

AGENDA  
JEFFERSON COUNTY PLANNING COMMISSION  
January 10, 2012

**Planning Commission meetings are located in the Old Charles Town Library meeting room at 200 East Washington Street, at the side entrance on Samuel Street at 7:00 PM**

1. Election of Officers.
2. Approval of the minutes for the November 8, 2011 meeting.
3. Citizen Communications.
4. Request for postponement.
5. Final Plat Public Hearing for the Wild Goose Farm, LLC Subdivision. The property is to consist of 13 Single Family Lots and 1 Non-Residential lot for horse breeding/boarding and will contain a riding/training facility on 173.80 acres. The property is located across from Terrapin Neck Road and the National Training Conservation Center. District: Shepherdstown, Map: 3, Parcel 13 & 13.6.
6. Request by Mark O'Dell (340 Defense, PC File #S10-04) for a waiver from the Subdivision Regulations:
  - a. Section 22.208 and Appendix B 9.6C requiring sidewalks to be provided in non-residential development. The applicant is requesting to dedicate a 10' easement to a bike path/walkway without currently constructing the path as a part of this site plan.
  - b. Appendix B Section 2.3 and Section 9.5 to allow for a smaller required width of the access and a lesser depth of asphalt.

This property is located at 263 Berryville Pike, Rippon, West Virginia and is designated as Tax District: Kabletown, Map: 29, Parcel 5.
7. Recreational Uses potential zoning amendments – update on public feedback received to date.
8. Discussion and possible vote regarding amendments to Articles 20.203 and 26.200 concerning Major/Minor Site Plan Determination.
9. Discussion of potential zoning categories.
10. Discussion and possible vote on amendments to Section 4.9 of the Jefferson County Planning Commission Bylaws regarding tardiness to meetings.
11. Discussion and Vote on the 2012 Planning Commission Meeting Schedule.
12. Reports from Legal Counsel and legal advice to PC.
13. Director's Report.
14. County Commission Liaison Report.

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15. Planning Commission Exchange.

- Report from the Health Department Meeting Liaison.
- Report from the Public Service District Meeting Liaison.
- Report from the Parks and Recreation Meeting Liaison.
- Report from the Jefferson County Development Authority Meeting Liaison.
- Report from the Water Advisory Committee Meeting Liaison.

16. President's Report.

17. Actionable Correspondence.

18. Non-Actionable Correspondence.

The Planning Commission welcomes written comments at any time. Our office is open Monday through Friday, 9:00 a.m. to 5:00 p.m., and is located at 116 East Washington Street, P.O. Box 338, Charles Town, WV 25414. Our phone number is (304) 728-3228; our fax number is (304) 728-8126; our email address is [planningdepartment@jeffersoncountywv.org](mailto:planningdepartment@jeffersoncountywv.org) and our website is [www.jeffersoncountywv.org](http://www.jeffersoncountywv.org).

Any party desiring a transcript of these proceedings will be responsible for providing a competent stenographer at their own expense. Minutes and video recordings of past meetings, Subdivision Regulations, Zoning Ordinance, and the Comprehensive Plan can be found on the website. The office has a file on each project as well as aerial photos of the county. Minutes and audio recordings of older meetings not on the website are available for review in the office.

MINUTES  
JEFFERSON COUNTY PLANNING COMMISSION  
NOVEMBER 08, 2011

The Jefferson County Planning Commission met on Tuesday, November 08, 2011, with the following Commission members present: Morgan Ethers, Arnold Dailey, Vice- President; Gene Taylor, Kelly Baty, Ed Burns, Paul Taylor and Walt Pellish. Staff members present included Jennifer Brockman, Director of Planning and Zoning; Seth Rivard, Planner; Steve Barney, Zoning Administrator; Jonathon Saunders, County Engineer; Stephan Groh, Assistant Prosecuting Attorney; and Amy Puetz, Planning Clerk.

Mr. Daniel Hayes was absent with notification.

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

**1. Election of President.**

Mr. Dailey explained that Mr. Hayes had resigned from his position as president of the Planning Commission due to unforeseen job duties.

Mr. G. Taylor nominated Ms. Ethers for president. Mr. Burns seconded the nomination. There were no other nominations. Ms. Ethers was voted into the position of president unanimously.

**2. Approval of the minutes for the October 11, 2011 meeting.**

Mr. Pellish moved to approve the minutes of the October 11, 2011 Planning Commission Meeting. Mr. Burns seconded the motion which carried 6 for and 1 abstention (Mr. Dailey).

**3. Citizens Communication.** None.

**4. Request for postponement.** None.

**5. Public Hearing for Zoning Map Amendment (Rezoning) for property designated as Tax District: Harpers Ferry, Map: 9, Parcel: 39.1. This property is currently zoned Residential Growth and Residential/Light Industrial/Commercial zoning is being requested. The property is located on the south side of Route 340 (William L. Wilson Freeway); the east side of Route 27 (Millville Road) and on the north side of Route 27/2 (Allstadt's Hill Road) and is a total of 12.97 acres. James and Barbara Gibson are the owners.**

Mr. Rivard reviewed the responsibilities of the Planning Commission and gave an overview of the location of the property.

Mr. Eric Smith entered the room at 7:09 PM.

Mr. James Gibson, owner of the property, gave a brief presentation of his request.

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Mr. Rivard read from his staff report and recommended that the applicant reapply when the Route US 340 Corridor Study is completed. He stated that staff would support a request of a one-time waiver of fees or for the applicant to apply for a Conditional Use Permit.

Mr. David Tabb, Jefferson County Resident, stated that this property had already given much revenue to Jefferson County. He reasoned that all the properties surrounding this property were already zoned the Residential/Light Industrial/Commercial zoning that the applicant had requested.

Mr. Scott Faulkner, resident of Bolivar Heights, stated that US 340 was a primary gateway and that visitors to the County should not see neon signs, large parking lots, or garish buildings when looking west past Bolivar Heights. He asked that the Planning Commission look at the Comprehensive Plan and find a public reason that this property should have a zoning change. He reported concern that there were no design standards. He was also concerned that jobs would not be created, but lost since the Flea Market and the Wilt Fruit Stand would be shut down. He requested that a condition be that the Wilt Fruit Stand not be disrupted. He commented that 20% of the commercially zoned properties in the County are empty which he interprets to mean that more commercially zoned property is unnecessary.

Ms. Lyn Widmyer, County Commissioner speaking as an area resident, commented that the US 340 Corridor Study would be analyzing the uses and character of this area and believes this property should be a part of the comprehensive vision that will be developed. She requested that the applicant wait for the US 340 Study to be completed before requesting a rezoning. She also commented that she was opposed to this request as traffic studies in this area have shown that further degradation and congestion are forecasted. She commented that this area needs to stay as free flowing as possible.

Andrew Lee, National Park Service Park Manager, read a letter penned by Superintendent Rebecca Harriett which addressed the historical nature of the property and cited several historic events (letter attached). The letter stated that the Residential/Light Industrial/Commercial category is too broad and poorly construed and would have a significant adverse impact on historic values.

Dick Latterell, Resident of Moler's Crossroads, stated that this type of modest commercial development would not be of benefit to the County's economy. He stated that the existing facilities hold more jobs for citizens than would any new commercial development. He agreed that he would oppose anything that would negatively affect our National Park.

Mr. Baty moved to close the public hearing. Mr. Burns seconded the motion which carried unanimously.

Mr. Gibson distributed a document of supplemental information including a draft motion recommending approval. Mr. Gibson quoted the Comprehensive Plan, "It is the vision of this Comprehensive Plan that development will be concentrated within the designated growth area". He stated that his property falls directly within the designated growth area on the reference map that is the closest thing that the Comprehensive Plan has regarding future land

use and should be considered consistent with the Comprehensive Plan. Mr. Gibson commented that the property is surrounded on three sides by properties zoned Residential/Light Industrial/Commercial. He stated that studies to enlarge the Park Boundary did not include his property. Mr. Gibson explained that the property is already zoned Residential Growth and already has a high intensity commercial use on the property and that the requested Residential/Light Industrial/Commercial zoning would have very little impact on traffic as the property is already being used commercially.

Mr. P. Taylor asked Mr. Gibson if he would be willing to wait to request a rezoning until after the US 340 Study was complete. Mr. Gibson declined explaining that he believed it would be quite some time before the study would be incorporated into the new Comprehensive Plan and that he would like to financially plan for his future at the present time.

Mr. Pellish inquired as to what would happen to the Flea Market. Mr. Gibson commented that the Flea Market was intended to be an interim use only. If he were to get an approval on a rezoning, he stated he would like to look at his options and plan for even better uses for the property.

Mr. Pellish moved to recommend to the County Commission that the rezoning request is consistent with the Comprehensive Plan. Mr. Dailey seconded the motion which resulted in a vote of 4 for (Mr. G. Taylor, Mr. Dailey, Mr. Pellish and Mr. P. Taylor) and 4 opposed (Mr. Smith, Mr. Burns, Mr. Baty and Ms. Etters).

Mr. Burns moved that the rezoning request be forwarded to the County Commission without a recommendation due to a deadlock. Mr. Smith seconded the motion which carried 7 for and 1 opposed (Mr. Baty).

Ms. Etters called a 5 minute recess at 8:41 PM. Ms. Etters called the meeting back to order at 8:47 PM.

- 6. Public Hearing for Zoning Map Amendment (Rezoning) for property designated as Tax District: Shepherdstown, Map: 13, Parcels: 26.1, 26.2, 26.3 & 26.4. These properties are located on Kearneysville Pike approximately 0.5 miles west of its intersection with Morgan Grove Road and are a total of 13.69 acres. Twin Oaks Subdivision, LLC is the owner.**

Mr. Rivard reviewed the responsibilities of the Planning Commission and gave an overview of the location of the property.

Mr. Fred Blackmer, the applicant's representative, discussed the request and the history of the property. He stated that the reason for requesting the Industrial/Commercial zoning was to exclude the possibility of residential use. He commented that the property would only be able to have a commercial use since the setbacks would not allow heavy or light industrial or adult uses.

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Mr. Peter Corum, applicant, clarified that the commercial use would support agriculture and agricultural sales.

Mr. Rivard read from his staff report and stated that while staff is in support of the agricultural business use, the staff would not support a request for Industrial/Commercial zoning since that zoning designation for that property would not be in conformance with the 2004 Comprehensive Plan. He explained that the Conditional Use Permit (CUP) process would be more appropriate for this request.

Ms. Eppers opened the public hearing.

Dr. Sylvia Shurbutt, area resident, stated that Morgan Grove Park is surrounded by a quiet residential community and that the requested zoning of Industrial/Commercial would be inappropriate. She also stated that she does not approve of the current commercial use on the property and feels that the creation of the commercial activity may have been to preface the request to Industrial/Commercial.

Mr. Mike Austin, President of the Shepherdstown Men's Club, briefly described the legal history of the property as he knew it. He stated that it has had an adverse impact on the community and on the Men's Club due to its controversial nature. He stated that he is concerned since allowing this type of zoning does not allow the public to react toward or influence specific development in the future which he feels is inappropriate. He commented that the applicant's claim that this property has had a continuing commercial use is a misstatement and wondered if other misstatements were made regarding the rezoning request. He stated that many people he had spoken to said that the proposed use could be accomplished better with a Conditional Use Permit. Mr. Austin also submitted a written letter to the Planning and Zoning Department which reiterated his concerns.

John Amos, area resident, Vice-President of the Shepherdstown Men's Club, discussed his frequent use of Morgan Grove Park and urged the Planning Commission to deny the request. He also stated that the proposed use could be accomplished with a Conditional Use Permit. He expressed concern that rezoning the property would lead to undesirable development in the future. He asked that consideration be given to the existing residents and the affect that rezoning would have on property values and rights. He commented that there were misleading inaccuracies in the document presented to the County Commission by Mr. Corum including that the property had been in continual commercial use since 1968. He stated that he had moved here 18 years ago and no commercial use existed on that property until the Farmers Market opened just this past summer. He indicated that Mr. Corum reported that the recent mixed use proposal that had been presented for that site received community support. Mr. Amos stated that was inaccurate and that those plans were actively opposed.

Judy Moore, resident of Ledge Lowe Estates, stated that she was concerned about traffic safety in the area. She reported that Mr. Corum did place traffic cones last summer to help slow traffic. She stated that it was still a very dangerous section of the road. She commented that neighbors also have rights as well to the peaceful enjoyment of their property.

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Diana Suttentfield, area resident, stated that there are no commercial properties on the south side of Route 480 and that Route 45 is where commercial development should be encouraged. She stated that allowing this rezoning would adversely affect the residents and any efforts to sell properties in that area. She asked the Planning Commission to maintain the rural character of the area. She stated that there are historic reasons (Town Run) that this property should not be rezoned.

Susan Kennison, Bizmarket Founder, supports the project and stated that the community needs this kind of local, sustainable economy. She then read several letters of support from area residents. Time did not allow for all letters to be read. Ms. Kennison provided copies of the letters to the Planning and Zoning staff.

Ann Spurgas, area resident, stated that she feels that instead of being a benefit to the community, the proposed project and rezoning would most likely be a detriment to area property values and change the dynamics of the neighborhood. She said that just the Farmers Market business added considerable traffic and noise to the area. She stated that there are many other areas already currently zoned with the requested zoning that are more appropriate in location. She also reported that the property had not been in consistent commercial use. She commented that Morgan Grove Park is a nice park due to the quiet rural nature of the area. She raised concern that a rezoning to Industrial/Commercial would allow for unwanted future development.

Harvey Heiser, Zoning Officer of Shepherdstown, reported that the Shepherdstown Planning Commission was unaware of this request before their most recent meeting and had not had a chance to discuss or compile a recommendation regarding this request. He asked that the Planning Commission consider the staff report and the public comment before making a decision.

Susan Flittie, area resident, spoke against the request due to the commercial development of the proposal. She also commented on the hazardous traffic in the area. She stated that she would not mind for the development to be residential in nature.

Joe Spurgas, area resident, stated that the proximity of this property to Morgan Grove Park should be a determination in recommending denial of this request. He commented that the park would be unable to survive with any kind of commercial activity adjacent to it. He proposed that Mr. Corum join with a coalition of people to find Parks and Recreation funds to purchase the property and expand the park. He encouraged that the Farmers Market exist within that park.

Mr. Baty moved to close the public hearing. Mr. Smith seconded the motion which carried unanimously.

Mr. Corum discussed the previous proposal for the property which included 34 townhomes and 30,000 square feet of commercial area. He explained that after extensive conversations with area residents, he understood that the residential portion of the proposal was undesirable. He stated that Industrial/Commercial zoning was being requested due to the fact

that it restricts residential. He stated that he would be unable to satisfy all the residents as the “finish line” seems to keep moving. He commented that the speed limit in that area had been lowered due to his and Mr. Blackmer’s efforts. He stated that a market within walking distance of a residential community defines sustainable economy.

Mr. Blackmer reiterated that to eliminate the possibility of residential development, an Industrial/Commercial category was the best option to request. He also discussed that any industrial or adult uses would not be possible on the site since variances would be needed that would be extremely unlikely for the Board of Zoning Appeals to grant. He commented that the staff should have outlined that, due to setbacks, industrial and adult uses would be impossible for this property. Mr. Blackmer discussed reasons why the applicant did not choose to apply for a Conditional Use Permit and stated that the CUP process was really just spot zoning. Mr. Blackmer stated that the applicant had chosen the most restricted and heavily regulated zoning to request.

Mr. Baty moved to recommend denial to the County Commission because the request is not consistent with the Comprehensive Plan. Mr. Dailey seconded the motion which failed 2 for (Mr. Baty and Ms. Etters) and 6 against.

Mr. Baty moved to recommend approval to the County Commission because the request is consistent with the Comprehensive Plan. Mr. Dailey seconded the motion which carried 5 for and 3 opposed (Mr. Smith, Mr. Baty and Ms. Etters).

Ms. Etters called a 5 minute recess at 10:45 PM. Ms. Etters called the meeting back to order at 10:49 PM.

**7. Final Plat Public Hearing for a resubdivision of Lot #16 and the Homeowners Association Parcel of the Cedar Meadows Airpark (PC File #11-07) The property is located on Hardesty Road near the VA/WV border, close to the intersection with Jamestown Road and is designated as Tax District: Middleway, Map: 29, Parcel: 1.**

Mr. Barney described the location of the property and explained to the Planning Commission that staff had been made aware of a dispute of land ownership.

Mr. Groh provided legal guidance on proceeding to hear the request without determination of ownership.

Mr. Jim Crawford, applicant’s representative, gave a brief presentation on the history of the project and stated that the purpose of the resubdivision was to more clearly define the common areas within the plat and within the Homeowner’s Association Covenants.

Mr. Jason Gerhardt, Engineer with William H. Gordon Associates, clarified the need for the resubdivision.

Mr. Barney presented his staff report and recommended approval with the conditions that the applicant shall address all remaining, unresolved staff comments, the applicant shall provide

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to the Planning and Zoning Department and to the Cedar Meadows Airpark homeowner's association (HOA) a schedule for the transfer to the association of the parcels containing the hangar and runway, the stormwater management facilities, and the road right-of-way, and that the applicant is the legal owner.

Ms. Etters opened the public hearing.

Mr. Timothy Foltz, who proclaimed to be the owner and lives on lot #16, explained the history of the original subdivision and why he believed he was the true owner of the property. He presented an operations agreement dated December 5, 2002 that he believed proved that he was the rightful owner. He requested that the Planning Commission postpone their decision until ownership could be determined through a legal process.

Mr. Robert Blackford, Cedar Meadows Airpark Lot #13 owner, commented that he is opposed to the request since he did not believe that the applicant was the true owner and that he did not want to see an additional residential possibility.

Mr. Andrew Catsakis, Cedar Meadows Airpark Lot #3 owner, stated that he opposed the request due to the residential possibility. He also commented that ownership should be resolved before approving this request.

Mr. Robert Goldsboro, Cedar Meadows Airpark Lot #1 owner, also voiced opposition to the request.

Mr. James Greer, President of the Cedar Meadows Airpark HOA, supported the resubdivision and stated that the applicant was only trying to recuperate some of the money that was put into the subdivision. He explained that the purpose of the resubdivision was to ensure the runway was a part of the common area and that no residence could be placed on the property due to the proximity of a house to the runway.

Mr. Goldsboro stated that planes fly over his house every day and that stating a house could not be built there is untrue.

Mr. Foltz again disputed ownership and reiterated his request to postpone the decision.

Mr. G. Taylor moved to close the public hearing. Mr. Dailey seconded the motion. Mr. G. Taylor withdrew the motion.

Ms. Christine Kessner, Cedar Meadows Airpark, stated that the ongoing ownership dispute had been holding residents "hostage" for many years. She stated that she would like to sell her home and she feels she had been unable to correctly market the usability of the airpark.

Mr. G. Taylor again moved to close the public hearing. Mr. Burns seconded the motion which carried unanimously.

Ms. Brockman explained the application process and stated that the applicant's signature was usually obtained after the 1<sup>st</sup> review comments were returned. She mentioned that due to this issue, departmental policy would now be that the applicant's original signature would be necessary upon submission of any project. She clarified that all public notices mentioned Timothy Foltz as the owner since that was the information on the first review of the plat provided by the engineer. She stated that a week prior to the meeting, staff had been notified that the ownership had changed.

Mr. Groh again stated that the Planning Commission should not debate ownership and should proceed with the owner as stated by the most current deed.

Discussion ensued regarding making a determination without knowing the current owner. Mr. Groh advised again that the Planning Commission should not form their decision of the request based on the ownership of the property.

Mr. P. Taylor moved to disapprove the resubdivision application. Mr. Pellish seconded the motion. Mr. Pellish moved to amend the motion to disapprove due to incomplete information. Mr. G. Taylor seconded the motion to amend which carried unanimously.

8. **Final Plat Public Hearing for a major plat change for Spruce Hill (PC File #02-08) to amend the 50' landscape buffer to accommodate a garage on Parcel #88. This property is located on Huyett Road approximately 0.5 miles west of its intersection with US Route 340 at 411 Blue Spruce Drive in Charles Town, W.V., 25414 and is designated as Tax District: Kabletown, Map: 3C, Parcel: 88. William and Lori Davis are the owners.**

Mr. Barney gave an overview of the minor plat change and explained the request.

There were no applicants or applicant representatives in attendance to present the project.

Ms. Etters opened the public hearing. There were no comments. Mr. G. Taylor moved to close the public hearing. Mr. Burns seconded the motion which carried unanimously.

Mr. Smith moved to approve the minor plat change with the staff recommended motion. Mr. Burns seconded the motion which carried unanimously.

