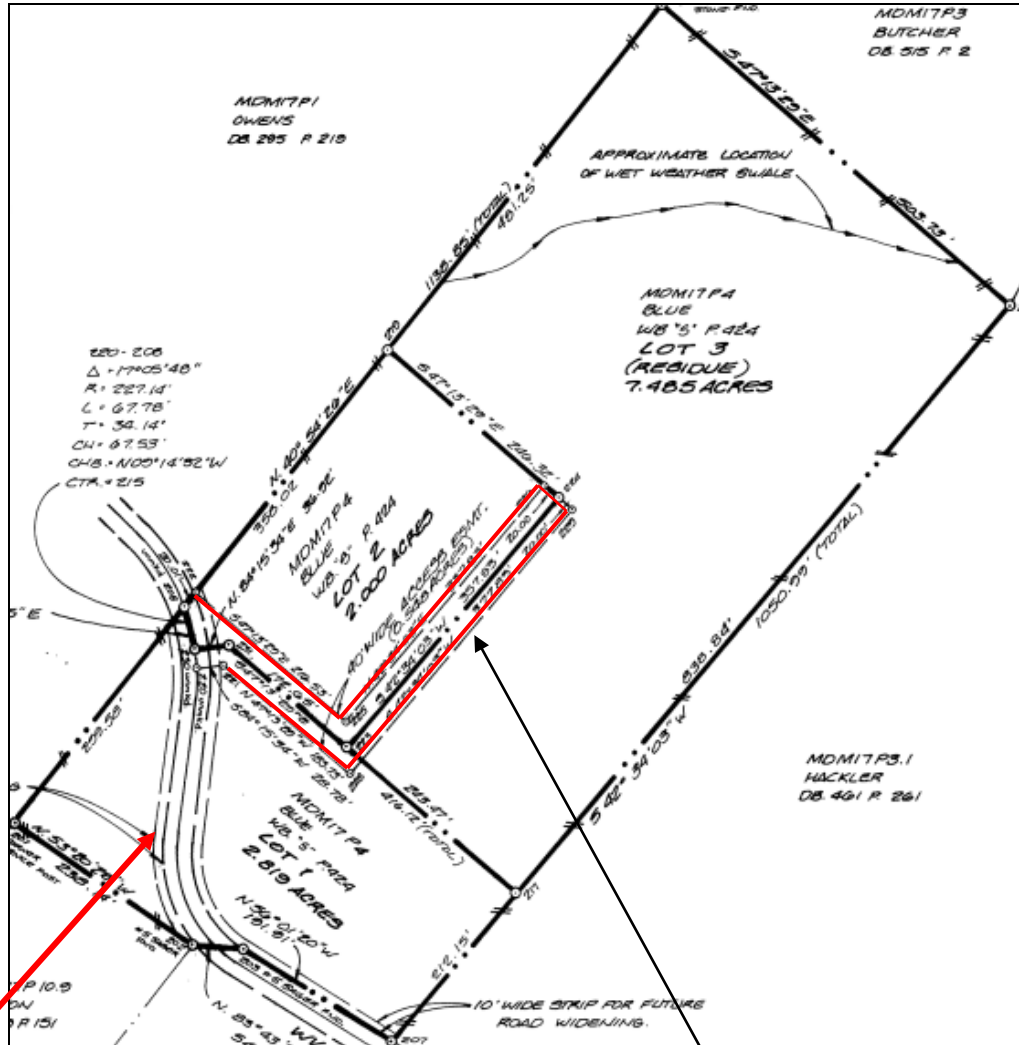
Staff does not recommend granting the waiver. The applicant is not able to meet the four criteria as outlined above. The Regulations are in place to protect current and future homeowners who will use this access. Adding additional burdens to this access easement could cause future problems.

However, if the Planning Commission moves to approve this waiver, the following conditions should be considered:

- If this waiver is granted, it shall only be for this lot and for the creation of these 2 lots and a residue. Future divisions will need to be based on the unique characteristics that exist at that time. Any further subdivision of the residue will require requesting an additional waiver which will be considered on its own merits.

Staff Report
 Jefferson County Planning Commission Meeting
 December 10, 2013

Image 1 (1995 recorded Final Plat)

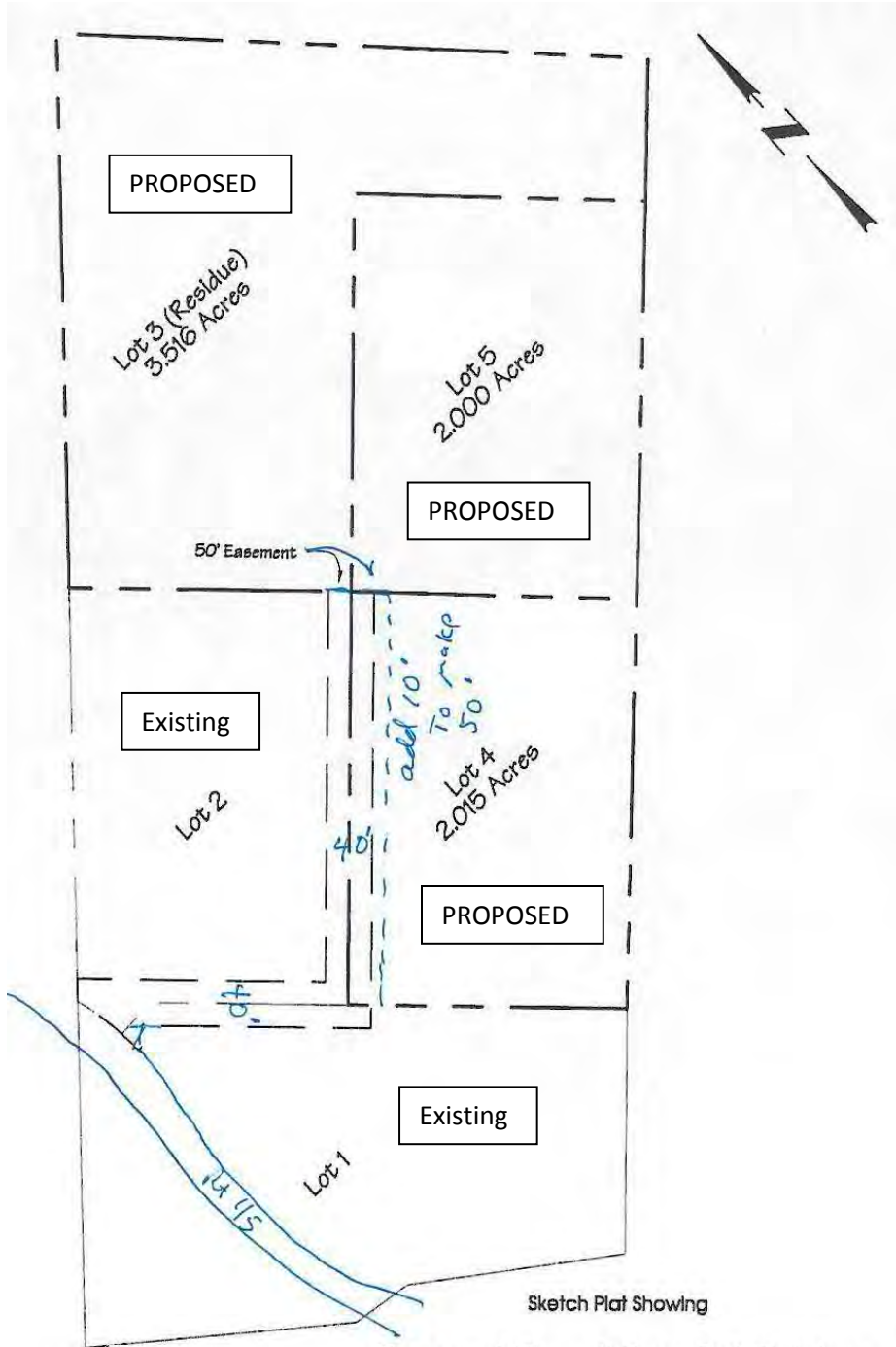


N. Childs Road

Existing 40 access easement

Staff Report
Jefferson County Planning Commission Meeting
December 10, 2013

Image 2



Proposed Dunn Minor Subdivision

Appalachian Surveys, PLLC

401 S. FAIRFAX BOULEVARD, SUITE 3
RANSON, WV 25438-1611
PHONE: 304.724.5008
FAX: 304.724.5010
WWW.APPALACHIANSURVEYSPLLC.COM

#2013066

Engineering Report

Blue Minor Subdivision Waiver to reduce the required 50' access easement 12/10/2013

Request:

Appalachian Surveys, PLLC on the behalf Katherine Dunn and Sarah Lowery property owners of parcel 4, on tax map 17, in Middleway District is requesting a waiver from the requirements of the JEFFERSON COUNTY SUBDIVISION AND LAND DEVELOPMENT ORDINANCE (2008), Section 20.201.A.2 Minor Subdivision, as follows:

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 to a road right-of-way 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.

The applicant is requesting that the existing 40' access easement be allowed where lot 1 and 2 restrains it from being expanded to 50'.

Findings:

The 40' easement was created in 1995 under the 1979 Jefferson County Subdivision and Land Development Ordinance for a 3 lot subdivision.

The applicant wants to subdivide the residue lot into another 3 lot subdivision. In doing so, the 40' easement will have a total 5 lots accessing it.

The proposed subdivision is to be processed as a minor subdivision.

Conclusion:

The intent of the 50' access easement is because minor subdivisions were being developed into major subdivision and variances were being requested to allow for a 40' right of way instead of a 50' as required for major subdivision. To solve that problem, the current regulations require the easement to be 50' for minor subdivision and if the minor subdivision was to be further developed, a variance may not be required. Therefore, engineering recommends approve of this variance if the access to the easement is limited to 5 lots and a new variance would be approved by the Planning Commission if the property is to further subdivide.



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

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

Charles Town, WV 25414

Staff Initials: clc

Sketch Received: _____

Fees Paid: \$100.00

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

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

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

Waiver Request

Note: Waivers to 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. Please provide a vicinity map of the area. Please provide a list of the adjoining property owner's mailing addresses.

I/We request a waiver from the provisions of the 2008 Amended Jefferson County Subdivision Regulations.