9. **Site Plan Public Hearing for Jefferson Asphalt Products (PC File #S11-12). This project consists of a 60 ft. by 70 ft. single story office building and a 60 ft. by 100 ft. maintenance shop. The property is located at 9390 Middleway Pike on WV Route 51 near Tuscowilla Hills and is designated as Tax District: Charles Town; Tax Map: 13 Tax Parcel: 7.**

Mr. Rivard provided an overview of the application.

Mr. Dirk Stansbury, Engineer for the project, gave a brief presentation.

Ms. Eppers opened the public hearing. There were no comments. Mr. Burns moved to close the public hearing. Mr. Baty seconded the motion which carried unanimously.

Mr. Burns moved to approve the site plan. Mr. Dailey seconded the motion which carried unanimously.

**10. Request by Robert Henshaw (WilBob Farm Inc.) for a waiver from the Subdivision Regulations Section 20.201 to allow for a second access to the property. This property is located on Route 51 approximately 0.3 miles west of the intersection of Middleway Pike and North Childs Road and is designated as Tax District: Middleway, Map: 19, Parcel: 39.**

Mr. Rivard reviewed the waiver request and recommended approval.

Mr. Robert Henshaw, applicant, stated he had nothing further to add to the presentation.

Mr. Smith moved to approve the waiver request. Mr. Pellish seconded the motion. Ms. Eppers moved to amend the motion to state that an updated Department of Highways permit was necessary. Mr. Smith and Mr. Pellish accepted the amendment. The motion passed unanimously.

**11. Reports from Legal Counsel and legal advice to PC.** None.

**12. Director's Report.**

Ms. Brockman discussed the December 13, 2011 Planning Commission and stated that there would be no time sensitive or public items on that agenda.

Ms. Eppers cancelled the December 13, 2011 Planning Commission Meeting contingent upon no public items being submitted to the Planning Department.

**13. County Commission Liaison Report.** None.

**14. Planning Commission Exchange.**

- **Report from the Health Department Meeting Liaison.** None.
- **Report from the Public Service District Meeting Liaison.** None.
- **Report from the Parks and Recreation Meeting Liaison.** None.
- **Report from the Jefferson County Development Authority Meeting Liaison.** None.
- **Report from the Water Advisory Committee Meeting Liaison.** None.

**15. President's Report.** None.

**16. Actionable Correspondence.** None.

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**17. Non-Actionable Correspondence.** None.

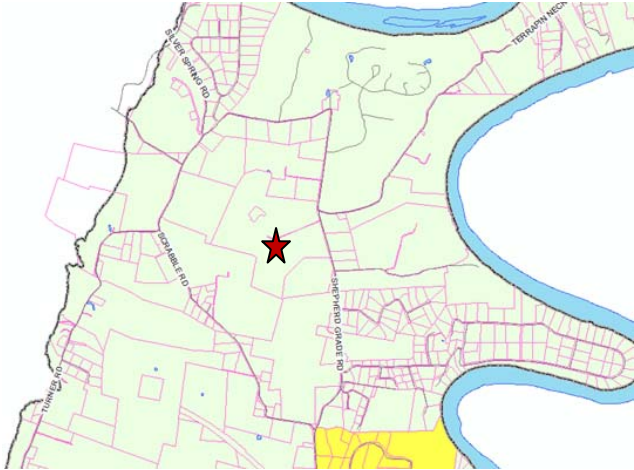

Mr. G. Taylor moved to adjourn the meeting at 12:01 AM. Mr. Burns seconded the motion which carried unanimously. An audio recording and/or a video recording of the meeting may be found on our website. These minutes were prepared by Amy Puetz, Planning Clerk.

# STAFF REPORT

## Jefferson County Planning Commission Meeting

January 10, 2012

Item #5      Final Plat Public Hearing for the Wild Goose Subdivision (PC File #08-18).

OWNER:	Wild Goose Farm, LLC
DEVELOPER:	Same
SURVEYOR/ENGINEER:	Appalachian Surveys, PLLC
PROPERTY LOCATION:	The property is located on Shepherd Grade Road. The site is located across from Terrapin Neck Road and the National Training Conservation Center.
LEGAL DESCRIPTION:	District: Shepherdstown, Map: 3, Parcels: 13 and 13.6 
ZONING DISTRICT:	Zoning Map Designation: Rural 
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North:</i> Rural <i>South:</i> Rural <i>East:</i> Rural <i>West:</i> Rural
LOT AREA:	173.80 acres
APPROVED ACTIVITY:	13 single-family lots and 1 multi-use lot for horse breeding/boarding containing a riding/training facility and 2 residences (per 9/23/08 variance).

# STAFF REPORT

## Jefferson County Planning Commission Meeting

January 10, 2012

DEVELOPMENT HISTORY:	<u>Wild Goose Subdivision (PC File # 08-18)</u> <ul style="list-style-type: none"><li>• Final Plat submitted December 2, 2011.</li><li>• January 2011 – Project falls under SB 595 allowing an extension provided that the Final Plat Public Hearing is held by July 1, 2012.</li><li>• April 3, 2009 – Staff Review Meeting for Preliminary Plat/Site Plan.</li><li>• Sept. 23, 2008 – Variance granted to allow more than 1 principle structure on the lot.</li><li>• Aug. 26, 2008 – Variance granted to waive the requirement that a subdivision must be served by internal roads.</li><li>• Aug, 26, 2008 – CIS accepted by the Planning Commission.</li><li>• June 27, 2008 – Staff review meeting for CIS.</li></ul>
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Wild Goose is a subdivision located on Shepherd Grade Road near the intersection of Terrapin Neck Road and consists of 13 lots and a residue parcel. Since this subdivision started before the 2008 Subdivision Regulations were adopted, this subdivision is being reviewed under the 1979 Subdivision Regulations. This is a cluster development in the Rural District. The remaining residue is 141 acres. The applicant is seeking Final Plat approval for a 13 lots and the residue. There are some outstanding conditions that do need to be addressed. Staff believes the outstanding conditions can be handled administratively. With the exception of a few unresolved items, the Final Plat complies with the approved Community Impact Statement and Preliminary Plat and Staff recommends approval with the conditions to be addressed.

If Final Plat is approved by the Planning Commission, the applicant shall have 90 days from time of approval to bond and record the Final Plat.

Per the 1979 Subdivision Regulations, the following details the Planning Commission responsibility for a Final Plat Public Hearing.

FINAL PLAT PUBLIC HEARING held before the Planning Commission during a regular meeting. New or revised information not previously considered at the Community Impact Evaluation stage is solicited from the public. The Planning Commission, after considering public comment, all previous information and comment, the provisions of this Ordinance, and the provisions of Section 8-24-30 of the West Virginia Code, approves, approves with conditions or disapproves the subdivision proposal and Final Plat.

The Planning Commission shall approve, approve with conditions, or disapprove a subdivision proposal and Final Plat within 60 days from the day the final plat and support material are submitted to the Planning Commission office. Failure to take action within the 60 day period shall result in final plat approval, unless a waiver of the 60 day period is granted to the Planning Commission by the subdivider.

Engineer's Report  
Planning Commission Meeting  
January 10, 2012  
Wild Goose Final Plat

Engineering recommends approval of the Wild Goose final plat with conditions.

Some major issues are as follows:

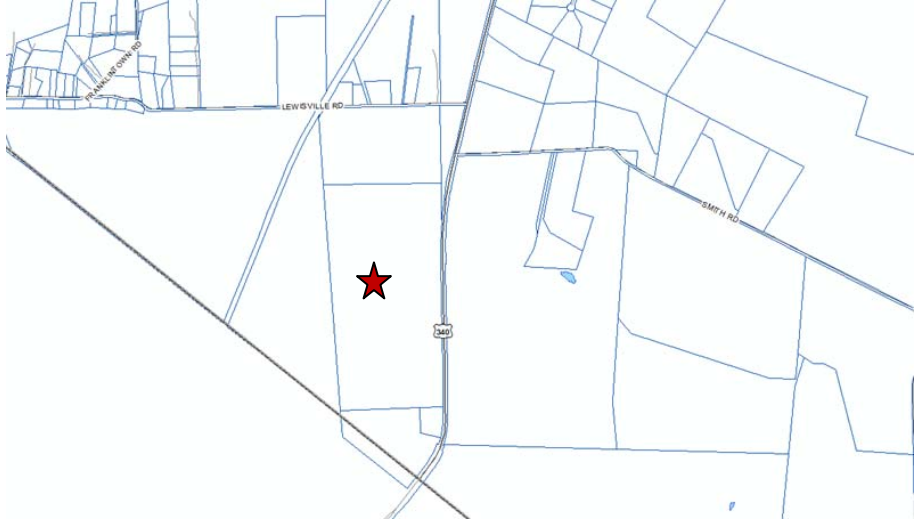
1. Highway Entrance Permit.
2. The plat states the WVDOH has a 30 foot right-of-way over Shepherd Grade Road. However, the plat also shows Holsteiner Way and Hunter Jumper Way both having a right-of-way to the center of Shepherd Grade Road. It appears that the two right-of-ways are overlapping. The applicant demonstrates that there are no conflict/legal issues with this overlap of this right-of-way for all parties.

# STAFF REPORT

## Jefferson County Planning Commission Meeting

January 10, 2012

Item #6 Request by Mark O'Dell (340 Defense Shooting Range) for a waiver from Subdivision Regulations Sections 22.208 and Appendix B 9.6(C) requiring sidewalks to be provided in non-residential development and from Appendix B Section 2.3 and Section 9.5 to allow for a smaller required width of the access and a lesser depth of asphalt.

APPLICANT:	Mark O'Dell (340 Defense Shooting Range)
OWNER :	Mark O'Dell
DEVELOPER:	Same
SURVEYOR/ENGINEER:	N/A
PROPERTY LOCATION:	Located on Route 340 South approximately ¼ mile north of the Virginia State Line.
LEGAL DESCRIPTION:	District: Kabletown; Map: 29; Parcel: 5 
ZONING DISTRICT:	Zoning Map Designation: Rural
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North:</i> R <i>South:</i> R <i>East:</i> R <i>West:</i> R
LOT AREA:	89.647 Acres
HISTORY:	<p>August 2009 – Planning staff was made aware of 340 Shooting Range in operation.</p> <p>September 2009 – Pre-proposal Conference/Violation Meeting was held between staff and applicant. The determination was made that a Shooting Range was a principle permitted use in the Industrial-Commercial District. A Site Plan would be required.</p> <p>October 2009 – An appeal of the use determination was submitted.</p> <p>November 2009 – The BZA heard the appeal and upheld the Zoning Administrator’s determination by a vote of 3 to 2.</p> <p>May 2010 – Initial draft of the site plan was submitted and the first review was completed.</p> <p>October 2011 – Verbal complaints of neighbors that visited the office brought attention to the continued operation of the range without and</p>

# STAFF REPORT

## Jefferson County Planning Commission Meeting

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	approved site plan. The owner was notified that the shooting range may not operate until the project had an approved site plan and had been bonded in order to be issued a building permit. Ongoing – Staff and applicant have remained in communication to bring the project into conformance by February 1, 2012 December 9, 2011 – Site plan was resubmitted for 2 <sup>nd</sup> review
PROPOSED ACTIVITY:	Shooting Range

### Site Plan Details:

Currently the applicant is operating in violation and the purpose of the 340 Defense Shooting Range site plan is to bring the applicant into compliance with Jefferson County land use regulations. The site plan is showing the existing 4 shooting ranges. Currently existing on the site is mulch operation that was approved under a previous site plan.

Applicant is requesting the following two waivers from site plan standards as required in the Jefferson County Subdivision and Land Development Regulations:

1. Sections 22.208 and Appendix B 9.6(C) requiring sidewalks to be provided in non-residential developments
2. Appendix B Section 2.3 and Section 9.5 requiring paved driveways.

### Planning & Zoning Department Report

Each waiver will be reviewed separately. Concerning the sidewalk waiver, the applicant is proposing to show a 10' pedestrian/bike path easement across the front of the property along US 340.

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

*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.*

Relief from the sidewalk requirement will provide no increase or decrease in public or County benefit.

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

The waiver will not impact the public health, safety or welfare of the public or affect adjacent owners and residents. Since the facility is closed to the public and public use is limited, there is no impact to the public or neighbors.

While sidewalks often provide a safe means of travel for pedestrians and increase public health, in this instance, the potential benefit is limited at this time. Based on the limited use of this site as noted above and the little existing pedestrian activity, such a benefit would be minimal.

# STAFF REPORT

## Jefferson County Planning Commission Meeting

January 10, 2012

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

While the intent of the Subdivision Regulations is to require sidewalks, there are extenuating circumstances where it may not be practical to do so at this point and time. The intent of the Regulations is to have useable sidewalks that provide value to the community. As previously indicated, this site is not open to the public.

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

The effect of the waiver would be neutral, as it relates to quality and character. While sidewalks are nearly always a universal good attribute to a community, appropriate time of installing such sidewalks is important.

### **Planning and Zoning Recommendation**

In the Planning profession, sidewalks are usually considered strongly desirable as they allow for safe pedestrian travel and the added health benefits achieved through walking in both residential and non-residential areas. It is difficult to argue against the need and value for sidewalks in most cases; however, in Rural Planning, there are some valuable planning principles that can be difficult to effectively apply in all instances. Rural planning of villages or modifications of existing non-conforming uses involves different principles than planning for farmstead preservation. Different tools and techniques need to be applied in those instances.

The request for the waiver of sidewalks in this instance requires some additional consideration because of the type of development and where it is located. Currently this area is limited in pedestrian activity and an auto dependent area. As such, requiring that sidewalks be installed in this area would serve a minimal public benefit. Consequently, the installation of sidewalks is not appropriate and providing a pedestrian/bike easement is a reasonable.

However, it's not unreasonable to believe that in the future this site and surrounding area could be develop at a higher intensity where sidewalks area appropriate. This waiver is *only* for this this specific project, the US 340 Defense Shooting Range. With any additional site plan and/or subdivision of the property, the need for installation of sidewalks or a trail will be reviewed at that time.

As a condition of approval, staff recommends that a ten (10) foot pedestrian/bike easement shall be required along US 340 of the O'Dell Property. An easement will be shown on the across the property in this site plan.

Planners often advocate for sidewalks that initially "lead to nowhere". With good planning, these sidewalks will eventually connect to other locations. It is often true that sidewalks do eventually connect to other paths. However, in this particular location, this report has delineated why sidewalks are unnecessary at this time. This should not be considered a blanket recommendation that sidewalks are not appropriate in rural areas and any such requests should be carefully reviewed on a case-by-case basis.

# STAFF REPORT

## Jefferson County Planning Commission Meeting

January 10, 2012

### **Waiver of pavement width and pavement profile**

The requirement for an internal driveway for site plans is 24 feet wide (12 foot travel lanes each direction), 1.5 inches of one pavement course, 2.5 inches of base pavement and 9 inches of gravel base. Applicant is proposing 16 foot gravel drive (8 foot travel lanes each direction), 6 inches of gravel for the drive aisle and 2 foot shoulders with drainage swales.

***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.***

Not increasing the width of the access aisle will not result in any maintenance cost for the County, since the access easement is not maintained by the County or the state.

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

The waiver will not adversely affect the public health, safety or welfare or the rights of adjacent property owners or residents. The nature of this business and members of this operation is low intensity. As such a reduction of the standards has merit.

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

The intent of the Regulations is to have reasonable access to a site or lot. While the width of the access and depth of material proposed does not meet the requirement detailed in the Subdivision Regulations, it does meet the intent to provide safe and usable access.

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

The character of the area would retain a more natural, rural feel if the waiver were granted.

### **Planning and Zoning Recommendation**

Planning and Zoning Staff recommends granting the waiver regarding the width of the access and depth of material. The waiver for this request applies only to this site plan and its current operation. If a site plan expansion were to occur at a future date, the driveway standards would be reviewed again. This waiver is based on the limited number of users to the site. A substantial increase in traffic and users to the site could result in the proposed drive aisle to deteriorate rapidly. As with any waiver, it's important to note that each request is a case by case review and any attempt to make a comparison to another site is defective.

Engineer's Report  
Planning Commission Meeting  
January 10, 2012  
340 Defense Waivers

The applicant is requesting a waiver from the 2008 Jefferson County Subdivision Ordinance as follows:

Section 9.6 C of the Curbs, Gutters and Sidewalks of the 2008 Jefferson County Subdivision Ordinance requires that a sidewalk be continued from any existing public sidewalk or pedestrian conveyance between existing developments on either side of the proposed site.

- There are no existing sidewalks or pedestrian conveyances on either side of the project. Therefore, no extension of sidewalk is required. Engineering believes the applicant meets this requirement.

Section 22.208 of Sidewalks of the 2008 Jefferson County Subdivision Ordinance states under subsection A that sidewalks shall be located within townhouse or multi-family residential developments and any non-residential development. However, it also state under subsection C "In general, sidewalks shall be constructed concurrent with street construction"

- Engineering understanding is that sidewalks are required only for non-residential subdivision only. Engineering feels that non-residential development should have called a non-residential subdivision because of subsection C state sidewalks shall be constructed concurrent with street construction. The applicant is not proposing any street construction but an internal driveway. Therefore, sidewalks are not required. Engineering believes the applicant is meeting this requirement.

Appendix B section 9.5 of the Parking Area, Entrance and Internal Driveway Paving of the 2008 Jefferson County Subdivision Ordinance states that a site development's parking lots, entrances, and internal driveways for use by the public shall be bituminous asphalt or concrete paved. Paving section shall be approved by the engineer. The minimum acceptable bituminous asphalt paving section is 1 1/2 inch of asphalt surface course, 2 1/2 inches of asphalt base course, and 9 inches of aggregate base course.

- The site plan is proposing to have public on site; therefore, the ordinance requires it to be paved. The ordinance requires a minimum thickness as stated above. Engineering recommends denial of this waiver. However, if the Planning

Commission is inclined to grant this waiver, the applicant should demonstrate what thicknesses of asphalt and gravel is sufficient for this type of use.

In summary, the Engineering Department believes the applicant meets the requirement of the ordinance for both sections 9.6 and 22.208 that requires sidewalks. As for the paved internal driveway section 9.5, the applicant has not demonstrated a decrease in pavement thickness is adequate for the site intended use; therefore, Engineering recommends denial of this waiver.

PCW12-01

Jefferson County Planning Commission  
116 East Washington Street  
Charles Town, WV 25414

**WAIVER REQUEST FORM**

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

Property Owner (s): Mark O'Dell

Address: 267 Selton Horst Lane  
Blue mount, VA 20135

Phone Number: 304-725-1700

Location of Property: Rte 340 approx 1/4 north of the  
Virginia State Line

Lot Size: 90 AC +/-

Deed Book Reference: Deed Book #: 968 Page #: 1212

Tax Map Reference: District: Kabletown Map: 29 Parcel: 5

Zoning District: Industrial-Commercial

Section of Ordinance: Sec. 22.208 & App. A 9.6.C

Briefly describe (in your own words) by specific reference to a sketch (in accordance with the following paragraph) the nature of your waiver request.

The owner requests to provide a 10' easement  
for a bike/walk per the cited Ordinance sections  
but not to construct said walkway as part  
of this site plan.

**RECEIVED**

DEC 20 2011

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

Sketch on a separate 8 1/2" x 11" sheet of paper the shape and location of the 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 note waivers to the Subdivision Regulations must comply with Division 24.300 of the Subdivision Regulations. To justify your waiver request, please address the following items:

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

The easement will permit expansion of any trail or walk should one be need in the future

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

The present use of the area and proposed use will not require the walk. Adjoin properties do not have existing walkways to connect.

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

The intent is to provide a bike/walk way. None yet exist north or south of this site. The easement will provide extension should any path/walkway be constructed.

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

This easement will provide for a future path/walkway to reflect any future development

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

For Owner [Signature] Agent  
Signature of Property Owner

**For Official Use Only**

Amount of Fees Paid: \_\_\_\_\_

Date of Meeting/Public Hearing: \_\_\_\_\_

Official/Administrative Body: \_\_\_\_\_

Property to be posted by: \_\_\_\_\_

Adjoiner letters to be mailed by: \_\_\_\_\_

Official Signature and Seal: \_\_\_\_\_

PCW12-02

Jefferson County Planning Commission  
116 East Washington Street  
Charles Town, WV 25414

**WAIVER REQUEST FORM**

**RECEIVED**

DEC 20 2011

JEFFERSON COUNTY  
PLANNING AND ENGINEERING

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

Property Owner (s): Mark O'Dell

Address: 267 Selton Horst Lane  
Blue mont , VA 20135

Phone Number: 304-725-1700

Location of Property: Rt. 340 approx 1/4 mile north of Virginia  
Line

Lot Size: 90 ac +/-

Deed Book Reference: Deed Book #: 968 Page #: 1212

Tax Map Reference: District: Kabletown Map: 29 Parcel: 5

Zoning District: Industrial - Commercial

Section of Ordinance: App. B Section 9.5

Briefly describe (in your own words) by specific reference to a sketch (in accordance with the following paragraph) the nature of your waiver request.

A request to reduce the internal road width and  
pavement section. The typical commercial roadway  
is 22 feet wide with asphalt pavement.

The proposed use does not warrant this leveve of  
roadway. The expected use will be about 20 trips  
per day, on the peak day. The road is for members  
only and would not produce "off the street traffic".

Sketch on a separate 8 1/2" x 11" sheet of paper the shape and location of the 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 note waivers to the Subdivision Regulations must comply with Division 24.300 of the Subdivision Regulations. To justify your waiver request, please address the following items:

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

The reduced road section and width will reduce  
the impervious area.

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

This request is for internal road to be used by  
members only. The public at large are not affected.

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

The reduction of the street does not impact this  
type of use. The full street section is for more  
active commercial activity.

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

The reduced section is an example of a  
lower impact development.

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

for owner D. Hoffman AGENT  
Signature of Property Owner

**For Official Use Only**

Amount of Fees Paid: \_\_\_\_\_

Date of Meeting/Public Hearing: \_\_\_\_\_

Official/Administrative Body: \_\_\_\_\_

Property to be posted by: \_\_\_\_\_

Adjoiner letters to be mailed by: \_\_\_\_\_

Official Signature and Seal: \_\_\_\_\_

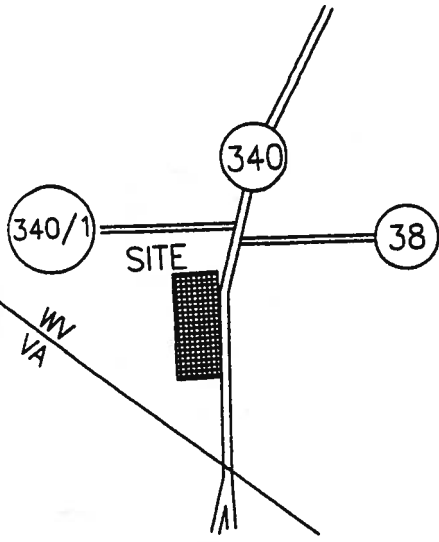
PCW12-01  
PCW12-02

RECEIVED

DEC 20 2011

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

1in = 2000ft



VICINITY MAP

Development/Owner

Mark O'Dell  
267 SELTON HORST LANE  
BLUEMONT, VA 20135  
304-725-1700



9 Dec 11

JEFFERY-ENGINEERING  
COURT SUITE B  
CHARLESTON, WV 25405  
304-596-2543

REPRODUCED COPY RIGHT LAW AND IS  
FOR CONSTRUCTION WITHOUT WRITTEN  
PERMISSION, P.F.

**JEFFERSON COUNTY, WEST VIRGINIA**  
**Department of Planning & Zoning**  
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**MEMO**

**TO:** Jefferson County Planning Commission  
**FROM:** Steve Barney, Zoning Administrator  
**DATE:** January 10, 2012  
**RE:** Outreach Regarding Recreational Uses

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**Background**

As part of the ongoing process of amending the Zoning Ordinance, Planning and Zoning Department staff initiated a stakeholder process to consider potential zoning ordinance text amendments related to recreational uses. Staff identified the need for these amendments following a series of recent inquiries regarding the establishment of various types of recreational land uses. The key issue is that, based on current Zoning Ordinance requirements, many recreational uses would be considered “commercial” uses. For this reason, these uses would not be permitted in the Rural zoning district without successful completion of the Conditional Use Permit process, including LESA evaluation and Board of Zoning Appeals approval. Because nearly all river frontage property in Jefferson County is in the Rural zoning district, current zoning requirements impede development of recreational uses in the vicinity of the two rivers.

**Current Status**

On October 21, 2011, the Department conducted an informal roundtable discussion regarding Recreational Uses. The purpose of this meeting was for County staff to hear comments from those in the community who currently operate (or seek to operate) a recreational use such as a camping, rafting, fishing, or boating facility or other recreational use, in addition to comments from other community stakeholders.

During the meeting, attendees noted that recreational industries benefit the County by generating tourism, jobs, and tax revenues. However, it was noted by many that such businesses can result in unwanted impacts to adjacent residential areas, such as traffic and noise. For this reason, many attendees at the meeting expressed concern with the idea of allowing commercial recreational land uses on property located in or adjacent to established single-family neighborhoods.

As a result of the large turnout at the October 21st meeting, there was not sufficient opportunity to hear comments from representatives of recreation-related businesses. For this reason, staff solicited additional input from business owners following the meeting.

Attached is a summary of comments heard during the October 21st meeting, as well as other comments provided to staff subsequent to the meeting.

The Planning and Zoning Department has also received numerous letters from residents and business representatives regarding the general issue of recreational uses. These letters can be viewed at the Department's offices.

**Next Steps**

I am proposing that the Commission review staff recommendations for possible amendments during its March meeting, and subsequently conduct a public hearing at its April or May meeting.

Please let me know if you need additional information.

Att: Summary of Comments Received Regarding Recreational Uses

## Summary of Comments Received Regarding Recreational Uses

### 1. River Access and River Usage

Questions were asked regarding whether properties zoned Rural and having river frontage could be used for river access for customers of river rafting tour companies. Staff has determined that this type of use of river frontage would constitute a commercial land use. Because this use is not listed as a principal permitted use in the Rural zoning district, approval of Conditional Use Permit by the Board of Zoning Appeals would be required prior to approval of a Zoning Certificate.

Many attendees expressed concerns that smaller local roads should not be used to transport boats and rafters for commercial river access, and that such access should not occur in established single-family neighborhoods.

Representatives of the river rafting industry have noted that there is a shortage of river access points within Jefferson County, especially on the Potomac River.

Concerns were also expressed regarding the capacity of the river for recreational rafting, and whether some type of system of permits and access times could be implemented to regulate the number and type of boats (e.g. jet skis) that use the river at any given time. Other concerns raised included trash along the river, noise from river users during evening hours, lack of availability of bathrooms for rafters, and associated water contamination issues.

### 2. Campgrounds

Campgrounds are not a permitted land use in the Rural zoning district. As such, they are considered to be a commercial land use, and establishment of a campground in the Rural District would require Board of Zoning Appeals approval of a Conditional Use Permit.

The Jefferson County Subdivision and Land Development Regulations requirements for campgrounds include standards such as curbs, gutters, and paved access drives. It was noted that these requirements represent a financial barrier to establishing a campground. Moreover, campground industry representatives have indicated to staff that campground users prefer campgrounds with a natural look and feel, with a minimum of paving. It is also worth noting that asphalt located near a river could increase runoff into the water. Industry representatives have also stated that camping is no longer purely a “tent-site” industry, and that many of today’s campground users prefer cabins and other lodging types instead of tents, and amenities such as wi-fi.

All campgrounds must meet all applicable Jefferson County Health Department and West Virginia Health Department standards.

3. Park Facilities

It was expressed that it would be appropriate to locate some recreational uses (such as commercial river access points) in a public park, rather than on privately owned property. This could help to ensure that access for such land uses can be provided on adequate roadways, and could reduce the incentive for recreational business operators to seek locations within established neighborhoods.

Representatives of the Parks Department noted that the department is proposing to conduct a master plan for the Jefferson County parks system, including both public and private facilities. The Department intends to conduct a needs assessment during the coming year, and subsequently conduct a master planning process. The Department has established a land acquisition committee, and has evaluated some properties with river frontage, but no acquisitions are currently planned.

Regarding existing parks, the department is currently renovating Moulton Park (located on the Shenandoah River), and developing a new park on Hite Road in the County's interior.

4. Mobile Food Vending

Several business representatives have approached the County seeking to establish mobile food service businesses in various locations, including adjacent to the Shenandoah River. The Zoning Ordinance currently does not permit such businesses to operate outside of a commercial district. Additionally, the Subdivision and Land Development Regulations would require a site plan, paved parking, and other standards for such a business. Business representatives have noted that mobile food vending could be a beneficial companion land use for river rafting enterprises.

5. Floodplain

The Jefferson County Floodplain Ordinance, developed in accordance with FEMA guidelines, requires that all development (including the establishment of parking areas) occur outside of the floodplain. There is not a variance process for this requirement.

The Floodplain Ordinance allows for recreational vehicles to be placed in the floodplain, with certain restrictions. Additionally, bathrooms located in the floodplain need to be portable so that they can be removed in case of a flood.

6. Zip Line Facility near Potomac River

There was discussion regarding the zip line facility installed on a property with Rural zoning in the Bakerton area, adjacent to the Potomac River. Staff clarified that because the property owner had provided documentation that this property had an uninterrupted history of commercial use prior to the 1988 adoption of the Zoning Ordinance, the commercial use of the site was considered nonconforming. For this reason, staff determined that the Planning and Zoning Department could approve a change in nonconforming use to allow the zip line.

7. Agricultural Tourism

Support was expressed for land uses that could benefit from the County's rural landscape, such as wineries, brew pubs, and facilities for wedding receptions and similar events. Staff noted that future amendments to the Zoning Ordinance are proposed that would address these and other types of appropriate Rural commercial uses.

8. Trails

Interest was expressed in the availability of more trails and bikeways, and it was noted that a task force to address these facilities would be beneficial [note: Such as task force has been established via a separate process].

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**Department of Planning & Zoning**  
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Fax: (304) 728-8126

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**MEMO**

**TO:** Planning Commission Members  
**FROM:** Jennie Brockman, AICP, Director, Planning and Zoning Departments  
**DATE:** January 10, 2012  
**RE:** Overview of the following Alternative Amendments to Articles 20 and 26 of the Jefferson County Subdivision and Land Development Regulations regarding the Maximum Square Footage Requirements for a Minor Site Plan in each Zoning District

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On July 26, 2011, after receiving public input, the Jefferson County Planning Commission voted to recommend to the County Commission a proposed Amendment to Articles 20 and 26 of the Jefferson County Subdivision and Land Development Regulations regarding the maximum square footage requirements that differentiate between a major and a minor site plan in each zoning district. The County Commission reviewed and discussed the version forwarded to them by the Planning Commission at their August 18, 2011 meeting and held a Public Hearing on this draft on September 15, 2011. The County Commission then held discussion workshops on this amendment on October 6, 2011, November 3, 2011 and November 10, 2011 and subsequently recommended that the staff incorporate their various ideas into additional alternatives.

Attached is a summary chart of the four alternatives drafted based on the various County Commission thoughts on how to address the need to broaden the developments that would qualify for review under the Minor Site Plan process (which requires no public hearing). Following the table are four separate memos, each of which detail one of the four alternatives with the exact ordinance amendment language that would be required to move forward with that version.

This is being brought to the Planning Commission as an informational item and to receive some feedback from Commission members about these alternatives. These alternatives will all be forwarded to the County Commission for their January 19, 2012 meeting.

	<u>Minor Process</u> New Site Plan (Undeveloped land)	<u>Minor Process</u> Addition to existing building(s)	<u>Major Process</u> New Site Plan (Undeveloped land)	<u>Major Process</u> Addition to existing building(s)	<u>Addition within Major</u> Site Plan definition that is permitted to process as a minor
<b>Scenario 1</b> "Concept Plan"	Under 5,000 sq. ft. process strictly administrative <u>5,000 - 50,000 sq. ft.</u> Concept Plan and remaining process as minor	(See cell to left)	50,000 sq. ft. or greater	Additions over 50,000 sq. ft.	If building(s) are above 50k, at time of adoption, sites shall be permitted a one-time 25k addition as minor site plan with a concept plan
<b>Scenario 2</b> "New Site and addition same size"	Buildings totaling no more than: 7,500 sq. ft. in V and RG 15,000 sq. ft. in Rural/RLIC 30,000 sq. ft. in I/C	A one-time site plan expansion at time of adoption, regardless of existing size, is permitted as a minor up to: 7,500 sq. ft. in V and RG 15,000 sq. ft. in Rural/RLIC 30,000 sq. ft. in I/C	Greater than: 7,500 sq. ft. in V and RG 15,000 sq. ft. in Rural/RLIC 30,000 sq. ft. in I/C	Greater than: 7,500 sq. ft. in V and RG 15,000 sq. ft. in Rural/RLIC 30,000 sq. ft. in I/C -or- Have previously utilized the one time expansion permitted in the minor process	
<b>Scenario 3</b> "Building to land ratio"	10,000 square feet of building(s) for every acre of land. Any fraction of an acre shall be proportioned to allotted sq. ft.	(See cell to left)	Building(s) over 10,000 square feet per acre of land or any fraction of an acre and building ratio thereof	(See cell to right)	If existing site exceeds size of a major process, for a new site plan, at time of adoption, a one- time site plan expansion is permitted as a minor up to: 10,000 sq. ft.
<b>Scenario 4</b> "One time 15,000 sq. ft. addition"	Building(s) totaling no more than: 7,500 sq. ft. in V and RG 15,000 sq. ft. in Rural/RLIC 30,000 sq. ft. in I/C	A one-time site plan expansion at time of adoption, regardless of existing size, is permitted as a minor up to: 15,000 sq. ft.	Buildings totaling more than: 7,500 sq. ft. in V and RG 15,000 sq. ft. in Rural/RLIC 30,000 sq. ft. in I/C	Additions over 15,000 -or- Have previously utilized the one time expansion permitted in the minor process	

Square footage is expressed in Gross Floor Area (GFA)

Building(s) shall be defined as both new and existing

**JEFFERSON COUNTY, WEST VIRGINIA**  
**Departments of Planning & Zoning**  
116 East Washington Street, 2<sup>nd</sup> Floor  
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Charles Town, West Virginia 25414

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**Phone:** (304) 728-3228  
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MEMORANDUM

**TO:** Jefferson County Planning Commission and County Commission  
**FROM:** Seth Rivard, County Planner  
**DATE:** January 6, 2012  
**SUBJECT:** **Option 1 (Staff Recommended)** – Proposed Subdivision Amendment for the Determination of a Minor or Major Site Plan

BACKGROUND

Since June of 2011, Staff has been working on amendments to Articles 20 and 26 of the Subdivision Regulations pertaining to the square footage at which a project is either a major or minor site plan. In conjunction with the Planning Commission, County Commission, and public input, Staff has incorporated those comments and suggestions into the proposed changes.

At the November 17, 2011 County Commission meeting, that body asked Staff to take a further look at the above noted amendments and provide the County Commission with a series of options based on discussions that had occurred over the previous few months.

Currently, any site plan where new and existing building area exceeds 5,000 square feet is processed as a major site plan, which requires multiple additional steps in the process and two public hearings as compared to the minor process, which has no public hearings.

DETAILS OF OPTION 1 – Concept Plan Public Workshop and Administrative Review

The option presented below, and the option recommended by Staff, would allow all site plans below 5,000 square feet gross floor area to process administratively. Between 5,000 square feet and 50,000 square feet, a site plan would have concept plan public hearing and all remaining processes would be administratively reviewed. Site plans that are 50,000 square feet and greater would process as a major site plan.

Staff believes this option would balance the needs of the public for a public workshop at a concept plan stage and the needs of the applicant to proceed more expeditiously through the site development process. This proposed amendment would significantly reduce the length of approval for a site plan that is of considerable size, yet allow the public an opportunity for review and potential input. In this scenario, the applicant would be aware of any concerns on the front end of a project before significant expenditure of resources occurred, rather than concerns that may arise toward the end of a project, where significant investment has occurred.

With site plans below 5,000 square feet gross floor area being strictly administratively approved and site plans in the range of 5,000 to 50,000 only having a concept plan public workshop, most site plans will process under this streamlined process.

Shown below are the sections from the Subdivision and Land Development Regulations with the proposed text amendments to address the previously stated issues shown in blue.

### **Sec. 20.203 Minor Site Development**

*Minor Site Developments* are those proposals that do not require the development of new infrastructure or the extension of existing off-tract infrastructure ~~and where there is no subdivision into separate lots.~~ If the development requires easements for drainage or other purposes, private roads, or parking, and access to public roads is involved that serve one or more land uses, it is a site development. Minor site development proposes one or more of the following:

- (1) Building(s), both new and additions to existing, where all structures located on the parcel total less than 5,000 square feet gross floor area (GFA) on any site; ~~shall process administratively and building(s), both new and additions to existing, where all structures located on the parcel total more than 5,000 and under 50,000 square feet gross floor area (GFA) on any site shall:~~
  - Process a concept plan with a public workshop and all remaining site plan review processes shall be administratively approved.
  - In the event that any condition(s) placed upon as site plan during the concept plan public workshop that cannot be addressed or resolved administratively, such condition(s) placed upon the concept plan at the public workshop shall return to the Planning Commission for resolution.
  - Building(s), both new and additions to existing that exceed 50,000 square feet gross floor area at time this adoption, ~~(insert adoption date), shall be permitted a one-time expansion up to 25,000 square feet gross floor area with a concept plan public workshop.~~
- (2) Building(s), both new and additions to existing, regardless of size, when located in a business and/or industrial park on a lot within an approved major non-residential subdivision with master planned roads and stormwater. ~~Section 20.203, Sub-Section (1) does not apply to this provision;~~
- (3) ~~Addition(s) to existing development of less than ten percent of existing GFA or additions less than 10,000 square feet GFA, whichever is less; or~~
- (4) apartment or multi-family development of nine ~~eight~~ or less dwelling units.

Existing single family structures used as single family structures and existing agricultural structures are not included in the square footage computations noted in this section.

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

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

### **Division 26.200 Definitions of Terms**

**Minor Site Plan.** A plan that follows the minor site development process and that will not require the development of new infrastructure or the extension of existing off-tract infrastructure, that proposes one or more of the following:

- A. Building(s), both new and additions to existing, where all structures located on the parcel total less than 5,000 square feet gross floor area (GFA) on any site; ~~shall process administratively and building(s),~~

both new and additions to existing, where all structures located on the parcel total more than 5,000 and less than 50,000 square feet gross floor area (GFA) on any site shall:

- Process a concept plan with a public hearing and all remaining site plan review processes shall be administratively approved.
- In the event that any condition(s) placed upon as site plan during the concept plan public workshop that cannot be addressed or resolved administratively, such condition(s) placed upon the concept plan at the public workshop shall return to the Planning Commission for resolution.
- Building(s), both new and additions to existing that exceed 50,000 square feet gross floor area at time this adoption, (adoption date), shall be permitted a one-time expansion up to 25,000 square feet gross floor area with a concept plan public hearing.

B. Building(s), both new and additions to existing, regardless of size, when located in a business and/or industrial park on a lot within an approved major **non-residential** subdivision with master planned roads and stormwater. Sub-Section A of this definition does not apply to this provision;

~~C. Addition(s) to existing development of less than ten percent of existing GFA or additions less than 10,000 square feet GFA, whichever is less; or~~

D. Apartment or multi-family development of nine ~~eight~~ or less dwelling units.

Minor Site Plans do not include the design, erection or addition to detached single family dwelling units when only one dwelling unit is located on an established lot.

Existing single family structures used as single family structures and existing agricultural structures are not included in the square footage computations noted in this definition.

**Site Plan, Minor.** A plan that follows the minor site development process and that will not require the development of new infrastructure or the extension of existing off-tract infrastructure, that proposes one or more of the following:

A. Building(s), both new and additions to existing, where all structures located on the parcel total less than 5,000 square feet gross floor area (GFA) on any site; shall process administratively and building(s), both new and additions to existing, where all structures located on the parcel total more than 5,000 and less than 50,000 square feet gross floor area (GFA) on any site shall:

- Process a concept plan with a public hearing and all remaining site plan review processes shall be administratively approved.
- In the event that any condition(s) placed upon as site plan during the concept plan public workshop that cannot be addressed or resolved administratively, such condition(s) placed upon the concept plan at the public workshop shall return to the Planning Commission for resolution.
- Building(s), both new and additions to existing that exceed 50,000 square feet gross floor area at time this adoption, (adoption date), shall be permitted a one-time expansion up to 25,000 square feet gross floor area with a concept plan public hearing.

B. Building(s), both new and additions to existing, regardless of size, when located in a business and/or industrial park on a lot within an approved major **non-residential** subdivision with master planned roads and stormwater. Sub-Section A of this definition does not apply to this provision;

~~C. Addition(s) to existing development of less than ten percent of existing GFA or additions less than 10,000 square feet GFA, whichever is less; or~~

D. Apartment or multi-family development of nine ~~eight~~ or less dwelling units.

Minor Site Plans do not include the design, erection or addition to detached single family dwelling units when only one dwelling unit is located on an established lot.

Existing single family structures used as single family structures and existing agricultural structures are not included in the square footage computations noted in this definition.