Property Owner Information

Name: Katherine Dunn and Sarah Lowery (Blue Heirs)
Mailing Address: 1371 Myerstown Road
City: Charles Town State: WV Zip Code: 25414
Phone Number: 304/725-8308 Email: _____

Applicant Contact Information

Name: Stanley Dunn
Mailing Address: Same
City: _____ State: _____ Zip Code: _____
Phone Number: _____ Email: _____

Applicant Registered Engineer(s) or Surveyor(s):

Name: Appalachian Surveys, PLLC Contact: Mike Shepp
Mailing Address: 401 South Fairfax Blvd, Suite 3
City: Ranson State: WV Zip Code: 25438
Phone Number: 304/724-5008 Email: mshepp@appalachiansurveyspllc.com

Physical Property Details

Physical Address N. side of Rt 1/5 (North Childs Rd) 1/4 miles East of Leetown Road intersection
City: Kearneysville State: WV Zip Code: 25430
Tax District: Middleway Map No: 17 Parcel No: 4
Parcel Size: 7.485 Deed Book: WB-S Page No: 424

Zoning District (please check one)



Rural (R-A)	Residential 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"/>

What Section of the Ordinance are you Requesting to Waive?

20.201 A.2

Briefly Describe the Nature of Your Waiver Request:

See Attached

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.

See Attached

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.

See Attached

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

See Attached

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

See Attached

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

Sara B. Leary 11/16/2013
Signature of Property Owner Date

Katherine B. Dunn 11/16/2013
Signature of Property Owner Date

To Be Completed By Office

_____ Date of Public Meeting/Public Hearing
_____ Official/Administrative Body

_____ Date Property to be Posted By
_____ Date Adjoiner Letters to be Mailed

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

Approved Denied

Dunn/Lowery/Blue Variance Request
Jefferson County Subdivision Ordinance
Article 20, Section 20.201 A.2.
November 19, 2013

Briefly Describe the Nature of your Waiver Request:

The Applicants are seeking a waiver from Article 20, Section 20.201 A.2. This section states:

“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 to a road right-of-way 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.”

In this case, the Applicant subdivided the property in 1995 for two lots and a residue. Since the zoning ordinance permitted the further subdivision of a residue every 5 years, the Applicant created a 40 feet access easement in between the front two lots and all of the way along the residue (and Lot 2) in order to serve the future lots. The easement standard at the time was only 40 feet. Thus, the Applicant created a 40 feet wide easement to serve future lots based on the regulations in effect at that time.

The Applicant is now ready to further subdivide the residue as permitted by the Zoning Ordinance. However, the new easement standard is 50 feet. It is important to note that the current subdivision ordinance also now allows up to five lots on an existing easement without having to meet any road standard. Therefore, there is no need to be concerned about the width of an easement for construction purposes.

Since the existing easement goes the entire length of Lot 2, the Applicant can easily expand the easement to 50 feet in that area, because the new proposed Lot 4 will share a property line with Lot 2. Also, the access easement is over 50 feet wide at the entrance due to the angle of entrance. Therefore, the only portion of the access easement that can’t be widened to 50 feet is the approximately 175 feet that lies between existing Lots 1 and 2.

Therefore, the applicant respectfully requests that a waiver of the required access easement width from 50 feet to 40 feet in the area between Lots 1 and 2 on the attached approved survey plat and sketch plat for the proposed Lots 4 and 5. This includes a waiver from Section 20.201 A.2. to allow the existing 40’ easement to remain where it is located on the property and to increase the easement to 50’ on the new portion of the easement.

Dunn/Lowery/Blue Variance Request
Jefferson County Subdivision Ordinance
Article 20, Section 20.201 A.2.
November 19, 2013

Four Criteria

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

The design of the additional permitted lots will have no bearing on these issues. Currently, the County does not maintain the access easement for the three lots and the County will not maintain the access easement when the new lots are created on this easement. The County does require that a maintenance agreement is established for the new subdivision. This provision wasn't in effect during the original subdivision in 1995. Therefore, the access easement will benefit from a maintenance agreement.

The Zoning Ordinance permits the additional lots, so the reduction of the easement width from 50' to 40' in this small section, will not have a negative impact on open space or parkland. If the Commission allows the easement to remain as it is located, it will have no effect on the public, since no construction is required. Furthermore, the Applicant will still have to get an updated Highway Entrance Permit from the WV Department of Highways.

- 2. 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:***

Since there is no road construction standard for roads that serve 5 lots or less, the reduction of the width of the easement by 10' will have no effect on the public health, safety or welfare of the public or adjacent property owners. This reduction of the easement will have no effect at all on the adjacent properties. The plat created in 1995 clearly shows an access easement through Lots 1 and 2 for the benefit of access to the Residue. The standard in 1995 for an access easement was 40 feet. The Planning Commission approved subdivision shows that the 40 feet wide access easement runs the entire length of Lot 2. This is also a clear indication of the intent to further subdivide the property in the future.

The project will also need the WVDOH approval for this new proposal.

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

The Subdivision Ordinance in effect at the time that the original subdivision was approved allowed for a 40' access easement. Therefore, the Applicant created a 40' access easement on the Planning Commission Approved Plat for the future subdivision of the Residue. This is reflected by the fact that the Applicant designed the easement along the entire length of Lot 2

through the Residue. The Planning Commission at the time approved that design. The Zoning Ordinance at the time of the division allowed these additional 2 lots once a five year period expired. The Zoning Ordinance continues to allow the additional 2 lots. Therefore, this proposal is consistent with the intent of the Zoning Ordinance.