**Major Site Plan.** A plan that follows the major site development process and proposes one or more of the following:

A. A new public or private street or dedication to public use of an existing street;

B. New building(s) where all structures located on the parcel are equal to or total more than 50,000 square feet or more of GFA on any site;

- except building(s), both new and additions to existing, regardless of size, when located in a business and/or industrial park on a lot within an approved major non-residential subdivision with master planned roads and stormwater;

~~C. Addition(s) to existing development of ten percent or more of existing GFA or with additions of 10,000 square feet, whichever is greater, or more of GFA;~~

D. Apartment or multi-family development of ten or more dwelling units; or

E. A heavy industrial use.

Existing single family structures used as single family structures and existing agricultural structures are not included in the square footage computations noted in this definition.

**Site Plan, Major.** A plan that follows the major site development process and proposes one or more of the following:

A. A new public or private street or dedication to public use of an existing street;

B. Building(s), both new and additions to existing, where all structures located on the parcel are equal to or total more than 50,000 square feet or more of GFA on any site;

- except building(s), both new and additions to existing, regardless of size, when located in a business and/or industrial park on a lot within an approved major non-residential subdivision with master planned roads and stormwater;

~~C. Addition(s) to existing development of ten percent or more of existing GFA or with additions of 10,000 square feet, whichever is greater, or more of GFA;~~

D. Apartment or multi-family development of ten or more dwelling units; or

E. A heavy industrial use.

Existing single family structures used as single family structures and existing agricultural structures are not included in the square footage computations noted in this definition.

# JEFFERSON COUNTY, WEST VIRGINIA

## Departments of Planning & Zoning

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### MEMORANDUM

TO: Jefferson County Planning Commission and County Commission  
FROM: Seth Rivard, County Planner  
DATE: January 6, 2012  
SUBJECT: **Option 2** – Proposed Subdivision Amendment for the Determination of a Minor or Major Site Plan

#### BACKGROUND

Since June of 2011, Staff has been working on amendments to Articles 20 and 26 of the Subdivision Regulations pertaining to the square footage at which a project is either a major or minor site plan. In conjunction with the Planning Commission, County Commission, and public input, Staff has incorporated those comments and suggestions into the proposed changes.

At the November 17, 2011 County Commission meeting, that body asked Staff to take a further look at the above noted amendments and provide the County Commission with a series of options based on discussions that had occurred over the previous few months.

Currently, any site plan where new and existing building area exceeds 5,000 square feet is processed as a major site plan, which requires multiple additional steps in the process and two public hearings as compared to the minor process, which has no public hearings.

#### DETAILS OF OPTION 2 – New Site Development and Additions to Existing Developments Utilize Same Square Footage

The option presented below would allow for incrementally larger site plans classified as a minor based on the Zoning District. The square foot gross floor area numbers presented below are the same as what has been proposed at the November 17, 2011. The change to this amendment is that existing site developments would be permitted a one-time equal size addition as a new site plans are allowed. For example, a new site plan in the Rural/Agricultural District would be permitted to build up to 15,000 square feet gross floor area (GFA) as a minor. An existing site with 20,000 square feet gross floor area (GFA) in the Rural/Agricultural District would be permitted to have an addition of 15,000 square feet gross floor area (GFA) as a minor. Any additional addition to this site would have to process as a major site plan.

If an applicant were to maximize the benefits of a minor process, in the Village and Residential Growth Districts a new site plan of 7,500 square feet gross floor area (GFA) and a subsequent addition of 7,500 square feet gross floor area (GFA) would allow for a 15,000 square feet gross floor area (GFA) building as a minor. In the Rural/Agriculture and Residential/Light Industrial/ Commercial Districts a new site plan of 15,000 square feet gross floor area (GFA) and a subsequent addition of 15,000 square feet gross floor area (GFA) would allow for a 30,000 square feet gross floor area (GFA) building as a minor. In the Industrial/Commercial District a new site plan of 30,000 square feet gross floor area (GFA) and a subsequent addition of 30,000 square feet gross floor area (GFA) would allow for a 60,000 square feet gross floor area (GFA) building as a minor.

### Pros of this Option

It allows applicants who have a vacant site to build a structure much larger than is currently permitted under the current regulations as a minor and allows those with an existing site development to build a one-time addition that an applicant with a vacant site is permitted.

### Cons of this Option

A structure up 30,000 square feet gross floor area (GFA), which is over ½ an acre, can be built in the Rural/Agricultural District with no public input.

Existing sites are permitted a one-time site plan expansion as a minor process, all subsequent expansions would be processed a major.

### Comparison to or how staff preferred option is resolves above noted concerns

The Staff preferred Option 1 would address the concerns of this proposed amendment by allowing for larger structures, for both new and existing developments, with a concept plan public hearing, regardless of zoning district. The applicants and public's needs would be satisfied. The applicant would be less limited in reviewing potential options for new site development and future site expansions. The only district that would allow a larger square footage than the Staff preferred alternative is the Industrial/Commercial District. The amount of Industrial/Commercial District zoning districts is somewhat limited in the County and most of industrial/commercial activity is anticipated to take place in one of the two industrial parks, where site plans are already permitted as a minor process.

Shown below are the sections from the Subdivision and Land Development Regulations with the proposed text amendments to address the previously stated issues shown in blue.

#### **Sec. 20.203 Minor Site Development**

*Minor Site Developments* are those proposals that do not require the development of new infrastructure or the extension of existing off-tract infrastructure ~~and where there is no subdivision into separate lots.~~ If the development requires easements for drainage or other purposes, private roads, or parking, and access to public roads is involved that serve one or more land uses, it is a site development. Minor site development proposes one or more of the following:

(1) New building(s) on a vacant lot, where all structures located on the parcel **totaling no more than:** ~~total less than 5,000 square feet gross floor area (GFA) on any site;~~

- 7,500 square feet gross floor area (GFA) on any site in the Village and Residential Growth Districts.
- 15,000 square feet gross floor area (GFA) on any site in the Rural/Agriculture and Residential/Light Industrial/ Commercial Districts.
- 30,000 square feet gross floor area (GFA) on any site in the Industrial/Commercial District.

(2) Building(s), both new and additions to existing, regardless of size, when located in a business and/or industrial park on a lot within an approved major non-residential subdivision with master planned roads and stormwater. **Section 20.203, Sub-Sections (1) and (3) do not apply to this provision;**

(3) Existing buildings, regardless of existing size, noted in 20.203, Sub-Section (1) shall be entitled to a one time addition at time this adoption, **(insert adoption date)**, as a minor process up to: ~~Addition(s) to existing development of less than ten percent of existing GFA or additions less than 10,000 square feet GFA, whichever is less; or~~ **Addition(s) to existing development of less than ten percent of existing GFA or additions less than 10,000 square feet GFA, whichever is less; or**

- 7,500 square feet gross floor area (GFA) on any site in the Village and Residential Growth Districts.
- 15,000 square feet gross floor area (GFA) on any site in the Rural/Agriculture and Residential/Light Industrial/ Commercial Districts.
- 30,000 square feet gross floor area (GFA) on any site in the Industrial/Commercial District.

(4) apartment or multi-family development of nine ~~eight~~ or less dwelling units.

Existing single family structures used as single family structures and existing agricultural structures are not included in the square footage computations noted in this section.

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

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

### **Division 26.200 Definitions of Terms**

**Minor Site Plan.** A plan that follows the minor site development process and that will not require the development of new infrastructure or the extension of existing off-tract infrastructure, that proposes one or more of the following:

A. New building(s) on a vacant lot, where all structures located on the ~~parcel totaling no more than: total less than 5,000 square feet gross floor area (GFA) on any site;~~ **parcel totaling no more than:**

- 7,500 square feet gross floor area (GFA) on any site in the Village and Residential Growth Districts.
- 15,000 square feet gross floor area (GFA) on any site in the Rural/Agriculture and Residential/Light Industrial/ Commercial Districts.
- 30,000 square feet gross floor area (GFA) on any site in the Industrial/Commercial District.

B. Building(s), both new and additions to existing, regardless of size, when located in a business and/or industrial park on a lot within an approved major **non-residential** subdivision with master planned roads and stormwater. Sub-Sections A and C of this definition do not apply to this provision;

C. Existing buildings, regardless of existing size, noted in 20.203, Sub-Section (1) shall be entitled to a one time addition at time this adoption, (insert adoption date), as a minor process up to: ~~Addition(s) to existing development of less than ten percent of existing GFA or additions less than 10,000 square feet GFA, whichever is less; or~~ **Addition(s) to existing development of less than ten percent of existing GFA or additions less than 10,000 square feet GFA, whichever is less; or**

- 7,500 square feet gross floor area (GFA) on any site in the Village and Residential Growth Districts.
- 15,000 square feet gross floor area (GFA) on any site in the Rural/Agriculture and Residential/Light Industrial/ Commercial Districts.
- 30,000 square feet gross floor area (GFA) on any site in the Industrial/Commercial District.

D. Apartment or multi-family development of nine ~~eight~~ or less dwelling units.

Minor Site Plans do not include the design, erection or addition to detached single family dwelling units when only one dwelling unit is located on an established lot.

Existing single family structures used as single family structures and existing agricultural structures are not included in the square footage computations noted in this definition.

**Site Plan, Minor.** A plan that follows the minor site development process and that will not require the development of new infrastructure or the extension of existing off-tract infrastructure, that proposes one or more of the following:

A. New building(s) on a vacant lot, where all structures located on the parcel totaling no more than: ~~total less than 5,000 square feet gross floor area (GFA) on any site;~~

- 7,500 square feet gross floor area (GFA) on any site in the Village and Residential Growth Districts.
- 15,000 square feet gross floor area (GFA) on any site in the Rural/Agriculture and Residential/Light Industrial/ Commercial Districts.
- 30,000 square feet gross floor area (GFA) on any site in the Industrial/Commercial District.

B. Building(s), both new and additions to existing, regardless of size, when located in a business and/or industrial park on a lot within an approved major non-residential subdivision with master planned roads and stormwater. Sub-Sections A and C of this definition do not apply to this provision;

C. Existing buildings, regardless of existing size, noted in 20.203, Sub-Section (1) shall be entitled to a one time addition at time this adoption, (insert adoption date), as a minor process up to: ~~Addition(s) to existing development of less than ten percent of existing GFA or additions less than 10,000 square feet GFA, whichever is less; or~~

- 7,500 square feet gross floor area (GFA) on any site in the Village and Residential Growth Districts.
- 15,000 square feet gross floor area (GFA) on any site in the Rural/Agriculture and Residential/Light Industrial/ Commercial Districts.
- 30,000 square feet gross floor area (GFA) on any site in the Industrial/Commercial District.

D. Apartment or multi-family development of nine ~~eight~~ or less dwelling units.

Minor Site Plans do not include the design, erection or addition to detached single family dwelling units when only one dwelling unit is located on an established lot.

Existing single family structures used as single family structures and existing agricultural structures are not included in the square footage computations noted in this definition.

**Major Site Plan.** A plan that follows the major site development process and proposes one or more of the following:

A. A new public or private street or dedication to public use of an existing street;

B. New building(s) on a vacant lot, where all structures located on the parcel are equal to or total more than: ~~5,000 square feet or more of GFA on any site;~~

- 7,500 square feet gross floor area (GFA) on any site in the Village and Residential Growth Districts.

- 15,000 square feet gross floor area (GFA) on any site in the Rural/Agriculture and Residential/Light Industrial/ Commercial Districts.
- 30,000 square feet gross floor area (GFA) on any site in the Industrial/Commercial District.
- except building(s), both new and additions to existing, regardless of size, when located in a business and/or industrial park on a lot within an approved major non-residential subdivision with master planned roads and stormwater;

C. Addition(s) to existing development of ~~more than: ten percent or more of existing GFA or with additions of 10,000 square feet or more of GFA;~~

- 7,500 square feet gross floor area (GFA) on any site in the Village and Residential Growth Districts;
- 15,000 square feet gross floor area (GFA) on any site in the Rural/Agriculture and Residential/Light Industrial/ Commercial Districts;
- 30,000 square feet gross floor area (GFA) on any site in the Industrial/Commercial District; or
- Have previously utilized the one-time expansion as permitted under the definition of a Minor Site Plan.

D. Apartment or multi-family development of ten or more dwelling units; or

E. A heavy industrial use.

Existing single family structures used as single family structures and existing agricultural structures are not included in the square footage computations noted in this definition.

**Site Plan, Major.** A plan that follows the major site development process and proposes one or more of the following:

A. A new public or private street or dedication to public use of an existing street;

B. New building(s) on a vacant lot, where all structures located on the parcel are equal to or total more than: ~~5,000 square feet or more of GFA on any site;~~

- 7,500 square feet gross floor area (GFA) on any site in the Village and Residential Growth Districts.
- 15,000 square feet gross floor area (GFA) on any site in the Rural/Agriculture and Residential/Light Industrial/ Commercial Districts.
- 30,000 square feet gross floor area (GFA) on any site in the Industrial/Commercial District.
- except building(s), both new and additions to existing, regardless of size, when located in a business and/or industrial park on a lot within an approved major non-residential subdivision with master planned roads and stormwater;

C. Addition(s) to existing development of ~~more than: ten percent or more of existing GFA or with additions of 10,000 square feet or more of GFA;~~

- 7,500 square feet gross floor area (GFA) on any site in the Village and Residential Growth Districts;
- 15,000 square feet gross floor area (GFA) on any site in the Rural/Agriculture and Residential/Light Industrial/ Commercial Districts;
- 30,000 square feet gross floor area (GFA) on any site in the Industrial/Commercial District; or
- Have previously utilized the one-time expansion as permitted under the definition of a Minor Site Plan.

D. Apartment or multi-family development of ten or more dwelling units; or

**E. A heavy industrial use.**

Existing single family structures used as single family structures and existing agricultural structures are not included in the square footage computations noted in this definition.

# JEFFERSON COUNTY, WEST VIRGINIA

## Departments of Planning & Zoning

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### MEMORANDUM

TO: Jefferson County Planning Commission and County Commission  
FROM: Seth Rivard, County Planner  
DATE: January 6, 2012  
SUBJECT: **Option 3** – Proposed Subdivision Amendment for the Determination of a Minor or Major Site Plan

#### BACKGROUND

Since June of 2011, Staff has been working on amendments to Articles 20 and 26 of the Subdivision Regulations pertaining to the square footage at which a project is either a major or minor site plan. In conjunction with the Planning Commission, County Commission, and public input, Staff has incorporated those comments and suggestions into the proposed changes.

At the November 17, 2011 County Commission meeting, that body asked Staff to take a further look at the above noted amendments and provide the County Commission with a series of options based on discussions that had occurred over the previous few months.

Currently, any site plan where new and existing building area exceeds 5,000 square feet is processed as a major site plan, which requires multiple additional steps in the process and two public hearings as compared to the minor process, which has no public hearings.

#### DETAILS OF OPTION 3 – 10,000 square foot of building(s) for every 1 acre of property

The option presented below would allow for incrementally larger site plans based on number of acres owned. For every one acre of lot, a 10,000 square feet gross floor area (GFA) structure could be built. Any fraction of an acre shall be proportioned to the allotted square feet gross floor area (GFA). For existing sites where buildings(s), both new and existing, exceeding 10,000 square feet gross floor area (GFA) per 1 acre of land, a one-time addition of 10,000 square feet gross floor area (GFA) is permitted.

#### Pros of this Option

It allows applicants who have a vacant site to build a structure larger than is currently permitted under the regulations as a minor and allows those with an existing site development to build a one-time addition as a minor. All subsequent expansions would be processed a major. The advantage of this proposal is that it is straight forward for applicants to understand and easy to administer.

#### Cons of this Option

A structure up 80,000 square feet gross floor area (GFA), or nearly 2 acres, can be built on 8 acres in any district with no public input.

For existing sites that exceed the proposed square footage of new sites, there is only a one-time site plan expansion permitted of 10,000 square feet gross floor area (GFA).

Comparison to or how staff preferred option is resolves above noted concerns

The Staff preferred Option 1 would address the concerns of this proposed amendment by allowing for larger structures, for both new and existing developments on a smaller lot, with a concept plan public hearing, regardless of zoning district. The applicants and public's needs would be satisfied. Under the preferred options, applicants would not need 1 acre for every 10,000 square feet. In the preferred scenario, an applicant could build a larger structure with less land. The trade off is that there is a Concept Plan Workshop. Additionally the applicant would be less limited in reviewing potential options for new site development and future site expansions.

Shown below are the sections from the Subdivision and Land Development Regulations with the proposed text amendments to address the previously stated issues shown in blue.

**Sec. 20.203 Minor Site Development**

*Minor Site Developments* are those proposals that do not require the development of new infrastructure or the extension of existing off-tract infrastructure ~~and where there is no subdivision into separate lots.~~ If the development requires easements for drainage or other purposes, private roads, or parking, and access to public roads is involved that serve one or more land uses, it is a site development. Minor site development proposes one or more of the following:

- (1) Building(s), both new and additions to existing, shall be permitted up to 10,000 square feet gross floor area (GFA) for every (1) acre of a lot. Any fraction of an acre shall be proportioned to the allotted square feet gross floor area (GFA). Building(s), both new and additions to existing that exceed 10,000 square feet gross floor area per 1 acre at time this adoption, (insert adoption date), shall be permitted a one-time expansion up to 10,000 square feet gross floor area with a concept plan public workshop. ~~where all structures located on the parcel total less than 5,000 square feet gross floor area (GFA) on any site;~~
- (2) Building(s), both new and additions to existing, regardless of size, when located in a business and/or industrial park on a lot within an approved major non-residential subdivision with master planned roads and stormwater. Section 20.203, Sub-Section (1) does not apply to this provision;
- (3) ~~Addition(s) to existing development of less than ten percent of existing GFA or additions less than 10,000 square feet GFA, whichever is less; or~~
- (4) apartment or multi-family development of nine ~~eight~~ or less dwelling units.

Existing single family structures used as single family structures and existing agricultural structures are not included in the square footage computations noted in this section.

**Sec. 20.204 Major Site Development**

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

## **Division 26.200 Definitions of Terms**

**Minor Site Plan.** A plan that follows the minor site development process and that will not require the development of new infrastructure or the extension of existing off-tract infrastructure, that proposes one or more of the following:

A. Building(s), both new and additions to existing, shall be permitted up to 10,000 square feet gross floor area (GFA) for every (1) acre of a lot. Any fraction of an acre shall be proportioned to the allotted square feet gross floor area (GFA). Building(s), both new and additions to existing that exceeds 10,000 square feet gross floor area per 1 acre at time this adoption, (insert adoption date), shall be permitted a one-time expansion up to 10,000 square feet gross floor area with a concept plan public workshop. ~~where all structures located on the parcel total less than 5,000 square feet gross floor area (GFA) on any site;~~

B. Building(s), both new and additions to existing, regardless of size, when located in a business and/or industrial park on a lot within an approved major **non-residential** subdivision with master planned roads and stormwater. Sub-Section A of this definition does not apply to this provision;

C. ~~Addition(s) to existing development of less than ten percent of existing GFA or additions less than 10,000 square feet GFA, whichever is less; or~~

D. Apartment or multi-family development of nine ~~eight~~ or less dwelling units.

Minor Site Plans do not include the design, erection or addition to detached single family dwelling units when only one dwelling unit is located on an established lot.

Existing single family structures used as single family structures and existing agricultural structures are not included in the square footage computations noted in this definition.

**Site Plan, Minor.** A plan that follows the minor site development process and that will not require the development of new infrastructure or the extension of existing off-tract infrastructure, that proposes one or more of the following:

A. Building(s), both new and additions to existing, shall be permitted up to 10,000 square feet gross floor area (GFA) for every (1) acre of a lot. Any fraction of an acre shall be proportioned to allotted square feet gross floor area (GFA). Building(s), both new and additions to existing that exceeds 10,000 square feet gross floor area per 1 acre at time this adoption, (insert adoption date), shall be permitted a one-time expansion up to 10,000 square feet gross floor area with a concept plan public workshop. ~~where all structures located on the parcel total less than 5,000 square feet gross floor area (GFA) on any site;~~

B. Building(s), both new and additions to existing, regardless of size, when located in a business and/or industrial park on a lot within an approved major **non-residential** subdivision with master planned roads and stormwater. Sub-Section A of this definition does not apply to this provision;

C. ~~Addition(s) to existing development of less than ten percent of existing GFA or additions less than 10,000 square feet GFA, whichever is less; or~~

D. Apartment or multi-family development of nine ~~eight~~ or less dwelling units.

Minor Site Plans do not include the design, erection or addition to detached single family dwelling units when only one dwelling unit is located on an established lot.

Existing single family structures used as single family structures and existing agricultural structures are not included in the square footage computations noted in this definition.

**Major Site Plan.** A plan that follows the major site development process and proposes one or more of the following:

A. A new public or private street or dedication to public use of an existing street;

B. Building(s), both new and additions to existing, over 10,000 square feet gross floor area (GFA) for every (1) acre of a lot or any fraction of an acre over permitted square feet gross floor area (GFA). ~~where all structures located on the parcel total less than 5,000 square feet gross floor area (GFA) on any site;~~

Except building(s), both new and additions to existing, regardless of size, when located in a business and/or industrial park on a lot within an approved major **non-residential** subdivision with master planned roads and stormwater;

C. Addition(s) to existing development **greater than:** ~~of ten percent or more of existing GFA or with additions of 10,000 square feet or more of GFA;~~

- 10,000 square foot gross floor area per 1 acre; or
- Have previously utilized the one-time expansion as permitted under the definition of a Minor Site Plan.

D. Apartment or multi-family development of ten or more dwelling units; or

E. A heavy industrial use.

Existing single family structures used as single family structures and existing agricultural structures are not included in the square footage computations noted in this definition.

**Site Plan, Major.** A plan that follows the major site development process and proposes one or more of the following:

A. A new public or private street or dedication to public use of an existing street;

B. Building(s), both new and additions to existing, over 10,000 square feet gross floor area (GFA) for every (1) acre of a lot or any fraction of an acre over permitted square feet gross floor area (GFA). ~~where all structures located on the parcel total less than 5,000 square feet gross floor area (GFA) on any site;~~

Except building(s), both new and additions to existing, regardless of size, when located in a business and/or industrial park on a lot within an approved major **non-residential** subdivision with master planned roads and stormwater;

C. Addition(s) to existing development **greater than:** ~~of ten percent or more of existing GFA or with additions of 10,000 square feet or more of GFA;~~

- 10,000 square foot gross floor area per 1 acre; or
- Have previously utilized the one-time expansion as permitted under the definition of a Minor Site Plan.

D. Apartment or multi-family development of ten or more dwelling units; or

E. A heavy industrial use.

Existing single family structures used as single family structures and existing agricultural structures are not included in the square footage computations noted in this definition.

# JEFFERSON COUNTY, WEST VIRGINIA

## Departments of Planning & Zoning

116 East Washington Street, 2<sup>nd</sup> Floor

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Phone: (304) 728-3228

Fax: (304) 728-8126

### MEMORANDUM

TO: Jefferson County Planning Commission and County Commission  
FROM: Seth Rivard, County Planner  
DATE: January 6, 2012  
SUBJECT: **Option 4** – Proposed Subdivision Amendment for the Determination of a Minor or Major Site Plan

#### BACKGROUND

Since June of 2011, Staff has been working on amendments to Articles 20 and 26 of the Subdivision Regulations pertaining to the square footage at which a project is either a major or minor site plan. In conjunction with the Planning Commission, County Commission, and public input, Staff has incorporated those comments and suggestions into the proposed changes.

At the November 17, 2011 County Commission meeting, that body asked Staff to take a further look at the above noted amendments and provide the County Commission with a series of options based on discussions that had occurred over the previous few months.

Currently, any site plan where new and existing building area exceeds 5,000 square feet is processed as a major site plan, which requires multiple additional steps in the process and two public hearings as compared to the minor process, which has no public hearings.

#### DETAILS OF OPTION 4 – 15,000 square foot addition

The option presented below would allow for one-time addition of 15,000 square feet gross floor area site plans to be classified as a minor. The square foot gross floor area numbers presented below are the same as what has been proposed at the November 17, 2011. The change to this amendment is that existing site developments would be permitted a one-time addition of 15,000 square feet gross floor area site plans to be classified as a minor. For example, a new site plan in the Rural/Agricultural District would be permitted to build up to 15,000 square feet gross floor area (GFA) as a minor. An existing site regardless of size in any district would be permitted to have an addition of 15,000 square feet gross floor area (GFA) as a minor. Any additional addition to this site would have to process as a major site plan.

#### Pros of this Option

It allows applicants who have a vacant site to build a structure much larger than is currently permitted under the regulations as a minor and allows those with an existing site development to build a one-time addition as a minor. The one-time addition is an equal 15,000 square feet gross floor area across all districts for ease of understanding and administration.

#### Cons of this Option

For existing sites that exceed the proposed square footage of new sites, there is only a one-time site plan expansion permitted.

A structure that up 30,000 square feet gross floor area (GFA), or over ½ an acre, can be built in the Rural/Agricultural District with no public input.

#### Comparison to or how staff preferred option is resolves above noted concerns/issues/short comings

The Staff preferred Option 1 would address the concerns of this proposed amendment by allowing for larger structures, for both new and existing developments, with a concept plan public hearing, regardless of zoning district. The applicants and publics needs would be satisfied. The applicant would be less limited in reviewing potential options for new site development and future site expansions.

Shown below are the sections from the Subdivision and Land Development Regulations with the proposed text amendments to address the previously stated issues shown in blue.

#### **Sec. 20.203 Minor Site Development**

*Minor Site Developments* are those proposals that do not require the development of new infrastructure or the extension of existing off-tract infrastructure ~~and where there is no subdivision into separate lots.~~ If the development requires easements for drainage or other purposes, private roads, or parking, and access to public roads is involved that serve one or more land uses, it is a site development. Minor site development proposes one or more of the following:

(1) **New building(s) on a vacant lot, Building(s), both new and additions to existing,** where all structures located on the parcel **totaling no more than: total less than 5,000 square feet gross floor area (GFA) on any site;**

- 7,500 square feet gross floor area (GFA) on any site in the Village and Residential Growth Districts.
- 15,000 square feet gross floor area (GFA) on any site in the Rural/Agriculture and Residential/Light Industrial/ Commercial Districts.
- 30,000 square feet gross floor area (GFA) on any site in the Industrial/Commercial District.

(2) Building(s), both new and additions to existing, regardless of size, when located in a business and/or industrial park on a lot within an approved major non-residential subdivision with master planned roads and stormwater. **Section 20.203, Sub-Sections (1) and (3) do not apply to this provision;**

(3) Existing buildings, regardless of size, with gross floor area exceeding the maximum square footage allowed in 20.203(1) are allowed a one-time expansion at time this adoption, **(insert adoption date), of no more than 15,000 square feet GFA in all zoning districts as a minor process; or Addition(s) to existing development of less than ten percent of existing GFA or additions less than 10,000 square feet GFA, whichever is less; or**

(4) apartment or multi-family development of ~~nine~~ **eight** or less dwelling units.

**Existing single family structures used as single family structures and existing agricultural structures are not included in the square footage computations noted in this section.**

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

*Major site developments* are those proposals that require the development of new infrastructure or the extension of off-tract infrastructure or where the proposal does not meet the definition of a minor site development ~~and where there is no subdivision into separate lots.~~ This covers the development of one or more parcels of land where there is no subdivision into separate lots. If the development requires easements for drainage or other purposes, private roads, or parking, and access to public roads is involved

that serve one or more land uses, it is a site development. Excluded are developments for the purpose of extraction or harvesting of resources and for roads on agricultural land for the purpose of conducting the agricultural operation. Re-subdivision or adjustments of lot lines are also excluded. Major site development shall adhere to full site plan requirements in all proposals.

### **Division 26.200 Definitions of Terms**

**Minor Site Plan.** A plan that follows the minor site development process and that will not require the development of new infrastructure or the extension of existing off-tract infrastructure, that proposes one or more of the following:

A. ~~New building(s) on a vacant lot, Building(s), both new and additions to existing,~~ where all structures located on the parcel totaling no more than:

- 7,500 square feet gross floor area (GFA) on any site in the Village and Residential Growth Districts.
- 15,000 square feet gross floor area (GFA) on any site in the Rural/Agriculture and Residential/Light Industrial/ Commercial Districts.
- 30,000 square feet gross floor area (GFA) on any site in the Industrial/Commercial District.

B. Building(s), both new and additions to existing, regardless of size, when located in a business and/or industrial park on a lot within an approved major non-residential subdivision with master planned roads and stormwater. Sub-Sections A and C of this definition do not apply to this provision;

C. Existing buildings, regardless of size, with gross floor area exceeding the maximum square footage allowed in 20.203(1) are allowed a one-time expansion at time this adoption, (insert adoption date), of no more than 15,000 square feet GFA in all zoning districts as a minor process; or ~~Addition(s) to existing development of less than ten percent of existing GFA or additions less than 10,000 square feet GFA, whichever is less; or~~

D. Apartment or multi-family development of nine ~~eight~~ or less dwelling units.

Minor Site Plans do not include the design, erection or addition to detached single family dwelling units when only one dwelling unit is located on an established lot.

Existing single family structures used as single family structures and existing agricultural structures are not included in the square footage computations noted in this definition.

**Site Plan, Minor.** A plan that follows the minor site development process and that will not require the development of new infrastructure or the extension of existing off-tract infrastructure, that proposes one or more of the following:

A. ~~New building(s) on a vacant lot, Building(s), both new and additions to existing,~~ where all structures located on the parcel totaling no more than:

- 7,500 square feet gross floor area (GFA) on any site in the Village and Residential Growth Districts.
- 15,000 square feet gross floor area (GFA) on any site in the Rural/Agriculture and Residential/Light Industrial/ Commercial Districts.
- 30,000 square feet gross floor area (GFA) on any site in the Industrial/Commercial District.

B. Building(s), both new and additions to existing, regardless of size, when located in a business and/or industrial park on a lot within an approved major non-residential subdivision with master planned roads and stormwater. Sub-Sections A and C of this definition do not apply to this provision;

C. Existing buildings, regardless of size, with gross floor area exceeding the maximum square footage allowed in 20.203(1) are allowed a one-time expansion at time this adoption, (insert adoption date), of no more than 15,000 square feet GFA in all zoning districts as a minor process; or Addition(s) to existing development of less than ten percent of existing GFA or additions less than 10,000 square feet GFA, whichever is less; or

D. Apartment or multi-family development of nine ~~eight~~ or less dwelling units.

Minor Site Plans do not include the design, erection or addition to detached single family dwelling units when only one dwelling unit is located on an established lot.

Existing single family structures used as single family structures and existing agricultural structures are not included in the square footage computations noted in this definition.

**Major Site Plan.** A plan that follows the major site development process and proposes one or more of the following:

A. A new public or private street or dedication to public use of an existing street;

B. ~~New building(s) on a vacant lot, Building(s), both new and additions to existing,~~ where all structures located on the parcel are equal to or total more than: ~~5,000 square feet or more of GFA on any site;~~

- 7,500 square feet gross floor area (GFA) on any site in the Village and Residential Growth Districts.
- 15,000 square feet gross floor area (GFA) on any site in the Rural/Agriculture and Residential/Light Industrial/ Commercial Districts.
- 30,000 square feet gross floor area (GFA) on any site in the Industrial/Commercial District.
- except building(s), both new and additions to existing, regardless of size, when located in a business and/or industrial park on a lot within an approved major non-residential subdivision with master planned roads and stormwater;

C. Existing buildings with gross floor area exceeding the maximum square footage allowed in 20.203(1) that have previously been granted a one-time expansion at time this adoption, (insert adoption date), of no more than 15,000 square feet of existing GFA in all zoning districts as a minor site plan as delineated in Section 20.203; or ~~Addition(s) to existing development of ten percent or more of existing GFA or with additions of 10,000 square feet or more of GFA;~~

D. Apartment or multi-family development of ten or more dwelling units; or

E. A heavy industrial use.

Existing single family structures used as single family structures and existing agricultural structures are not included in the square footage computations noted in this definition.

**Site Plan, Major.** A plan that follows the major site development process and proposes one or more of the following:

A. A new public or private street or dedication to public use of an existing street;

B. New building(s) on a vacant lot, ~~Building(s), both new and additions to existing,~~ where all structures located on the parcel are equal to or total more than: ~~5,000 square feet or more of GFA on any site;~~

- 7,500 square feet gross floor area (GFA) on any site in the Village and Residential Growth Districts.
- 15,000 square feet gross floor area (GFA) on any site in the Rural/Agriculture and Residential/Light Industrial/ Commercial Districts.
- 30,000 square feet gross floor area (GFA) on any site in the Industrial/Commercial District.
- except building(s), both new and additions to existing, regardless of size, when located in a business and/or industrial park on a lot within an approved major non-residential subdivision with master planned roads and stormwater;

C. Existing buildings with gross floor area exceeding the maximum square footage allowed in 20.203(1) that have previously been granted a one-time expansion at time this adoption, (insert adoption date), of no more than 15,000 square feet of existing GFA in all zoning districts as a minor site plan as delineated in Section 20.203; or ~~Addition(s) to existing development of ten percent or more of existing GFA or with additions of 10,000 square feet or more of GFA;~~

D. Apartment or multi-family development of ten or more dwelling units; or

E. A heavy industrial use.

Existing single family structures used as single family structures and existing agricultural structures are not included in the square footage computations noted in this definition.

**JEFFERSON COUNTY, WEST VIRGINIA**  
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**MEMO**

**TO:** Planning Commission Members  
**FROM:** Steve Barney, Zoning Administrator  
**DATE:** January 10, 2012  
**RE:** Draft Amendments – Article 5 (New Zoning Districts)

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**Background**

As part of the series of Zoning Ordinance amendments, one of the Planning and Zoning Department's most important goals is to expand the variety of commercial zoning districts in the Zoning Ordinance. Staff understands this to be a high priority of the Planning Commission and the County Commission as well.

The Zoning Ordinance currently has only two commercial districts:

- **Residential-Light Industrial-Commercial.** The land uses permitted in this district are very broad, including single-family homes, apartments, retail, and manufacturing.
- **Industrial - Commercial District.** This district allows all uses that the Residential-Light Industrial-Commercial District allows (with the exception of residential uses), and also allows heavy industrial uses.

During recent zoning cases, members of both the Planning Commission and the County Commission have expressed dissatisfaction with the menu of commercial zoning district options currently available in the Zoning Ordinance. Members have expressed a need for a broader continuum of zoning categories, in order that a zoning change request may be matched with a zoning district more closely tailored to the proposed land use(s).

**Recommended Districts**

As part of the process of developing recommendations, staff has reviewed examples of other nearby communities' ordinances, such as Loudoun County, VA, Clarke County, VA, Washington County, MD, and Adams County, PA.

Based on preliminary research, staff is recommending adoption of several additional zoning categories, as described in more detail in the attached document. These districts include:

1. Rural Commercial – Limited commercial uses (farm markets, country inns, etc) in appropriate rural areas.
2. Neighborhood Commercial (NC) – Neighborhood serving shops and services, compatible with adjacent residential areas.

3. General Commercial (GC) – Retail stores, shopping centers, gas stations, and other general-purpose commercial uses.
4. Corridor Mixed Use (CMU) – Developments containing a mix of residential and commercial uses, developed in accordance with site layout standards
5. Highway Commercial (HC) – Land uses appropriate for major highways, including larger retail stores and large gas stations.
6. Light Industrial (LI) – Warehousing, light manufacturing and other land uses that do not produce significant externalities (noise, odors, etc).
7. Major Industrial (MI) – Uses of a more intense nature than would otherwise be permitted in the Light Industrial district.
8. Planned Development (PD) – A district that allows customization of standards in order to provide a better fit for a particular development or piece of property. This district would allow implementation of conditions or restrictions offered by a property owner or developer.

### **Intended Use of New Zoning Districts**

The goal of this amendment is solely to establish a wider variety of commercial zoning categories in order to make available more choices to property owners, the Planning Commission, and the County Commission when a zoning change is requested. Staff's understanding is that no County-initiated rezoning of properties will occur in conjunction with this Zoning Ordinance amendment, unless otherwise directed by the County Commission.

During the development the 2014 Comprehensive Plan update, staff will analyze the County's existing land use pattern and make recommendations regarding future land use and zoning. These recommendations will result in a future land use map, which the Planning Commission and County Commission will use as guidance when zoning changes are requested.

### **Proposed Related Amendments**

As part of the process of development the proposed new districts, staff has identified related sections of the ordinance that would benefit from amendment or clarification. These sections are attached in the table entitled "Related Amendments to Existing Zoning Districts/Standards."

### **Next Steps**

Staff will discuss the proposed zoning districts with the County Commission at an upcoming meeting. At that time, staff will inform the County Commission of the Planning Commission's recommendation regarding scheduling public workshops to review the new zoning districts. Following the public outreach period, the Planning Commission will conduct a public hearing and ultimately vote to recommend the draft amendments to the County Commission for review and adoption. The Planning Commission may also direct staff to make specific amendments in response to public comments received.

For more information, please contact me at [zoning@jeffersoncountywv.org](mailto:zoning@jeffersoncountywv.org).

Att: Proposed Commercial Zoning Districts (DRAFT 1/10/2012)

## Proposed Commercial Zoning Districts (DRAFT)

District Name	Purpose	Setbacks (feet) <sup>1,2</sup>					Height (feet)	Impervious surface limit	Site Layout Standards <sup>3</sup> apply?	Additional Standards	Examples of Permitted Uses <i>(note: partial list only)</i>
		Front		Rear	Side	Street Side					
		(min.)	(max.)								
Rural Commercial (RC)	The purpose of this district is to allow limited commercial uses to serve residents and visitors of the County's rural areas. This district is established as a "floating zone" which may be established on parcels in rural areas located along primary or secondary roads or at significant road intersections.	40	-	25	25	35	35	25%	No	For existing buildings, all minimum setbacks are 10'	Commercial Farm Market Country Inn Antique Shop Commercial Nursery Campground/RV Park
Neighborhood Commercial (NC)	The purpose of this district is to permit the development of small scale commercial uses which serve the convenience needs of residential neighborhoods immediately adjacent to or within walking distance of the commercial use. Properties in the NC district shall be located on local access or two lane minor collector roads, and shall be designed, landscaped and buffered so as to be compatible with neighboring development. Uses should be appropriate in scale to the residential character of their context.	15	25	10	10 (see note)	15	35	70%	Yes	No side yard setback for non-residential uses abutting commercial or industrial uses	Bookstore Coffeeshop Limited Restaurant Dry Cleaner Small Retail Store
General Commercial (GC)	The purpose of this district is to provide for general destination business uses which provide a broad range of commercial products and services necessary for large regions. Types of land uses include retail stores, repair shops, wholesale businesses, and offices. The uses in this district may be characterized by larger buildings, more intensive commercial activity, and more vehicular traffic than would be permitted for uses in the NC district.	20	-	25	10	15	60	70%	No	Individual buildings with area over 50,000 sq. ft. require approval as a Special Exception by the Board of Zoning Appeals.	Shopping center Gas station Restaurant, General

<sup>1</sup> For property lines adjoining a road, setbacks measured from ROW or from future dedication area if ROW is less than 50'.

<sup>2</sup> Distance requirements of Section 4.11 apply to developments adjacent to a residential district; a lot with a residential use; a school, church, institution for human care; or historic structure or district.

<sup>3</sup> Site Layout Standards include location of parking (in rear or on side of building), limitation of 3,000 square feet per building, and designated 15' pedestrian zone including sidewalk/trail and landscaping.

## Proposed Commercial Zoning Districts (DRAFT)

District Name	Purpose	Setbacks (feet) <sup>1,2</sup>					Height (feet)	Impervious surface limit	Site Layout Standards <sup>3</sup> apply?	Additional Standards	Examples of Permitted Uses <i>(note: partial list only)</i>
		Front		Rear	Side	Street Side					
		(min.)	(max.)								
Corridor Mixed Use (CMU)	The purpose of this district is to allow for developments containing a mix of residential, commercial, and office land uses located on primary or secondary roads. Developments are oriented to principal streets, contain substantial public space and streetscaping, allow for pedestrian movement within the site and between adjacent sites, and meet the design standards provided for this district.	15	25	10	10 (see note)	15	60	80%	Yes	No side yard setback for non-residential uses abutting commercial or industrial uses  Buildings must contain mix of residential and commercial uses	Retail Office Multi-family residential Services
Highway Commercial (HC)	The purpose of this district is to provide for a compatible mix of commercial uses fronting on major roadways, where some commercial development already exists, or where land use patterns and planning goals suggest that highway oriented commercial development is appropriate.	25	-	25	25	25	60	80%	No	Residential uses not permitted.	Retail "superstore" Gas station, large General Commercial uses
Light Industrial (LI)	The purpose of this district is to provide locations for lighter manufacturing processes which are not as extensive as those provided in the MI District and can be served with adequate public or community water and sewerage service. In this district, most manufacturing is composed of processing or assembly of previously processed materials.	25	-	25	25	25	60	80%	No		Light manufacturing Warehouse
Major Industrial (MI)	This district is intended to provide sufficient space in appropriate locations for a wide variety of industrial activities, generally located on primary highways with more than 5,000 trips per day. The uses in this district may be characterized by extensive warehousing, frequent heavy trucking activity, and broader manufacturing activity than would be permitted in the LI district.	25	-	50	50	50	75	80%	No		Petroleum processing Concrete plant Sawmill

### Proposed Commercial Zoning Districts (DRAFT)

District Name	Purpose	Setbacks (feet) <sup>1,2</sup>				Height (feet)	Impervious surface limit	Site Layout Standards <sup>3</sup> apply?	Additional Standards	Examples of Permitted Uses <i>(note: partial list only)</i>	
		Front		Rear	Side						Street Side
		(min.)	(max.)								
Planned Development (PD)	The purpose of this district is to permit a greater degree of flexibility and creativity in the layout and development of commercial areas than would otherwise be permitted. This district is established as a “floating zone” which may be combined with any other district other than Rural. The purpose is also to promote efficient use of land while providing for a harmonious variety of commercial uses, a more varied level of community amenities, pedestrian-oriented features, design appropriate to local context, promotion of adequate open space and scenic attractiveness, and protection of environmental and cultural resources.	See notes.							Underlying base district establishes site development standards, which may be modified as part of PD approval process.	Underlying base district establishes permitted uses, which may be modified as part of PD approval process. Note: Permitted uses may be reduced but not expanded.	