One of the main purposes of an adequate width for an easement is to ensure a safe passageway through a property. In this case, a 40' access easement serves that purpose. The second main purpose of an adequate width for an easement is to ensure that the construction of a road can take place within the easement. For a subdivision greater than 5 lots, that means that the required width of the road (20-24 feet), the shoulders (2-3 feet) and the ditches for the road (4-6 feet) all need to fit in the width of the easement. This includes room for the construction of the improvements. Since this subdivision is not greater than 5 lots, these construction standards do not apply. Therefore, there is no need for the additional 10 feet in the very short portion of the access easement that is affected.

Accordingly, the granting of the waiver will entirely be within the intent and purpose of both the Zoning and Subdivision Ordinances.

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

The granting of the variance will not negatively affect the character of the area or development. It should have little impact one way or another. However, the approval of the waiver will allow the two new ordinance permitted lots AND require a maintenance agreement for the easement to ensure that the access is maintained. Currently, there is no such required agreement for maintenance since one wasn't required in 1995. This will benefit all parties. This will also ensure that the neighborhood around this development will have a properly maintained entrance.

PCW13-11



Paula

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 JEFFERSON COUNTY
 PLANNING, ZONING AND ENGINEERING

Proposed Dunn Minor Subdivision
 Appalachian Surveys, PLLC

401 S. FAIRFAX BOULEVARD, SUITE 3
 RANSON, WV 25438-1611
 PHONE: 304.724.5008
 FAX: 304.724.5010
 WWW.APPALACHIANSURVEYSPLLC.COM

#2013066

This information is
Tab #6 in your binder.



JEFFERSON COUNTY, WEST VIRGINIA

Department of Planning and Zoning

116 East Washington Street, 2nd Floor

P.O. Box 338

Charles Town, West Virginia 25414

Email: planning_department@jeffersoncountywv.org

Phone: 304-728-3228

Fax: 304-728-8126

APPROVED 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 14, 2014
February 11, 2014
March 11, 2014
April 8, 2014
May 13, 2014
June 10, 2014
July 8, 2014
August 12, 2014
September 9, 2014
October 14, 2014
November 11, 2014
December 9, 2014

Tentative Meetings*

January 28, 2014
February 25, 2014
March 25, 2014
April 22, 2014
May 27, 2014
June 24, 2014
July 22, 2014
August 26, 2014
September 23, 2014
October 28, 2014
November 25, 2014
December 23, 2014

*Tentative meetings are held if necessary to conduct Commission business or to meet required deadlines. 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.

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.

Waiver Deadlines

You must submit by 5 PM on:	To be heard the meeting of:
December 23 ,2013	January 14, 2014
January 21, 2014	February 11, 2014
February 18, 2014	March 11, 2014
March 18, 2014	April 8, 2014
April 22, 2014	May 13, 2014
May 20, 2014	June 10, 2014
June 17, 2014	July 8, 2014
July 22, 2014	August 12, 2014
August 19, 2014	September 9, 2014
September 23, 2014	October 14, 2014
October 21, 2014	November 11, 2014
November 18, 2014	December 9, 2014

*This deadline is 3 weeks prior to the meeting to allow for staff to gather research and send adjoining property owner letters per department policy. This also allows for the 14 day posting requirement per Division 24.300 (C) of the Jefferson County Subdivision Regulations.

Concept Plan Deadlines

You must submit by 5 PM on:	To be heard the meeting of:
November 6, 2013	January 14, 2014
December 6, 2013	February 11, 2014
January 6, 2014	March 11, 2014
February 4, 2014	April 8, 2014
March 11, 2014	May 13, 2014
April 8, 2014	June 10, 2014
May 2, 2014	July 8, 2014
June 9, 2014	August 12, 2014
July 8, 2014	September 9, 2014
August 11, 2014	October 14, 2014
September 8, 2014	November 11, 2014
October 2, 2014	December 9, 2014

*This deadline is 45 working days prior to the meeting to allow for review and public notice per Section 24.106 J (for Subdivisions) and Section 24.116 J (for Site Plans) of the Jefferson County Subdivision Regulations.

Cell Tower Concept Plan Deadlines

You must submit by 5 PM on:	To be heard the meeting of:
December 20, 2013	January 14, 2014
January 17 2014	February 11, 2014
February 14, 2014	March 11, 2014
March 14, 2014	April 8, 2014
April 18, 2014	May 13, 2014
May 16, 2014	June 10, 2014
June 13, 2014	July 8, 2014
July 18, 2014	August 12, 2014
August 15, 2014	September 9, 2014
September 19, 2014	October 14, 2014
October 17, 2014	November 11, 2014
November 14, 2014	December 9, 2014

*This deadline is 25 days prior to the meeting to allow for advertising requirements per Section 24.120 of the Jefferson County Subdivision Regulations and Section 4B.2 of the Jefferson County Zoning Ordinance.

JEFFERSON COUNTY COMMISSION HOLIDAY SCHEDULE 2014



New Year's Day	Wednesday, January 1, 2014
Martin Luther King's Day	Monday, January 20, 2014
President's Day	Monday, February 17, 2014
Primary Election	Tuesday, May 13, 2014
Memorial Day	Monday, May 26, 2014
West Virginia Day	Friday, June 20, 2014
Independence Day	Friday, July 4, 2014
Labor Day	Monday, September 1, 2014
Columbus Day	Monday October 13, 2014
General Election	Tuesday, November 4, 2014
Veteran's Day	Tuesday, November 11, 2014
Thanksgiving Day	Thursday, November 27, 2014
Day after Thanksgiving	Friday, November 28, 2014
Christmas Eve	½ Day, Wednesday, December 24, 2014
Christmas Day	Thursday, December 25, 2014
New Years Eve	½ Day, Wednesday, December 31, 2014

IN ADDITION TO THE DAYS LISTED ABOVE, THE COMMISSION WILL OBSERVE AS HOLIDAYS, ANY NATIONAL, STATE OR OTHER ELECTION DAY THROUGHOUT THE COUNTY, AND ALL DAYS WHICH MAY BE APPOINTED OR RECOMMENDED BY THE GOVERNOR, OF THIS STATE, OR THE PRESIDENT OF THE UNITED STATES, AS DAYS OF THANKSGIVING, OR FOR THE GENERAL CESSATION OF BUSINESS, ANY DAY OR PART THEREOF DESIGNATED BY THE GOVERNOR AS TIME OFF, WITHOUT CHARGE AGAINST ACCRUED ANNUAL LEAVE, FOR STATE EMPLOYEES STATEWIDE MAY ALSO BE TIME OFF FOR COUNTY EMPLOYEES IF THE COUNTY COMMISSION ELECTS TO DESIGNATE THE DAY OR PART THEREOF AS TIME OFF, WITHOUT CHARGE AGAINST ACCRUED ANNUAL LEAVE FOR COUNTY EMPLOYEES. ANY ENTIRE OR PART STATE WIDE DAY OFF DESIGNATED BY THE GOVERNOR MAY, FOR ALL COURTS BE TREATED AS IF IT WERE A LEGAL HOLIDAY, AS PROVIDE FOR IN 2-2-1 OF THE WEST VIRGINIA CODE, AS AMENDED.

Date: _____

PRESIDENT, JEFFERSON COUNTY COMMISSION

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

Phone: (304) 728-3228

Email: zoning@jeffersoncountywv.org

Fax: (304) 728-8126

Director's Report December 10, 2013 Planning Commission Meeting

1) Envision Jefferson 2035 Update

See Updated Timeline Attached

2) Recent/Upcoming CC Actions relevant to Planning:

- a) 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) (*Public Hearing held 10/10/13; follow up CC workshop 11/21/13, continued to 12/05/13*)
- b) Request by the Planning Commission that the County Commission Reconsider their Motion of 10/25/12 Regarding the Proposed Zoning Ordinance Text Amendment Related to New Commercial and Industrial Zoning Categories (*Public Hearing held 11/21/13; comments open until 12/05/13; future workshop with CC for follow up*)
- c) Zoning Map Amendment request by the Hunter Family c/o Ann Hunter to rezone property located on the north side of Old Route 9 (Route 115) approximately 700 feet southeast of Berkeley/Jefferson County Line from Rural to Residential-Light Industrial-Commercial zoning (*request for CC Public Hearing on 12/05/13 agenda; tentatively set PH for 1/16/13*)

3) Upcoming PC meetings

- a) January 14, 2014
 - Public Hearing on the proposed Text Amendment to Section 4.11 of the Zoning and Land Development Ordinance regarding landscaping between similar non-residential uses
- b) January 23, 2014 – PC attendance requested
 - Joint meeting of PC/CC to discuss key land use Goals and Objectives; discussion of Future Land Use Map and discussion of Upcoming Public Input

ENVISION JEFFERSON 2035 UPDATED TIMELINE

Tentative Dates	Tasks	Responsibility
August – December 2012	Phase 1: 2014 Plan Start Up/Organization	
<i>Completed</i>	Technical Advisory Committee formed for Existing Conditions element; Steering Committee appointed by County Commission and meetings initiated	
May 2012 – January 2013	Phase 2: Existing Conditions Data Collection, Mapping and Trends Analysis	
<i>Completed</i>	Nearly complete draft serving as a snapshot in time to be a separate baseline document including draft Existing Land Use Map	
January 2013 – February 2013	Phase3: Issues Analysis/Visioning	
<i>Completed</i>	4 public meetings held in February and March and on-line survey input received	
March 2013 – October 2013	Phase 4: Goals and Objectives	
Completed	15 Lunch and Learns (http://envisionjefferson2035.com/) 2 public meetings held in July and survey at County Fair 2 public meetings held in October 4 Stakeholder Meetings in October Goals and Objectives Draft finalized Future Land Map Draft underway – to be finalized for public review in early 2014	
October 2013 – May 2014	Phase 5: Plan Recommendations and Implementation Strategies (with the following milestones)	Steering Committee Staff
11/18 – 11/23/13	Open Houses at five Libraries for public review and input of proposed PGAs and future land uses in those areas	Staff
11/19/13	Steering Committee Meeting Review of October public input Land Use policy decisions	Steering Committee Staff
12/17/13	Steering Committee Meeting Review of proposed consolidated future land use map and SC input and edits;	Steering Committee Staff