## Proposed Commercial Zoning Districts (DRAFT)

### Related Amendments Proposed to Existing Zoning Districts / Standards:

Existing District or Ordinance Section	Issue	Proposed Amendment
Village District (Section 5.10)	The Village District allows very few commercial uses.	<p>Some inoffensive neighborhood-oriented commercial uses may be appropriate to be located on principal roads in this district, especially in existing structures.</p> <p>District purpose statement should be expanded to add, “to provide for limited commercial uses to serve the County’s village areas.”</p> <p>Setback averaging provision (Section 9.4) should be adjusted to allow for shorter front setbacks in the Village District (15’ from edge of pavement).</p>
Residential - Light Industrial - Commercial (Section 5.8)	Site development standards (such as height and impervious surface limits unclear)	Clarify site development standards
LESA Applicability (Articles 6 and 7)	LESA scoring should not apply to use of existing structures, or to redevelopment that does not expand development area by more than 1000 square feet	Amend Articles 6 and 7 (and other relevant sections)
CUP Requirements (Section 5.8C, Section 3.2G)	<p>CUP is currently required for fast food restaurants and convenience stores in all zones. Staff recommends that these land uses be permitted outright in some zones.</p> <p>CUP expiration date of 18 months appears to be too short.</p>	<p>Amend Section 5.8C to allow fast food restaurants and convenience stores by right in <u>some</u> commercial zones.</p> <p>Extend CUP expiration date to a longer time period.</p>
Definitions (Section 2.2)	Some definitions (e.g. “Restaurant, Fast Food, Limited”) are excessively narrow.	Amend definitions as needed.

#### Section 4.9 – Attendance at Regular Meetings

Regular and timely attendance of all Planning Commission members is critical to the effective functioning of the Planning Commission. Planning Commissioners shall strive to attend all Regular Meetings. Accordingly, if a Commissioner, over a consecutive six month period, misses six Regular Meetings with notice, or four Regular Meetings without notice, the Planning Commission may forward this information to the County Commission with the request that the County Commission consider removal from the Planning Commission. Also, if the a member ~~continues to be~~ is tardy more than 10 minutes for six regular meetings, the Planning Commission may forward this information to the County Commission with the request that the County Commission consider removal from the Planning Commission.

# JEFFERSON COUNTY, WEST VIRGINIA

## Department of Planning

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January 10, 2012

Listed below are the scheduled Planning Commission meeting dates for 2012. These dates consist of the 2<sup>nd</sup> Tuesday (Regular Meetings) of every month in black and the 4<sup>th</sup> Tuesday (Tentative Meetings) of every month in green. Any possible conflicts with the meeting dates are designated in red. If you have any questions, please contact the Planning Department at the above referenced number.

January 10, 2012

January 24, 2012

February 14, 2012

February 28, 2012

March 13, 2012

March 27, 2012

April 10, 2012

April 24, 2012

May 8, 2012 (This is Primary Election Day – Offices will be closed)

May 22, 2012

June 12, 2012

June 26, 2012

July 10, 2012

July 24, 2012

August 14, 2012

August 28, 2012

September 11, 2012

September 25, 2012

October 9, 2012

October 23, 2012

November 13, 2011

November 27, 2011

December 11, 2011

December 25, 2012 (This is Christmas Day)

# In the Circuit Court of Jefferson County, West Virginia

Cedar Air Park Holdings, LLC  
Petitioner

v. 11-C-460  
Judge Sanders

Jefferson County Planning Commission, a public body,  
Respondent

**COPY**

## **Motion to Strike Appearance of Counsel and to Dismiss Due to Conflict of Interest**

COMES NOW THE RESPONDENT, BY SPECIAL APPEARANCE, to contest service of process, to move to strike the pleading due to a conflict of interest on behalf of opposing counsel. In support thereof, the petition does state:

### **SERVICE OF PROCESS INSUFFICIENT TO OBTAIN PERSONAL JURISDICTION**

1. The Respondent appears specially and moves to dismiss the petition for failure of proper service of process. Rule 4(d)(6)(B) specifies the required methods of service of process for "domestic public corporations."
2. The Jefferson County Planning Commission, an arm of the Jefferson County Commission, is a "county tribunal created to transact county business" which was created by local ordinance with all of its membership appointed by the County Commission pursuant to WV Code §8A-1-1 et sec. As such service must be by delivery to any commissioner or to the clerk of the commission.
3. As of the filing of this motion, the Petitioner has only mailed a copy of the summons to the Jefferson County Planning and Zoning Staff which does not satisfy the requirements for service. Wherefore, the Planning Commission respectfully request that no action to the prejudice of the Respondent occur unless and until appropriate

service is perfected, and, if such service is not obtained within the proscribed time period, dismiss the instant action.

### **Conflict of Interest by Petitioner's Counsel**

4. The firm of Steptoe & Johnson, PLLC, prepared and filed the instant petition. However, since 2010, lawyers from the same law firm have had an on-going attorney-client relationship with the Jefferson County Commission and its various constituent boards and commissions. Steptoe & Johnson have been retained to defend the Commission in federal court in a matter styled "Smith v. Jefferson County Commission et al 3:10-cv-106" pending in the U.S. District Court for the Northern District of West Virginia.
5. The Jefferson County Planning Commission, a constituent body of the Jefferson County Commission, is a "county tribunal created to transact county business" which was created by local ordinance with all of its membership appointed by the County Commission pursuant to WV Code §8A-1-1 et sec. In fact, pursuant to WV Code 8A-2-4(d) a member of the County Commission serves as a voting member of the Planning Commission. Therefore, by filing suit against the Planning Commission, Steptoe & Johnson have filed suit against its own current client in violation of their duties of loyalty and confidentiality imposed by the West Virginia Rules of Professional Responsibility 1.6 and 1.7.
6. Furthermore, as counsel for the Jefferson County Commission in the Smith matter, Steptoe and Johnson attorneys had, and continue to have, full and unfettered access to all civil filings in which the Jefferson County Commission has been involved. This includes access to private, confidential and attorney-client privileged materials prepared for both County Commission and the respondent Jefferson County Planning Commission by the Office of the Prosecuting Attorney for Jefferson County, the statutory attorney for the County Commission and all of its subordinate boards, including the Planning Commission.
7. It is clear from a recent order in the Smith Case, attached hereto as exhibit A, Steptoe & Johnson attorneys have reviewed each and every document prepared by Assistant Prosecuting Attorneys Brandon Sims and Stephanie Grove.
8. Attorneys Sims and Grove serve as counsel for the respondent Planning Commission and have defended the respondent in numerous actions similar to the instant petition. Steptoe & Johnson lawyers have reviewed privileged attorney-client documents of the respondent Planning Commission.

9. Actual and extensive examination of all attorney-client materials involving Sims and Grove occurred with lawyers from Steptoe & Johnson, including files relating to matters pertaining to the respondent Planning Commission. However, the respondent need not prove that specific and damaging items of confidential material were examined because between a current client and their lawyer “**communication of confidential information is presumed** and is covered by the lawyer-client privilege.” State, ex rel, Taylor Associates v. Nuzum, 175 W.Va. 19, 23 (1985).
10. An attorney cannot sue their own client and “should be disqualified from participating in a pending case if his continued representation would give rise to an **apparent conflict of interest or appearance of impropriety** based upon the lawyers confidential relationship with the opposing party.” State, ex rel, Taylor Associates v. Nuzum, 175 W.Va. 19 (1985).
11. To protect the attorney-client relationship, “even when there are doubts about the existence of an asserted conflict of interest, these doubts should be resolved in favor of disqualification.” State, ex rel, Taylor Associates v. Nuzum, 175 W.Va. 19, 23 (1985).
12. Enforcement of the rules against conflict of interest is not a ‘mere technicality’ but goes to the heart of a proper attorney-client relationship. “If a client perceived that his lawyer was free to divulge information imparted in confidence, he might be reluctant to completely confide in his lawyer. . .the rule serves to encourage clients to freely, frankly and openly discuss – in an atmosphere of trust—all the information counsel needs to adequately prepared his clients defense . . .[the rule] serves to promote public confidence in the legal profession, the adversarial process and the judicial system as a whole.” State, ex rel, Bluestone Coal Corp. v. Mazzone , 226 W.Va. 148, 157 (2010).
13. When the petition was filed by Steptoe & Johnson, the undersigned contacted the attorney responsible, raised the issue of conflict of interest and requested that the petition be withdrawn. After consulting with the other attorneys in his office involved in the Smith case, counsel for Steptoe & Johnson declined to withdraw from the petition. Counsel said that “there was no conflict issue because the Planning Commission is a separate subsidiary of the County Commission, sort of like if we represent Pepsi we could still sue Pizza Hut which is owned by Pepsi.” When the undersigned disagreed and stated that the Planning Commission was created and funded fully by the County Commission, the counsel for Steptoe & Johnson agreed “there would be a conflict if we sought money damages but we are only seeking equitable relief, so conflict is not an issue.”
14. Money damages are not a requirement for disqualification due to conflict of interest but, assuming for the sake of argument that money damages are required, the Petition expressly requests in its prayer for relief “an award of attorney’s fees,

expenses and costs." Said claimed attorney's fees, costs and expenses if ever awarded would have to be paid by the Jefferson County Commission as the Planning Commission has no independence from the County Commission. WV Code §7-1-3 (County Commission is financially responsible for county government) and WV Code §8A-2-10(a)(2)(County Commission shall "appropriate money to defray the reasonable expenses of the planning commission.")

15. Therefore, in addition the presumptive use of attorney-client privileged material, the petition is also "adverse" to the financial interests of Steptoe & Johnson's client, the Jefferson County Commission.
16. Rule 1.7 prohibits a lawyer from taking adverse action to a current client except under narrow circumstances and only if the client consents. "A lawyer shall not represent a client if the representation of that client would be directly adverse to another client . . . unless each client consents after consultation." WVRPC 1.7.
17. The Commentary to Rule 1.7 makes the instant situation untenable for the Petitioners. It states "**a lawyer may not act as an advocate against a client the lawyer represents in some other matter, even if the matter is wholly unrelated.**" In the instant case, the Respondent contends that the representation is related to the confidential attorney-client materials reviewed by Petitioner's counsel. However, the commentary makes it clear that even if it is "wholly unrelated," the attorney cannot advocate against their own client as does the instant petition.
18. Neither Jefferson County Commission nor the Jefferson County Planning Commission were "consulted" nor did they "consent."
19. Furthermore, as the litigation involves a public body, the conflict of interest cannot be waived. "An attorney may not represent both a governmental body and a private client merely because disclosure was made and they are agreeable" (in the instant case neither was done) Syl. Pt 2, State, ex rel, Morgan Stanley & Co. Inc. v. MacQueen, 187 W.Va. 97 (1992)("where the public interest is concerned a lawyer may not represent conflicting interests even with the consent of all concerned.")
20. The Court has inherent authority to strike the appearance of petitioners counsel and to strike the pleading themselves as the product of a violation of attorney-client privilege. State, ex rel, Bluestone Coal Corp. v. Mazzone, 226 W.Va. 148, 157 (2010)(reiterating "the inherent authority courts possess to maintain the integrity of the judicial process.")
21. The instant petition was formulated and drafted by Steptoe & Johnson while retained as counsel for the Respondent while it has access to privileged and confidential materials of the Jefferson County Commission and the Jefferson County Planning Commission. Therefore, the instant petition is presumptively the product

of attorney-client material of the respondent. Not only can the attorneys from Steptoe & Johnson not take action against their own client, no knowledge or information gained during said representation can be used as a weapon against their client. Hence, not only should the appearance of Steptoe & Johnson be struck but the petition itself (the product of attorney-client material) must also be struck and the petition in the Circuit Court file placed under seal.

22. The Petitioner should be required to obtain new, separate counsel with no knowledge of the instant petition. Furthermore, to protect even the indirect use of attorney-client material, the Petitioner should be ordered not to share the instant petition nor any discussions it had with Steptoe & Johnson about the petition with new counsel.

23. All files and other materials related to this case held by Steptoe & Johnson should be turned over to the Court for an *in camera* review. The Court should examine the same and any and all materials, notes, pleadings and other documents that relate in any way to attorney-client material of the Respondent should be removed and given to the Respondent. The portion of the file which does not contain attorney-client material of the Respondent returned by the Court to Steptoe & Johnson.

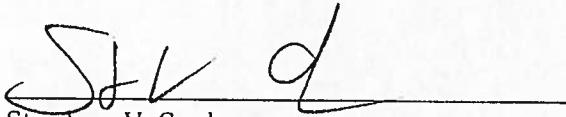
24. Unless and until, the instant motion is denied by the Court, all proceedings in this matter should be stayed and the Respondent should not be required to file a responsive pleading of any kind until this matter is resolved. To require a responsive pleading while this issue is pending would subject the Respondent to further breach of the attorney-client relationship.

WHEREFORE, the Respondent respectfully requests that this matter be set in for a full hearing on the issue of conflict of interest by Steptoe & Johnson and at which hearing the respondent will respectfully request that Steptoe & Johnson be struck as counsel, that the pleading itself be struck and placed under seal, that Steptoe & Johnson be required to produce its files for the instant case for in camera review to remove any attorney-client material belonging to the Respondent Planning Commission or County Commission, that the Petitioner be ordered to obtain new counsel with no knowledge of the instant petition, that the Petitioner be ordered not to share the instant petition nor

any information gained from Steptoe & Johnson in any manner be shared with new counsel and provide such further relief as the Court deems just and equitable.

Respectfully submitted,

Jefferson County Planning Commission, by counsel



Stephen V. Groh  
Assistant Prosecuting Attorney  
P.O. Box 729  
Charles Town, WV  
WV Bar #6831

**Certificate of Service**

I certify that on this 28 day of December, 2011, I caused a true and accurate copy of the foregoing to be sent by first class mail postage pre-paid to counsel of record, Steptoe & Johnson, P.O. Box 2629 Martinsburg, WV 25402-2629



Stephen V. Groh  
Assistant Prosecuting Attorney  
P.O. Box 729  
Charles Town, WV  
WV Bar #6831

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

LESLIE D. SMITH,

Plaintiff,

v.

Civil Action No. 3:10-cv-106

JEFFERSON COUNTY COMMISSION,  
a public body, CAROLYN WIDMYER,  
President, PATRICIA A. NOLAND, Vice  
President, C. DALE MANUEL, Commissioner,  
JAMES T. SURKAMP, Commissioner, and  
FRANCES B. MORGAN, Commissioner,

Defendants.

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT JEFFERSON  
COUNTY COMMISSION'S MOTION FOR PROTECTIVE ORDER AND DENYING  
PLAINTIFF'S MOTION TO COMPEL

This matter comes before the Court on Defendant Jefferson County Commission's Motion for Protective Order, which asks the Court to order that the depositions of attorney Brandon C. H. Sims and the deposition of attorney Stephanie Grove not be conducted,<sup>1</sup> and on Plaintiff's Motion to Compel, which asks the Court to order the Commissioners to respond to certain deposition questions.<sup>2</sup> The Court held an evidentiary hearing and argument on Defendant Jefferson County Commission's Motion for Protective Order and Plaintiff's Motion to Compel on November 18, 2011. Plaintiff appeared by Nathan P. Cochran, in person, Peter L. Chakmakian, in person, and Richard G. Gay, in person. Defendant Jefferson County Commission appeared by A. Neal Barkus, in person. Non-parties Brandon C. H. Sims and

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<sup>1</sup>Dkt. No. 35.

<sup>2</sup>Dkt. No. 55.

Stephanie Grove appeared by Jeffrey W. Molenda, in person. At the hearing, the Court admitted the following exhibits submitted by Defendant Jefferson County Commission: a resolution adopted on May 10, 2007 by the Jefferson County Commission as Exhibit 1 and meeting minutes of the September 17, 2007 meeting of the Jefferson County Commission as Exhibit 3. Each exhibit was admitted without objection. The Court also admitted Exhibit 1, the deposition of Patricia Nolan, submitted by the Plaintiff without objection. Defendant Jefferson County Commission called Frances Morgan as a witness and Plaintiff called Leslie Smith as a witness. No other testimony was taken nor was any other evidence adduced.

## I. INTRODUCTION

### A. Background

This action was initially filed on September 28, 2010 in the Northern District of West Virginia after Leslie D. Smith, a former Jefferson County Administrator, was terminated from her employment following a vote by the Commission. Plaintiff's complaint alleges that: she was terminated because of her age and/or gender in violation of the West Virginia Human Rights Act; she was not paid all wages, benefits and other compensation in a timely manner following her termination in violation of the West Virginia Wage Payment and Collection Act; she was terminated because of her opposition to the Commission's alleged violations of the West Virginia Open Meetings Act, in violation of the Human Rights Act; the termination amounted to intentional infliction of emotional distress; her termination was an unlawful retaliatory discharge; she was subjected to and injured by harassment on the basis of her gender and/or age; her employment contract was breached; and her civil rights under 42 U.S.C. § 1983 were violated. The parties engaged in discovery and certain discovery disputes arose.

B. The Motions

1. Defendant Jefferson County Commission's Motion for Protective Order.
2. Plaintiff's Motion to Compel.

C. Decision

Plaintiff's Motion to Compel is **DENIED** because it was not timely filed. Defendant Jefferson County Commission's Motion for Protective Order is **GRANTED IN PART AND DENIED IN PART** because while the documents relating to Attorney Sims and Attorney Grove requested from them via subpoenas *duces tecum* were properly withheld on the basis of attorney-client privilege, those documents listed as withheld on the basis of Rule 1.6 were improperly withheld and must be produced. This Court must also deny the portion of the Motion for Protective Order asking that the depositions not be conducted because it cannot yet determine whether certain responses are protected under the attorney-client privilege or the Rules of Professional Conduct.

II. FACTS

1. On October 3, 2011, Defendant Jefferson County Commission filed a Motion for Protective Order asking the Court to direct that the proposed depositions of Brandon C. H. Sims and Stephanie Grove not be conducted.
2. On October 17, 2011, Plaintiff filed her Response in Opposition to Motion for Protective Order.
3. On October 24, 2011, Defendant Jefferson County Commission filed its Reply to Plaintiff's Response in Opposition to Motion for Protective Order.
4. On October 28, 2011, Plaintiff filed a Motion to Compel.
5. On November 9, 2011, Defendant Jefferson County Commission filed a Motion to Quash or Modify Subpoena Duces Tecum Served on Attorney Brandon C. H. Sims.
6. On November 11, 2011, Defendant Jefferson County Commission filed a Response to Plaintiff's Motion to Compel.

7. On November 15, 2011, Defendant Jefferson County Commission filed a Motion to Quash or Modify Subpoena Duces Tecum Served on Attorney Stephanie Grove.
8. An evidentiary hearing and argument was held on November 18, 2011 on Defendant Jefferson County Commission's Motion for Protective Order and Plaintiff's Motion to Compel.

### III. MOTION TO COMPEL

#### A. Contentions of the Parties

During the deposition of Jefferson County Commissioner Frances Morgan, defense counsel instructed her not to answer questions about events that occurred in executive session at the time of Ms. Smith's termination. This instruction prompted Plaintiff to file the instant Motion to Compel. Plaintiff argues this information is discoverable because she requested that discussion of matters regarding her employment and termination be held publicly, so the Jefferson County Commission had no authority to enter into executive session to discuss her employment. Plaintiff further argues that there is no blanket executive session privilege.

Defendant Jefferson County Commission contends that defense counsel's instruction not to answer was proper under Federal Rule of Civil Procedure 30(c)(2) because the information is privileged. Furthermore, Defendant Jefferson County Commission argues that Plaintiff's Motion is untimely because violations of the Open Governmental Proceedings Act are barred by its 120-day limitations period, and that the motion to compel testimony is also untimely because it falls outside the thirty-day time period.