	Discussion of other content maps and Land Use policy discussions	
1/21/14	Steering Committee Meeting Final review of maps for upcoming Public Input Meetings Preparation for Public Input Meetings	Steering Committee Staff
January 23, 2014	Joint meeting of PC/CC to discuss the following: Review of key land use Goals and Objectives Discussion of Future Land Use Map for public add'l input Discussion of Upcoming Public Input	PC/CC Staff/legal
February 2014 (1st or 2nd week)	4th series of Public Input Meetings (2 mtgs): <ul style="list-style-type: none"> • Open House Format • Focus on Future Land Use map and related maps • Overview of key draft recommendations and strategies 	Staff Steering Committee
2/18/14	Steering Committee Meeting Follow up to Public Input Sessions Next Steps to completing Recommendations for all Elements	Steering Committee Staff
3/18/14	Steering Committee Meeting	Steering Committee Staff
4/15/14	Steering Committee Meeting	Steering Committee Staff
4/22/14	4th Public Input Meeting – one large joint meeting instead of regional meetings ***PC/CC invited to attend this meeting Presentation of completed draft Plan	Staff Steering Committee
5/20/14	FINAL Steering Committee Meeting to forward draft Envision Jefferson 2035 Plan to the Planning Commission for initiation of formal public hearing and adoption process	Steering Committee Staff
June 2014 – December 2014	Phase 6: 2014 Plan Workshops and Public Hearings by PC and CC and Adoption	PC/CC Staff/legal
12/11/14	CC Vote on 2014 Comprehensive Plan	CC

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IN THE CIRCUIT COURT OF
JEFFERSON COUNTY, WEST VIRGINIA

GARY L. CAPRIOTTI,
EDWARD R. MOORE,
EDWARD DUNLEAVY,
SHEPHERDSTOWN BATTLEFIELD
PRESERVATION ASSOCIATION, INC.
Petitioner,

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JEFFERSON COUNTY
CIRCUIT CLERK

v.

Civil Action No. 11-C-325

JEFFERSON COUNTY PLANNING COMMISSION,
A public body,
Respondent.

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v.

NOV 15 2013

FAR AWAY FARM, LLC,
Intervenor.

Jefferson County Commission

ORDER GRANTING JEFFERSON COUNTY PLANNING COMMISSION'S
"MOTION TO RECONSIDER"

I. BACKGROUND

This motion comes after the Court made a ruling on June 19, 2012 in the form of an Order Granting Petitioners' Motion for Partial Summary Judgment. The Court ruled that Respondents had violated the Open Meetings Act ["OMA"] when it held an executive session on July 26th, 2011 without providing either the required notice or minutes in a timely fashion. Following the entry of that order, Respondent held a "do-over" meeting in order to comply with the order on June 19, 2012 and its interpretation of OMA case law, notwithstanding Respondent's contention that it had never actually violated OMA.

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Since June 2012, all parties have filed various motions in response to the actions taken by Respondent to cure the 2011 OMA violation. On October 18, 2013, the Court again considered the various orders submitted by the parties, including “Respondent’s Motion to Reconsider.” Respondent’s grounds for the motion, and for the particular assertion that OMA was never violated in the first place, can be summarized as follows:

- A. Summary Judgment was in Error Because A Genuine Issue of Material Fact Exists on the Issue of When the Settlement was Concluded
- B. Summary Judgment was in Error Because the Court Failed to Apply the OMA Settlement Exception
- C. Summary Judgment was in Error Because the Court Ignored the OMA Exception for Confidential Advice
- D. Statutory Language in Surrounding Sections Support Exceptions 11 and 12
- E. Constitutional Separation of Powers Concerns Supersede the OMA
- F. The Common Law Recognition of Attorney-Client Privilege of Peters Superseded by Exceptions 11 and 12

Initially, the Court had been convinced that a violation of OMA had occurred, as reflected in the June 2012 Partial Summary Judgment. As such, the Court was poised at the hearing of October 18, 2013 to grant the Intervenor’s Motion to Limit Remedy, since no sanction appeared to be merited in light of both the de minimis nature of said violation and the Respondent’s efforts to cure the violation.

However, upon review of the legislative history of OMA, the Court finds that the prior Partial Summary Judgment was based on a misplaced reliance on Peters v. County Com’n of Wood County, 205 W.Va. 481, 519 S.E.2d 179 (1999). The West Virginia Supreme Court itself appears to recognize the newly-minted exceptions that were by that point added to OMA in the Peters opinion, and its congruence with the rules of ethical attorney conduct (in particular, attorney-client confidentiality rules). In a footnote of the opinion, the Court notes that:

The West Virginia Legislature amended significant portions of the Act, passing House Bill 2005 on March 21, 1999. Governor Underwood approved these amendments on April 8, 1999, and this new version of the Act will take effect ninety (90) days from its passage. Significantly, the Legislature included more exceptions to the Act. The new version of West Virginia Code § 6-9A-4(12) (1999) specifically provides that a public body may hold a closed executive session “[t]o 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 within the meaning of the freedom of information act...” However, the preceding subsection, West Virginia Code § 6-9A-4(11) (1999) provides, in pertinent part, that “[n]othing in this article permits a public agency to close a meeting that otherwise would be open, merely because an agency attorney is a participant.” [Emphasis added].¹

The curiously prospective language used in the footnote suggests that Supreme Court, in deciding Peters, was not using the more permissive version of OMA that is still in effect today.² For this reason, the exceptions to the general thrust of OMA’s sunshine mandates cited by Respondent, Exceptions 11 and 12, were ostensibly contemplated (per the footnote cited above) *yet not relied upon* by the Supreme Court when it decided Peters. Given the disconnect between the version of OMA controlling Peters and the more permission version that controls today, this Court’s reliance upon the holding of Peters—in particular, the three statutory requirements imposed upon closed executive sessions—is misplaced.

II. REVIEW OF APPLICABLE LAW

1. The Standard: Rule 60(b)(6) / Motion for Relief from a Judgment or Order

According to the West Virginia Supreme Court, “[i]n the normal course of litigation, juridical policy strongly suggests that trial courts should be accorded initial

¹ *Id.* n7

² It is not clear to this Court why the Peters decision, dated July 14, 1999, states that the new version of OMA “will take effect ninety (90) from its passage” when such ninety-day mark would have by that point already occurred (on July 7, 1999). It appears to the Court that one cannot rely upon mere dates to reveal the version of OMA that controls Peters, due to the close timing between the two. Ultimately, it is the Supreme Court’s plain language which informs this Court’s position (that the new version of OMA took effect after the wheels of Peters were already set in motion, so that the old version still controlled Peters).

opportunity to correct errors of both judicial and clerical nature. Within the time limitations prescribed, Rules, 50, 52, 59, and 60, W.Va. R.C.P. provide a vehicle for the correction of such errors before resort to appeal is necessary.” Young v. Young, 158 W. Va. 521, 527, 212 S.E.2d 310, 314 (1975). As the Respondent’s Motion to Reconsider and Set Aside Partial Summary Judgment was filed more than ten days after the Partial Motion for Summary Judgment, the Respondent’s “Motion to Reconsider” is more appropriately characterized as a Motion for Relief from a Judgment or Order.³ Powderidge Unit Owners Ass’n v. Highland Properties, Ltd., 196 W. Va. 692, 695-96, 474 S.E.2d 872, 875-76 (1996).

Since the motion is considered under Rule 60(b)(6) (and not under 60(b)(1), (2), or (3)), the fact that Respondent filed the motion in August 2013 does not bar relief, even though this was more than one year after the entry of Partial Summary Judgment: “The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken.” W. Va. R. Civ. P. 60. This is because the Court finds that the motion was filed within a reasonable time, particularly because the Respondent’s dissatisfaction with the Partial Summary Judgment was noted in its Notice of Appeal that was filed on July 11, 2012.

³ A motion filed within ten days following the June 2012 Partial Summary Judgment could be characterized as a “Motion for Reconsideration;” however, such terminology has fallen out of favor with West Virginia Supreme Court: “Despite [the Supreme Court’s] repeated direction to the bench and bar of this State that a ‘motion to reconsider’ is not a properly titled pleading in West Virginia, it continues to be used. . . The reason for this may be partially our fault because we continue to treat a ‘motion to reconsider’ as either a motion to alter or amend judgment under Rule 59(e) of the West Virginia Rules of Civil Procedure, if served no later than ten days after entry of the judgment, or a motion for relief from judgment pursuant to Rule 60 of the West Virginia Rules of Civil Procedure.” Richardson v. Kennedy, 197 W.Va. 326, 329-30, 475 S.E.2d 418, 421 (1996). See also In re Chevie V., 226 W. Va. 363, 367, 700 S.E.2d 815, 819 (2010).

Under W. Va. R. Civ. P. 60(b)(6), the Court may vacate that previous judgment for the reasons cited in Respondent's motion: "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons:... (6) any other reason justifying relief from the operation of the judgment." The misplaced reliance of this Court in deciding the Partial Summary Judgment, due to the tricky interface between the Peters holding and the legislative history of OMA, certainly qualifies as a "reason justifying relief from ... the judgment."

The West Virginia Supreme Court stated, "[i]n establishing the bounds of such motion, the weight of authority supports the view that Rule 60(b) motions which seek merely to relitigate legal issues heard at the underlying proceeding are without merit," Powderidge Unit Owners Ass'n v. Highland Properties, Ltd., 196 W. Va. 692, 705, 474 S.E.2d 872, 885 (1996). However, the Supreme Court was reviewing on appeal a circuit court's decision to deny a Rule 60(b) motion, and in making this statement, it had relied upon other cases in which an appellate court was likewise reviewing the decision of a lower court to grant or deny motions made pursuant to Rule 60(b).⁴ Those cases are easily distinguished from the instant case in which the Circuit Court is vacating its own prior judgment. The long-standing liberty afforded by the West Virginia Supreme Court to circuit courts in reviewing *their own* previous orders and judgments under Rule 60(b) thus controls here: "A motion to vacate a judgment made pursuant to Rule 60(b), W.Va. R.C.P., is addressed to the sound discretion of the court and the court's ruling on such

⁴ Powderidge cited the following cases as support for this point: Johnson v. Nedeff, 192 W. Va. 260, 266, 452 S.E.2d 63, 69 (1994) ("We hold that the Rule 60(b)(1) motion was properly denied"); Smith v. Evans, 853 F.2d 155 (3d Cir. 1988).

motion will not be disturbed on appeal unless there is a showing of an abuse of such discretion.” Hooshyar v. Afshari, 12-0578, 2013 WL 2495138 (W. Va. June 7, 2013) (citing Toler v. Shelton, 157 W.Va. 778, 204 S.E.2d 85 (1974)). Therefore, this Court reconsiders its own Partial Summary Judgment under the liberal, discretionary standard.