#### B. Discussion

The first issue posed to this Court is whether Plaintiff's Motion to Compel was timely filed. As a general rule, this Court cannot grant a motion to compel unless it is timely filed. Local Rule of Civil Procedure 37.02(b) states that "[a] motion to compel...is deemed waived if it

is not filed within thirty days after the discovery response or disclosure requirement sought was due." If the requesting party does not file the motion to compel within the specified time frame, "the party has waived his right to any material he may have obtained from the request, unless it can show good cause for the delay." Ayers Continental Cas. Co., 240 F.R.D. 216, 224 (N.D.W.Va. 2007). In this case, Commissioner Morgan<sup>3</sup> was deposed on August 16, 2011, but Plaintiff did not move to compel her responses to questions she was instructed not to answer until October 28, 2011, a total of 73 days after the deposition had taken place. Because this is manifestly outside the thirty-day rule, pursuant to Local Rule 37.02(b) this Court must deny Plaintiff's Motion to Compel as untimely.

#### IV. MOTION FOR PROTECTIVE ORDER

##### A. Contentions of the Parties

Defendant Jefferson County Commission filed the instant Motion for Protective Order claiming that the noticed depositions of Attorneys Sims and Grove would invade the attorney-client privilege, would require deponents to violate their duties of loyalty and confidentiality under the Rules of Professional Conduct, and that the requested discovery is duplicative and unnecessary because it can be obtained from other non-privileged sources.

Plaintiff contends that she only seeks to obtain information from the two witnesses that

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<sup>3</sup>Although Plaintiff argues that the depositions of other commissioners besides Commissioner Morgan should be reopened, Plaintiff's Motion only cites objections raised to certain questions asked to Commissioner Frances Morgan. Plaintiff provided this Court with no evidence that the other commissioners were instructed not to answer similar questions, so this Court cannot now compel responses to questions that it cannot confirm were posed to other commissioners. Although counsel argued at the hearing that these questions were not asked because its course of dealing with opposing counsel indicated they would not receive answers to any of these questions, the Court finds this argument unpersuasive.

shows how they, and women in general, were treated and discriminated against in the course of their employment with the Jefferson County Commission, and this is a non-privileged matter. Further, Plaintiff argues that although underlying advice or observations might be privileged, the illegality of the underlying actions removes the information from being covered by the privilege rules due to the crime/fraud exception. Finally, Plaintiff contends that this information is not available from other sources, especially because Commissioner Morgan was not allowed to answer questions in her deposition about the executive sessions.

B. Discussion

The next question before the Court is whether the depositions of attorneys Sims and Grove would invade the attorney client privilege, and whether the documents requested from them would do the same. In United States v. United Shoe Machine Corp., the court held that the attorney-client privilege applies only if:

(1) the asserted holder of the privilege is or sought to become a client; (2) the person to whom the communication was made (a) is a member of the bar of a court, or his subordinate and (b) in connection with this communication is acting as a lawyer; (3) the communication relates to a fact of which the attorney was informed (a) by his client (b) without the presence of strangers (c) for the purpose of securing primarily either (i) an opinion on the law or (ii) legal services or (iii) assistance in some legal proceeding, and not (d) for the purpose of committing a crime or tort; and (4) the privilege has been (a) claimed and (b) not waived by the client. 89 F. Supp. 357, 358-50 (D. Mass. 1950).

Although the above citation provides a lengthier definition, for the purposes of evaluating whether the attorney-client privilege exists to protect the disclosure of certain discovery, the key is that four essential elements are present: (1) a communication, (2) made between privileged persons, (3) in confidence, and (4) for the purpose of seeking, obtaining, or providing legal assistance to the client. In this case, at the conclusion of the November 18, 2011 evidentiary

hearing and argument, the Court received the documents withheld on the basis of privilege related to Attorney Sims, and it received documents withheld on the basis of privilege related to Attorney Grove, and documents withheld on the basis of Rule 1.6 related to attorneys Sims and Grove by letter and attachment to the Court, dated December 2, 2011. The Court has conducted an *in camera* review of the documents listed on the logs.<sup>4</sup> Upon having reviewed the documents and their accompanying privilege logs, it is clear that each document meets the four criteria listed above: they are undoubtedly communications between privileged persons made in confidence and for the purpose of seeking, obtaining or providing legal assistance. Accordingly, this Court agrees that none of the documents listed on the privilege logs as withheld on the basis of the attorney-client privilege must be produced.

However, Attorney Sims and Attorney Grove also submitted logs listing documents that were withheld on the basis of Rule 1.6 of the Rules of Professional Conduct, so the Court must also address whether certain documents were appropriately withheld on this basis. As a general rule, even though under the Rules of Professional Conduct an attorney may not divulge client confidences except under limited circumstances, the Rules of Professional Conduct do not create an evidentiary privilege that trumps an order of the Court to produce the material. See Model Rules of Prof'l Conduct R. 1.6(b) ("A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to...comply with other law or a court order."). In addition, Defendant concedes that when documents have been

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<sup>4</sup>In its November 17, 2011 Order Granting Defendant Jefferson County Commission's Motion to Quash, this Court gave Defendant Jefferson County Commission fourteen days from the date of the Order to submit a privilege log to this Court related to the documents in Attorney Grove's possession.

subpoenaed in a litigation, a different analysis is required. Here, the Court has a duty to make sure that relevant information is turned over to the other party, and it finds that the subpoenas *duces tecum* have been reasonably calculated to lead to the discovery of admissible evidence in this case. In the interest of making sure that all proper discovery is brought forward, it must order that these documents be produced.

As to the depositions themselves, this Court is not able to conclude that all of the questions that might potentially be asked of attorneys Grove and Sims at their depositions will meet the four above-listed criteria in order to be protected under the attorney-client privilege. Rather, the only way for this Court to determine what questions might call for the discovery of privileged information is for the witness to appear and give testimony, and when a question seeking disclosure of alleged privileged material is posed, the holder of the alleged privilege may object and delay disclosure until a court rules on the objection. In re Chevron Corp., 749 F.Supp.2d 141, 166-67 (S.D.N.Y. 2010)(where attorney moved to quash deposition on ground that he was counsel, the court ruled he must sit for the deposition and assert privilege on a question-by-question basis). See also 24 Charles Alan Wright & Kenneth W. Graham, Jr., Federal Practice and Procedure: Evidence § 5507, at 567 (2007)(“One cannot assert the privilege by a blanket refusal to testify; there must be a specific objection to particular questions calling for privileged information.”). For example, although a question posed to Attorney Grove or Attorney Sims about the advice they gave concerning the Open Meetings Act would be protected, a question posed to Attorney Grove or Attorney Sims concerning their observations of Commissioners would not be, as could other possible questions about certain dates or places of the communications. In re Chevron Corp. 749 F.Supp.2d at 166 (“When an objection is made,

the party seeking disclosure nevertheless is entitled to discover the dates and places of and the identities of the participants in the communications, the identities of others who were present and to whom the communications were disclosed, and the general subject matter (but not the content) of the communications.”). See also United States v. Pape, 144 F.2d 778, 782 (2d Cir.

1944)(finding that no privilege attaches to matters observed by the attorney in the course of a representation); In re Walsh, 623 F.2d 489, 494 (7th Cir. 1980)(attorney could be compelled to testify regarding the number of times meetings had occurred with the client and whether the attorney had instructed the client to appear before the grand jury). Accordingly, because it would be merely speculative if this Court were to rule on the privileged status of all potential deposition questions, it seems this Court should likely deny Defendant Jefferson County Commission’s Motion for Protective Order.

However, Defendant argues the Rules of Professional Conduct may still serve to bar the two noticed depositions even if the rules of attorney-client privilege do not. The next question thus posed, then, is whether the broader protections of the Rules of Professional Conduct prevent Attorneys Sims and Grove from being deposed. As a general rule, an attorney owes a duty of confidentiality to each client, that is, to maintain clients’ secrets and confidences. “A ‘confidence’ is defined as information protected by the attorney-client privilege. A ‘secret’ is defined as information gained in the professional relationship (not necessarily from the client) that the client requests be held in confidence or that would be embarrassing or detrimental to the client if disclosed.” James E. Moliterno, Ethics of the Lawyer’s Work 180 (2d ed. 2003)(also noting the model rules have eliminated the distinction between secrets and confidences but that the analysis done by courts will likely continue to use the “evidentiary privilege plus secrets”

formula)(citations omitted).

Here, Defendant Jefferson County Commission first invokes Rule of Professional Conduct 1.6(a). However, this Court has the same hesitancy in determining that a violation of Rule 1.6(a) has occurred before it has heard the questions which would allegedly require the disclosure of client confidences, because similar to the attorney-client privilege, the application of Rule 1.6(a) always turns on the information sought, the type of information provided, and the context in which the information was provided. See Schaefer v. General Elec. Co., No. 3:07-cv-0858, 2008 WL 649189, at \*10 (D. Conn. Jan. 22, 2008). To find otherwise would mean that each time an attorney represents a corporation, or a commission, like in this case, each communication by an attorney with any current or former employee, or any conversation among any employees at which an attorney was present, would be confidential, no matter the subject of the conversation or its time and place. Id.

Jefferson County Commission also invokes Rules 1.7 and 1.8 to argue that the attorneys' duties of loyalty are broad enough to encompass their claims. While the Court has the same concerns as noted with Rule 1.6(a), this Court also notes that Jefferson County Commission incorrectly cites Rule 1.7 which applies when an attorney represents a client and seeks to represent another client in an adverse matter. This rule thus does not apply to the pending matter because attorneys Grove and Sims do not seek to take on Plaintiff as a client. See Schaefer v. General Elec. Co., No. 3:07-cv-0858, 2008 WL 649189, at \*10 (D. Conn. Jan. 22, 2008). Furthermore, Rule 1.8 is not appropriately applied to this issue. Rule 1.8 states that a lawyer shall not use information relating to representation of a client to the disadvantage of the client. In this case, Defendant Jefferson County Commission has not provided evidence that the

discovery sought will result in a disadvantaging the Commission. On the one hand, the attorneys might have information that could potentially be damaging to the Commission in defending its lawsuit, but on the other hand, the attorneys arguably could give testimony that would be favorable to the Commission, or, more likely, they could give information that will end up having little to no bearing on the ultimate disposition of this case. Accordingly, this Court cannot say there is a reasonable probability that disclosure will materially adversely affect Defendant Jefferson County Commission. This rule applies when the information is used to benefit either the lawyer or a third person, such as another client or business associate of the lawyer. Just as discussed above with regard to disadvantage, this Court is not convinced the information would result in any benefit to attorneys Grove and Sims or of their clients or business associates. Accordingly, this Court finds that neither the Rules of Professional Conduct nor the attorney-client privilege require that this Court grant Defendant Jefferson County Commission's Motion for Protective Order and it is therefore denied with respect to the depositions of Attorney Brandon C. H. Sims and Attorney Stephanie Grove.

#### IV. DECISIONS

Because Plaintiff failed to file her Motion to Compel within thirty days, her Motion is hereby DENIED. Because Defendant Jefferson County Commission properly withheld documents related to Attorney Sims on the basis of the attorney-client privilege, those documents need not be produced, however, those documents withheld on the basis of the Rules of Professional Conduct must be produced. Finally, because this Court cannot determine whether all deposition questions posed to Attorney Sims or Attorney Grove will be protected on the basis of the attorney-client privilege or the Rules of Professional Conduct, Defendant Jefferson

County Commission's Motion for Protective Order is hereby **DENIED IN PART**.

Filing of objections does not stay this Order.

Any party may, on or before December 27, 2011, file with the Clerk of the Court written objections identifying the portions of the Order to which objection is made, and the basis for such objection. A copy of such objections should also be submitted to District Court Judge of Record. Failure to timely file objections to the Order set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Order.

The Clerk of the Court is directed to transmit a copy of this Order to parties who appear *pro se* and any counsel of record, as applicable.

IT IS SO ORDERED.

DATED: December 13, 2011

/s/ James E. Seibert

JAMES E. SEIBERT  
UNITED STATES MAGISTRATE JUDGE

**JEFFERSON COUNTY, WEST VIRGINIA**  
**Department of Planning & Zoning**  
116 East Washington Street, 2<sup>nd</sup> Floor  
P.O. Box 338  
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Phone: (304) 728-3228  
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**Director's Report**  
**January 10, 2012**  
**Planning Commission Meeting**

- 1) Activity Report (attached)
- 2) 2<sup>nd</sup> Quarterly Report of FY 12 Work Plan – to be forwarded to the CC at their next meeting
- 3) US 340 Corridor - East Gateway Plan
  - a) Next Public Workshop (5<sup>th</sup> public meeting) – Thursday, January 19, 2012, 7 -9 pm, Charles Town Library Basement Meeting Room discuss a preferred land use alternative and related recommendations

The primary focus of the January 19th meeting will be to hear a presentation from the transportation consultant regarding the impact of the preferred land use scenario and alternative transportation improvements that should be considered in conjunction with the preferred land use/growth scenario. There will be the opportunity to provide feedback on the alternative transportation improvements and finalize the recommendations of the plan. Additionally, there will be a brief overview of the components of the 340 plan as a whole, including, but not limited to, draft goals and objectives and recommendations related to parks/trails/greenways, community services/infrastructure, economic opportunities, historic resources, and implementation strategies.

- b) Joint Planning Commission/County Commission – tentatively March 1, 2012 for the purpose of presenting the final recommendations of the US 340 Plan
- 4) Recent CC agenda items:
  - a) The following items were on the County Commission agendas for “action”:
    - i. On the 11/10/11 CC meeting:  
“Discussion of October 6, 2011 Comments Received and Possible Action on a Proposed Amendment to Articles 20 and 26 of the Jefferson County Subdivision and Land Development Regulations regarding the Maximum Square Footage Requirements for a Minor Site Plan in each Zoning District” **(CC provided additional comments and requested that the P&Z staff provide additional alternatives for their consideration)**
    - ii. On the 11/10/11 CC meeting:  
“Discussion of October 6, 2011 Comments Received and Possible Action on a Proposed Amendment to Article 12 of the Jefferson County Zoning and Land Development Ordinance (March 2011) regarding the Process of Amending the Zoning Map and/or Zoning Text District” **(approved as written)**

- iii. On the 11/17/11 and the 12/8/12 CC meeting:  
“Recommendation of Planning Commission to the County Commission on the landowner-initiated petition to amend the County Zoning Map for a 13.69 acre property owned by Twin Oaks Subdivision, LLC, designated as Tax District: Shepherdstown, Map: 13, Parcels: 26.1, 26.2, 26.3 & 26.4, located on Kearneysville Pike (WV 480) approximately 0.5 miles west of its intersection with Morgan Grove Road, adjacent to Morgan Grove Park.” **(denied, 12/8/11)**
- iv. On the 12/1/11 CC meeting and subsequently at a 1/5/12 Public Hearing:  
“Recommendation of Planning Commission to the County Commission on the landowner-initiated petition to amend the County Zoning Map for a 12.97 acre property owned by Dr. James and Barbara Gibson, designated as Tax District: Harpers Ferry, Map: 9, Parcel: 39.1, located on the south side of Route 340 (William L. Wilson Freeway); the east side of Route 27 (Millville Road) and on the north side of Route 27/2 (Allstadt’s Hill Road)” **(Hearing held open for written comments until 1/12/12; action anticipated on 1/12/12 CC meeting)**
- v. On the 1/5/12 CC Meeting:  
“Upcoming US 340 Public Meeting and Request for Joint PC/CC Meeting” **(Joint meeting set tentatively for 3/1/12)**

5) Upcoming PC meetings:

- a) No second meeting in January 2012 at this time
- b) February 2012
  - Possible Public Hearing of new proposed Commercial Zoning Categories
  - Possible Work Session regarding potential Recreation Zoning and Sub Reg provisions
- c) No second meeting scheduled for February at this time

## Christine Chalmers

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To: PLANNING COMMISSION  
Subject: RE: WEEKLY CALENDAR / 11.07.11 - 11.11.11

### MONDAY, NOVEMBER 07, 2011

9:00 am – 10:00 am STEVE & MASON – SITE VISIT TO RIVER ROAD PROPERTY  
10:00 am – 11:00 am STAFF MEETING  
11:00 am – NOON JENNIE, STEVE, SETH & DAWN – PREP FOR US 340 MEETING / DECEMBER 6th  
2:00 pm – 2:30 pm JENNIE, STEVE, SETH & STEVE GROH – MEETING/ RE: DANI ARMSTRONG  
(IMPROPERLY RECORDED LOT)  
3:00 pm JENNIE, STEVE, SETH – MEETING WITH JAMES CASIMIRO  
RE: 340 DEFENSE SHOOTING RANGE / FILING INJUNCTION

### TUESDAY, NOVEMBER 08, 2011

9:30 am – 12:30 pm JENNIE – MEETING @ JEFFERSON COUNTY DEVELOPMENT AUTHORITY  
2:00 pm – 3:00 pm JENNIE, SETH & AMY – WEEKLY PLANNING MEETING  
3:00 pm – 4:30 pm JENNIE & STEVE – WEEKLY ZONING MEETING  
7:00 pm JENNIE, STEVE, SETH & AMY – PLANNING COMMISSION MEETING

### WEDNESDAY, NOVEMBER 09, 2011

10:00 am – 11:00 am STEVE, JENNILEE & JONATHAN – AMY LEONARD / RE: SECOND PPC MEETING  
11:00 am – NOON STEVE/JENNILEE OR SETH/AMY & JONATHAN – RUTH INSLEY PPC  
RE: PARENT-TO-CHILD TRANSFER

### 2:00 pm NATIONWIDE EMERGENCY ALERT SYSTEM ALARM

2:00 pm – 3:00 pm JENNIE, STEVE, SETH, BECKY & MASON – MTG. W/ PAUL RACO & MATT KNOTT  
3:00 pm – 4:00 pm JENNIE, STEVE, SETH, BECKY & MASON – MEETING WITH PAUL RACO /  
RE: 340 DEFENSE & SHOOTING RANGE

### THURSDAY, NOVEMBER 10, 2011

9:00 am COUNTY COMMISSION MEETING

### FRIDAY, NOVEMBER 11, 2011

VETERAN'S DAY HOLIDAY – OFFICES CLOSED

## Christine Chalmers

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**To:** Planning Commission  
**Subject:** RE: WEEKLY CALENDAR / 11.14.11 - 11.18.11

### MONDAY, NOVEMBER 14, 2011

10:00 am – 11:00 am STAFF MEETING  
11:00 am – NOON JENNIE, STEVE, SETH & DAWN – PREP US 340 MEETING / DECEMBER 6<sup>th</sup>  
1:30 pm – 3:00 pm JENNIE & STEVE – WEEKLY ZONING MEETING  
3:00 pm – 4:00 pm JENNIE, SETH & AMY – WEEKLY PLANNING MEETING

### TUESDAY, NOVEMBER 15, 2011

11:00 am – 11:30 am STEVE & JONATHAN – MEETING WITH PAUL RACO / ENGINEERING DEPT.  
RE: REVIEW 340 DEFENSE COMMENTS  
11:30 am – NOON JENNIE & DAWN – UPDATE / RE: DON JACOBS MEETING  
2:00 pm – 3:00 pm JENNIE, STEVE, SETH, JENNILEE, JONATHAN, BECKY, MASON & JOE /  
RE: TRAINING – ZONING ORDINANCE AMENDMENTS

### WEDNESDAY, NOVEMBER 16, 2011

10:00 am – 11:00 am STEVE/JENNILEE OR SETH/AMY & JONATHAN - PPC MEETING w/PAUL RACO  
RE: PEACE PLANTATION (BRIGGS)  
11:45 am – 12:45 pm DAWN, JENNILEE, AMY & CHRISTINE – TEAM BUILDING SESSION  
2:00 pm – 3:00 pm JENNIE, STEVE, SETH & DAWN – US 340 PREP / DECEMBER 6<sup>TH</sup> MEETING

### THURSDAY, NOVEMBER 17, 2011

9:00 am COUNTY COMMISSION MEETING  
3:30 pm – 4:30 pm JENNIE, STEVE, SETH & DAWN – US 340 PREP / DECEMBER 6<sup>TH</sup> MEETING

### FRIDAY, NOVEMBER 18, 2011

10:30 am – 11:00 am JENNIE & DAWN – MEETING / “COOP” PLAN UPDATE  
2:00 pm JENNIE, STEVE & SETH – MEETING WITH JASON GERHART (WHGA)  
RE: SPARC

## **Christine Chalmers**

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**To:** Planning Commission  
**Subject:** RE: WEEKLY CALENDAR / 11.21.11 - 11.25.11

### **MONDAY, NOVEMBER 21, 2011**

11:00 am SETH, AMY, MASON, BECKY, ROGER-SITE VISIT/ 340 SHOOTING RANGE  
AFTERNOON STEVE, SETH, DAWN & AARON - PREP US 340 MEETING / DECEMBER 6<sup>th</sup>