2. The Court re-interprets the statute that is found in its written order from June 19, 2012 and thus now at issue: West Virginia Code § 6-9A-1 et seq. (1999)

In misplaced reliance upon Peters, the Court seized upon the three statutory requirements of the statute in its Partial Summary Judgment against Respondent. The Court’s re-interpretation now is based upon a more careful reading of both the statute and Peters, and as such has a cascading effect on the other points of law in the Partial Summary Judgment. Therefore the Court must contend with the following three issues:

- a. Was the closed executive session a meeting of such a nature as to warrant an exception to OMA per W.Va. Code § 6-9A-4(12) (“Exception 12”)?
- b. Did Respondent abide by the requirement of W.Va. Code § 6-9A-4(11) (“Exception 11”); namely, to report and enter into its minutes the terms of the settlement that was approved or considered in closed session “within a reasonable time after the settlement” was concluded?
- c. Was the built-in “exception to Exception 11” triggered by the Respondents actions on July 26, 2011? Put differently, did Respondent hold a closed executive session solely because an agency attorney was present and participating in the meeting?

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In answering whether Exception 12 was implicated by the Respondent's actions on July 26, 2011, the Court must look to the language of act: "A public agency may hold an executive session and exclude the public only when a closed session is required for any of the following actions: ... (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 within the meaning of [FOIA]..." W.Va. Code § 6-9A-4 et seq. As Respondent noted in its motion, Supreme Court rulings regarding the West Virginia Rules of Professional Conduct, as well as the common law recognition of attorney-client privilege, require that attorneys promptly inform their clients about a settlement offer. The Court need not repeat here the details proffered by Respondent in its motion as to why the closed executive session of July 26, 2011 was required under West Virginia law. The meeting on that day was of such a nature as to warrant Exception 12 so that the public was not improperly excluded.

This Court has reviewed arguments as to when it can be said that the settlement was concluded. The Court need not at this juncture be convinced by Respondent that Respondent abided by the Exception 11 requirement—that Respondent reported and entered into its minutes the terms of the settlement within a reasonable time after the settlement was concluded—in order to grant the Respondent's motion. This is because the Respondent has persuasively argued in its motion that a genuine issue of material fact exists as to when the settlement concluded (not on July 26, 2011, but instead, upon the date the court entered the settlement order, August 3, 2011). Although this is only a matter of eight days, partial summary judgment as to this particular issue was improper.

Lastly, nothing in the record suggests that the Respondents used the presence of an attorney as an excuse to hold the closed executive session. Therefore, Exception 11 does not limit Respondent's ability to avail itself of Exception 12 to OMA.

IV. CONCLUSION

WHEREFORE, this Court GRANTS Respondent's Rule 60(b) Motion / Motion for Relief from a Judgment or Order, i.e. "Motion for Reconsideration."

It is further ORDERED that the Clerk of this Court shall transmit an attested copy of this Order, once entered, to all parties and counsel of record, so that the Order Granting Petitioners' Motion for Partial Summary Judgment is vacated, and that petitioners' request for remedies detailed in their RESPONSE TO FAR AWAY FARM'S MOTION TO LIMIT REMEDY AND COUNTER-MOTION FOR SUMMARY JUDGMENT GRANTING REMEDIES—including attorney fees and costs incurred in this civil action, an injunction compelling the Jefferson County Planning Commission to comply with all provisions of the Open Governmental Proceedings Act, and the annulment of the Jefferson County Planning Commission's decision to approve the Agreed Settlement Order in Civil Action No. 11-C-125—are rendered moot.

9 cc's:

ENTERED: 11/8/13

G. Capriatic
L. Gulsell
JC Planning Comm.
S. Grub
M. Gay
Far Away Farms c/o B. Gay
Shp. Battlefield Pres. Assoc. 8
E. Moore
C. Dumb...



DAVID H. SANDERS, JUDGE OF THE
23RD JUDICIAL CIRCUIT, WEST VIRGINIA

A TRUE COPY
ATTEST:

LAURA E. STORM
CLERK, CIRCUIT COURT
JEFFERSON COUNTY, WVA.

BY B. Chalk
DEPUTY CLERK

11-6-13 BC

ZV13-33

ZV13-34

December 4, 2013

Ms. Jennilee Hartman, Zoning Clerk
116 East Washington Street, Suite 200
P. O. Box 338
Charles Town, WV 25414

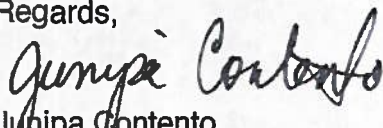
Dear Ms. Hartman and the Jefferson County Board of Zoning Appeals:

First and foremost, on behalf of the All Good Festival, we would like to thank you for your extensive time and consideration during the November Board of Zoning Appeals meeting for our requests to host a Seasonal Use event in Jefferson County as well as a waiver of the 3-day limit for such seasonal use. As we mentioned during our presentation we have been working under strenuous time constraints to properly schedule our event for the 2014 festival season.

Regrettably, we had later come to recognize that the property owners involved in the lease are in contention and unable to come to terms, thereby we will not be able to utilize our seasonal use permit and we are forced to withdrawal the permit to host our event during the 2014 season.

Thank you again for all of your time.

Regards,


Junipa Contento

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JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

*Copy mailed to BZA in 12/18/13 packet. - JH