### **TUESDAY, NOVEMBER 22, 2011**

10:30 am - 11:00 am DAWN & JENNILEE - MEETING / RE: JOB DESCRIPTION UPDATES  
2:00 pm - 4:00 pm JENNIE, STEVE, SETH, DAWN & AARON - SPECIAL MISCELLANEOUS MTG

### **WEDNESDAY, NOVEMBER 23, 2011**

10:00 am - 11:00 am STEVE, SETH, AMY & JONATHAN - STEPHAN McMURRAY PPC  
RE: PARENT-TO-CHILD / PETE LORENZEN, CONSULTANT  
11:00 am STEVE & SETH - MEETING WITH MATT POWELL

### **THURSDAY, NOVEMBER 24, 2011**

**THANKSGIVING HOLIDAY - OFFICES CLOSED**

### **FRIDAY, NOVEMBER 25, 2011**

**THANKSGIVING HOLIDAY - OFFICES CLOSED**

## **Christine Chalmers**

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**To:** Planning Commission  
**Subject:** RE: WEEKLY CALENDAR / 11.28.11 - 12.02.11

### **MONDAY, NOVEMBER 28, 2011**

9:00 am – 9:30 am JENNIE, STEVE & SETH – INFORMAL 340 MEETING  
10:00 am – 11:00 am STAFF MEETING  
11:00 am – NOON JENNIE, STEVE, SETH & DAWN –  
PREPARATION: 340 CITIZENS COMMITTEE MEETING  
2:00 pm – 3:00 pm JENNIE & SETH – WEEKLY PLANNING MEETING  
3:00 pm – 4:30 pm JENNIE & STEVE – WEEKLY ZONING MEETING

### **TUESDAY, NOVEMBER 29, 2011**

MORNING PREPARATION – 340 CITIZENS COMMITTEE MEETING  
2:30 pm – 4:00 pm JENNIE, STEVE, SETH & DAWN – 340 CITIZENS COMMITTEE MEETING

### **WEDNESDAY, NOVEMBER 30, 2011**

10:00 am – 11:00 am JENNIE, STEVE & SETH – MEETING / RE: PROPOSED NEW ZONING DISTRICT  
11:00 am – NOON STEVE, SETH, JONATHAN & MIKE – SITE PLAN PPC WITH ED BURNS /  
RE: SHENANDOAH SPRINGS CHURCH  
2:00 pm – 2:30 pm JENNIE & DAWN – “COOP” MEETING

### **THURSDAY, DECEMBER 01, 2011**

9:00 pm COUNTY COMMISSION MEETING  
AFTERNOON STEVE & SETH - MEETING WITH DR. GIBSON / RE: REZONING

### **FRIDAY, DECEMBER 02, 2011**

9:30 am – 11:00 am JENNIE, STEVE, SETH & DAWN – PREP FOR 340 MEETING / DECEMBER 6th  
NOON JENNIE, STEVE & SETH – PLANNERS LUNCHEON @ PAUL'S RESTAURANT  
1:00 pm – 3:00 pm JENNIE – BOARD OF HEALTH DEPARTMENT MEETING

## Christine Chalmers

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**To:** PLANNING COMMISSION  
**Subject:** RE: WEEKLY CALENDAR / 12.05.11 - 12.09.11

### MONDAY, DECEMBER 05, 2011

10:00 am – 11:00 am STAFF MEETING  
11:30 am – 2:00 pm JENNIE, STEVE & SETH – LEGISLATIVE LUNCHEON @ EPIC BUFFET  
2:00 pm JENNIE, STEVE, SETH – PREPARATION FOR DECEMBER 6<sup>th</sup> MEETING  
RE: ROUTE 340 CORRIDOR EAST GATEWAY PLAN

DAWN – OUT / “GIS” TRAINING IN MORGANTOWN

### TUESDAY, DECEMBER 06, 2011

9:00 am JENNIE – MEETING WITH PETE LORENZEN / RE: BRUCE STRATHEARN  
9:30 am – 11:00 am JENNIE & STEVE – WEEKLY ZONING MEETING  
11:00 am – NOON JENNIE & SETH – WEEKLY PLANNING MEETING  
AFTERNOON JENNIE, STEVE & SETH - PREPARATION FOR EVENING MEETING  
  
7:00 pm US ROUTE 340 CORRIDOR EAST GATEWAY PLAN MEETING  
LOCATION: HARPERS FERRY KOA, CUTLER HALL

DAWN – OUT / “GIS” TRAINING IN MORGANTOWN

### WEDNESDAY, DECEMBER 07, 2011

8:00 am – 9:30 am JENNIE - MONTHLY DEPARTMENT HEAD MEETING WITH TIM BOYDE  
10:00 am STEVE & JENNILEE – SITE VISITS / RE: BZA & COMPATIBILITY MEETINGS  
1:30 am – 3:00 pm JENNIE – TELEPHONE CONFERENCE / STAKEHOLDERS PHASE II  
3:15 pm JENNIE – MEETING WITH BRUCE STRATHEARN

DAWN – OUT / “GIS” TRAINING IN MORGANTOWN

### THURSDAY, DECEMBER 08, 2011

9:00 am COUNTY COMMISSION MEETING / JENNIE & SETH – APPOINTMENTS

DAWN – OUT / “GIS” TRAINING IN MORGANTOWN

### FRIDAY, DECEMBER 09, 2011

DAWN – OUT / “GIS” TRAINING IN MORGANTOWN

## **Christine Chalmers**

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**To:** Planning Commission  
**Subject:** RE: WEEKLY CALENDAR / 12.12.11 - 12.16.11

### **MONDAY, DECEMBER 12, 2011**

10:00 am – 11:00 am STAFF MEETING  
2:30 pm – 3:30 pm JENNIE, SETH & AMY – WEEKLY PLANNING MEETING

### **TUESDAY, DECEMBER 13, 2011**

8:30 am – JENNIE – PWP INFO EXCHANGE / LOCATION: FRONT ROYAL, VA  
10:30 am DAWN – MEETING / RE: “CO-OP” PLAN  
2:30 pm – 3:30 pm JENNIE, SETH, ENGINEERING STAFF & WHITNEY BURCH -  
RE: NORM THOMPSON BUILDING SITE VISIT & MEETING  
3:30 pm STEVE, MASON & JAMES CASIMIRO (?) – MEETING W/ GEORGIANA PARDO  
RE: VICTORIA ADRAKTAS PROPERTY / LOCATION: ENGINEERING CONF RM

### **WEDNESDAY, DECEMBER 14, 2011**

10:00 am – JENNIE, STEVE & JENNILEE – COMPATIBILITY ASSESSMENT HEARING /  
RE: BAKERTON LAUNDRY #09-01  
2:00 pm STEVE, SETH, ROGER, BECKY & JONATHAN – MEETING /  
RE: ROCK FERRY STATION  
4:30 pm – 5:30 pm JENNIE – JEFFERSON COUNTY DAY INFORMATION MEETING /  
LOCATION: SKIPPERS ICE CREAM PARLOR

### **THURSDAY, DECEMBER 15, 2011**

9:00 am COUNTY COMMISSION MEETING  
9:00 am DAWN & CHRISTINE - SEXUAL HARRASSMENT TRAINING /  
LOCATION: JEFFERSON COUNTY HEALTH DEPARTMENT  
1:00 pm – 2:30 pm JENNIE, STEVE & JENNILEE – WEEKLY ZONING MEETING  
3:00 pm JENNIE, STEVE & JENNILEE - BOARD OF ZONING APPEALS MEETING

### **FRIDAY, DECEMBER 16, 2011**

9:00 am STEVE & MASON – SITE INSPECTION / KENNEL PROPERTY  
9:00 am JENNIE - SEXUAL HARRASSMENT TRAINING / LOCATION: LIBRARY  
10:45 am STEVE, SETH & AMY - SEXUAL HARRASSMENT TRAINING / LOCATION: LIBRARY  
3:00 pm JENNILEE - SEXUAL HARRASSMENT TRAINING/ LOCATION: LIBRARY

## Christine Chalmers

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**To:** Planning Commission  
**Subject:** RE: WEEKLY CALENDAR / 12.19.11 - 12.23.11

### MONDAY, DECEMBER 19, 2011

### TUESDAY, DECEMBER 20, 2011

9:00 am – JENNIE – MEETING WITH DEBBIE KEYSER  
10:00 am JENNIE & SETH – MEETING WITH PAUL RACO & DIRK STANSBURY /  
RE: 340 DEFENSE SHOOTING RANGE  
2:30 pm – 5:00 pm JENNIE – EDA MEETING

### WEDNESDAY, DECEMBER 21, 2011

9:30 am – 11:30 am JENNIE – EAST GATEWAY CONFERENCE CALL WITH DAN SZEKERES  
10:00 am – SETH, AMY & JONATHAN – SITE PLAN PPC /  
RE: VERIZON TELECOMMUNICATIONS TOWER – “KAREN”  
10:00 am STEVE & JENNILEE – REC MEETING WITH MATT KNOTT & KOA  
1:30 pm – 2:30 pm JENNIE – MEETING WITH TANNER HAID / RE: UTC NEXT STEPS  
2:30 pm – 3:30 pm JENNIE & SETH – WEEKLY PLANNING MEETING  
3:30 pm – 5:00 pm JENNIE & STEVE – WEEKLY ZONING MEETING

### THURSDAY, DECEMBER 22, 2011

10:00 am JENNIE – MEETING WITH ROGER / RE: GRANT AMENDMENT  
3:30 pm – 4:30 pm JENNIE, STEVE, SETH & DAWN – PREP FOR JANUARY 19<sup>th</sup> 340 MEETING

### FRIDAY, DECEMBER 23, 2011

9:30 am SETH – UNIWEST / JEFFERSON CROSSING PHASE II

**Christine Chalmers**

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**To:** Planning Commission  
**Subject:** RE: WEEKLY CALENDAR / 12.26.11 - 12.30.11

**MONDAY, DECEMBER 26, 2011**

**CHRISTMAS HOLIDAY – OFFICES CLOSED**

**TUESDAY, DECEMBER 27, 2011**

**WEDNESDAY, DECEMBER 28, 2011**

**THURSDAY, DECEMBER 29, 2011**

**MORNING**                      **STEVE & SETH – TELEPHONE CONFERENCE**

**FRIDAY, DECEMBER 30, 2011**

**Christine Chalmers**

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**To:** Planning Commission  
**Subject:** RE: WEEKLY CALENDAR / 1.02.12- 1.06.12

**MONDAY, JANUARY 2, 2012**

**NEW YEARS HOLIDAY – OFFICES CLOSED**

**TUESDAY, JANUARY 3, 2012**

2:00 pm – 3:00 pm JENNIE & SETH – WEEKLY PLANNING MEETING

**WEDNESDAY, JANUARY 4, 2012**

8:00 am – 9:30 am JENNIE - MONTHLY DEPARTMENT HEAD MEETING W/ TIM BOYDE  
10:00 am STAFF MEETING  
1:00 pm STEVE & JENNILEE – MEETING W/ PETER CORUM & FRED BLACKMERE  
RE: MORGANS GROVE CONDITIONAL USE PERMIT  
2:30 pm – 4:00 pm JENNIE & STEVE – WEEKLY ZONING MEETING

**THURSDAY, JANUARY 5, 2012**

9:00 am - COUNTY COMMISSION MEETING  
3:30 pm – 4:30 pm JENNIE, STEVE & DAWN - MEETING  
7:00 pm – 9:00 pm COUNTY COMMISSION MEETING / RE: GIBSON PUBLIC HEARING

**FRIDAY, JANUARY 6, 2012**

2:00 pm JENNIE, STEVE & SETH - PREPARATION FOR JANUARY 19<sup>TH</sup> 340 MEETING

## 2nd Quarterly Report -- FY 2012 Work Plan County Commission (October - December 2011)

PRIORITY	PROJECTS	TIME FRAMES from FY 11-12 Work Plan	Status or Number Completed (July 11 -- Sept. 11)	Status or Number Completed (Oct. 11 -- Dec. 11)	Outstanding Tasks	REQUIRED RESOURCES/STAFF	REQUIRED HEARINGS	ANTICIPATED RESULTS
	<b>Day to Day Customer Service</b>	<b>on-going</b>						
	Walk in Customers - general information, zoning requests, process questions		196	149				
	Information Request Forms		26	29				
	Zoning Certificates Issued		6	6 issued; 1 denied	5 pending			
	Call-in customers - general info, zoning, questions		471	469				
	E-mail to general planning/zoning mailboxes (note: individuals receive over 100 per month each)		803	874				
	<b>Day to Day Development Review Responsibilities:</b>	<b>on-going</b>						
	Minor Site Plans		1	3				
	Limited Site Plan		1	0				
	Major Site Plans, including Concept Plans		4	1				
	Merger Deeds, Lot Line Adjustments		5	7				
	Conservation Easement Review		--	7				
	Minor Subdivision Plats		3	3				
	Major Subdivision Plats (Concept, Preliminary, Final)		0	1				
	Conditional Use Permits/Neighborhood Compatibility Meetings		0	1 CUP/1 NCM	CUP to be acted upon by BZA 1/19/12			
	Zoning Variances (requirements, dimensional variances, CUP Time extensions)		11	5				
	Subdivision Waivers including requests related to time frames or requirements		2	1				
	Pre-proposal Conferences		6	8				
	<b>Zoning Map Amendments (Rezoning)</b>		3 new (Sanderson Approved by CC 6/30/11)	<b>PC and CC Public Hearings: Hott (CC 10/6/11 - no action); Gibson (PC 11/8/11); Corum (PC 11/8/11; CC 12/8/11 - denied)</b>	<b>Gibson CC Public Hearing 1/5/12; action by CC 1/12/12; possible action on Hott rezoning</b>	SR, SB, JMB		
	<b>Staff to Planning Commission meetings, including staff reports and presentations</b>	on-going	4 Regular Meetings 6 staff report related to land development applications	<b>2 Regular Meetings ; 9 staff report related to land development applications; Amendments to By-laws approved by CC 10/6/11</b>				
	<b>Staff to Board of Zoning Appeals meetings, including staff reports and presentations</b>	on-going	3 BZA meetings 11 staff reports for land development applications	<b>2 BZA meetings 5 staff reports for land development applications</b>	<b>CUP to be acted upon by BZA 1/19/12</b>			

## 2nd Quarterly Report -- FY 2012 Work Plan County Commission (October - December 2011)

PRIORITY	PROJECTS	TIME FRAMES from FY 11-12 Work Plan	Status or Number Completed (July 11 -- Sept. 11)	Status or Number Completed (Oct. 11 -- Dec. 11)	Outstanding Tasks	REQUIRED RESOURCES/STAFF	REQUIRED HEARINGS	ANTICIPATED RESULTS
	Staff Training -- new skills, planning and zoning related functions	on-going	None this Quarter	Seth Rivard and Steve Barney -- Land Use and Zoning Law Litigation (11/2/11); Dawn Childs - ArcGIS Desktop I: GIS Workflows and Analysis and ArcGIS Desktop II: Tools and Functionality (12/5-12/9/11)	April - new PC member training; APA National Conference (April 2012) - Steve Barney			
	Various non-PC and non-BZA Meetings including participation in County Commission; other agencies such as WAC, JCDA, Health Department, PSD, HEPMPO TAC, WIP II Work Group; other Region 9 Meetings as requested; and follow up meetings with applicants and their representatives	on-going	JB - 126 meetings attended; SR - 69 meetings attended; SB - 84 meetings attended	JB - 100 meetings attended; SR - 67 meetings attended; SB - 72 meetings attended				
Special Project	Proposed Subdivision Regulations Amendments		Proposed Am to Articles 20 & 26 re: Add'l minor site plan sq. footage (PC vote 7/26/11; CC 8/18/11; CC PH 9/15/11); Proposed Am to Article 24 combining Submission & Completeness Reviews for Site Plans and Plats (PC PH 7/12/11; PC vote 7/12/11; CC 8/18/11; CC PH 9/15/11)	Proposed Am to Articles 20 & 26 re: Add'l minor site plan sq. footage (CC PH follow up 10/6/11; add'l follow up work session 11/3/11; requested add'l alternatives); Proposed Am to Article 24 combining Submission & Completeness Reviews for Site Plans and Plats (CC Workshop 11/3/11 and 11/10/11; approved with edits by CC, 11/3/11)	Proposed Am to Articles 20 & 26 re: Add'l minor site plan sq. footage (new alternatives to PC 1/10/12; to CC 1/19/12)	SR, SB, JB	possibly	
Special Project	Proposed Zoning Ordinance Amendments		Policy Neutral Am. Approved by CC 7/7/11; Am to Article 4A Home Occ./Cottage Ind (PC vote 7/26/11; CC 8/18/11; CC PH 9/15/11); Am to Article 12 (PC PH and vote 7/12/11; CC 8/18/11; PC PH 9/15/11)	Am to Article 4A Home Occ./Cottage Ind (Approved by CC with edits 11/3/11); Am to Article 12 (Approved by CC 11/10/11); Kick-off Roundtable Discussion with recreation providers 10/21/11 and follow up meeting with industry 12/20/11; drafting new Commercial Zoning categories for PC review and action at January meeting	Possible new ordinance language related to Recreation Uses (2/12); Public Hearing/input into proposed new commercial zoning categories 2/12	SR, SB, JB	possibly	

## 2nd Quarterly Report -- FY 2012 Work Plan County Commission (October - December 2011)

PRIORITY	PROJECTS	TIME FRAMES from FY 11-12 Work Plan	Status or Number Completed (July 11 -- Sept. 11)	Status or Number Completed (Oct. 11 -- Dec. 11)	Outstanding Tasks	REQUIRED RESOURCES/STAFF	REQUIRED HEARINGS	ANTICIPATED RESULTS
Special Project	<b>340 Corridor East Gateway Study</b>	Spring 2011 - January 2012	6/16/11 meeting summary and follow up; preparation for and follow up to 3rd Public Meeting 9/17/11 meeting, including development of 3 land use alternatives based on public input and Traffic Analysis Zones for data analysis; Metro Quest Phase 2 preparation	<b>Joint meeting with HF NPS and Trail Blazers 10/18/11; MetroQuest Phase 2 open 10/7/11 - 11/11/11; Public Meeting #4 to chose preferred alternative 12/6/11 (KOA); drafting text and finalizing maps and working with HEPMPO consultants</b>	<b>Next Public Workshop (5th public meeting) – Thursday, January 19, 2012, 7 -9 pm, Charles Town Library Basement Meeting Room; Joint PC/CC Meeting tentatively 3/1/12</b>	SR, SB, JB		
Special Project	<b>340 Corridor South Study</b>	Spring 2012 - Winter 2013	No Work this quarter	<b>No Work this quarter</b>				
Special Project	<b>2014 Comprehensive Plan</b>	Fall 2012 - Spring 2014 (18 month); adoption 2014	No Work this quarter	<b>No Work this quarter</b>				
Special Project	<b>Urban Tree Canopy Plan Adoption</b>		Urban Tree Canopy Draft Plan & Goals Meetings: Shepherdstown (8/18/11), Bolivar (9/6/11); County PC PH (7/26/11)	<b>Approved and adopted by County Commission after Public Hearing 11/3/11</b>	completed	JB		
Special Project	<b>Urban Growth Boundaries</b>		Shepherdstown UGB recommended to CC 9/15/11	<b>drafted letter on behalf of CC to Shepherdstown requesting more information for CC signature</b>		JB		
Special Project	<b>Participation in WIP II Meetings held by DEP and follow up Chesapeake Bay activities</b>		WIP II Developed Lands Work Group 8/3/11; Ches. Bay WIP II Summit 8/30/11; speaker at 6th Annual Chesapeake Bay Forum 9/30/11	<b>monthly conference calls</b>		JB		
Special Project	<b>Review and Potential Implementation of Region 9 Model Stormwater Regulations</b>		WIP II meetings (above)	<b>coordinating with County Engineer in effort to apply for grant to facilitate the incorporation of these regulations in local ordinances</b>		JB, SR, engineering		

**2nd Quarterly Report -- FY 2012 Work Plan County Commission (October - December 2011)**

PRIORITY	PROJECTS	TIME FRAMES from FY 11-12 Work Plan	Status or Number Completed (July 11 -- Sept. 11)	Status or Number Completed (Oct. 11 -- Dec. 11)	Outstanding Tasks	REQUIRED RESOURCES/STAFF	REQUIRED HEARINGS	ANTICIPATED RESULTS
Special Project	Summer intern hired to initiate data analysis		Summer Intern worked May through mid-Sept 2011; researched existing conditions data, 2010 Census data, community facilities data, etc in preparation for 2014 Comp Plan Update; also assisted with TAZs and land use alternatives for US 340 East Gateway Plan	no further action at this time				