

AGENDA
JEFFERSON COUNTY PLANNING COMMISSION
October 23, 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. Approval of the minutes for the October 9, 2012 meeting.
2. Citizen Communications.
3. Request for postponement.
4. Public Hearing for Zoning Map Amendment (Rezoning) for property designated as Tax District: Shepherdstown, Map: 8, Parcel: part of 5. This property is currently zoned Residential Growth and Residential/Light Industrial/Commercial zoning is being requested. This property is located on the south side of Route 45 (Martinsburg Pike) and on the east side of Potomac Farms Drive and is a total of 8.07 acres. The owner of record is John D. Lowe, III.
5. Public Hearing for Zoning Map Amendment (Rezoning) for property designated as Tax District: Charles Town, Map: 13, Parcel: 7. This property is currently zoned Rural and Residential/Light Industrial/Commercial zoning is being requested. This property is located on the south side of Route 51 near the Tuscowilla Hills entrance approximately 2 miles west of Charles Town and is a total of 34.27 acres. The owner of record is Jefferson Asphalt Products, Inc.

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 and our website is 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
OCTOBER 9, 2012

The Jefferson County Planning Commission met on Tuesday, October 9, 2012 with the following Commission members present: Paul Taylor, President; Eric Smith, Vice President; Morgan Eppers, Secretary; Kelly Baty, Gene Taylor, J.P. Phillips, Steve Stolipher, Daniel Hayes 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; Stephanie Grove, Prosecuting Attorney; and Amy Puetz, Planning Clerk.

Mr. P. Taylor called the meeting to order at 7:11 PM

1. Approval of the minutes for the September 11, 2012 meeting.

Mr. Stolipher moved to approve the minutes of the September 11, 2012 Planning Commission meeting. Mr. Pellish seconded the motion which carried 5 for and 1 abstention (Mr. P. Taylor).

Mr. Rivard provided an update related to the motion made regarding the Sheetz waiver at the last meeting, including updated information after discussion with the WV Department of Highways (WVDOH). He explained that the WVDOH will allow sidewalks in the right-of-way in many areas; however, in the case of Sheetz, the frontage along Washington Street/US 340 is considered "limited access" and is controlled by the Federal Highway Administration for road improvements. He stated that placing a sidewalk within that right-of-way would be difficult and could cause other concerns.

2. Citizens Communication.

Mr. Fred Blackmer, on behalf of Morgan's Grove Market, stated that he had appeared before the County Commission last Thursday to request the creation of a Citizen's Appeal Board for the purpose of mediating issues between applicants and staff when a resolution cannot be met. He reported that the County Commission suggested that he present his request to the Planning Commission. He commented that he has recently faced a series of misunderstandings, miscommunications, and a failure to agree on the interpretations of State code and local regulations in processing his project. He requested to be placed either on the 2nd meeting in October or the 1st meeting in November to discuss the need for an appeal board. He stated he would wait at this meeting so that the scheduling of an agenda item for this cause could be discussed under County Commission Liaison Report.

3. Request for postponement.

Ms. Brockman stated that there was a request for the Aitcheson Rezoning request to be heard at the December 11, 2012 Planning Commission meeting instead of the November 13, 2012 meeting.

Mr. Stolipher moved to postpone the rezoning request to the December 11, 2012 Planning Commission meeting. Mr. Pellish seconded the motion.

Mr. Baty asked the reason behind the request for the postponement. Ms. Brockman explained that there was no current policy that requires the applicant to provide a reason for a request of postponement. Mr. Baty stated concern for allowing applicants to request different meeting dates as it does not seem fair to the public who is expecting that item to be heard at a particular meeting. Ms. Brockman reported that no adjoining letters or advertisement had been posted yet for this particular request.

Mr. Hayes entered the room at 7:19 PM.

The motion carried 6 for, 1 opposed (Mr. Baty), and 1 abstention (Mr. Hayes).

4. **Public Hearing for Zoning Map Amendment (Rezoning) for property designated as Tax District: Harpers Ferry, Map: 7, Parcels: 24 and 26. This property is currently zoned Rural and Residential/Light Industrial/Commercial zoning is being requested. This property is located on the intersection of US Route 340 and Washington Street in Harpers Ferry and is a total of 2.39 acres. The owner of record is the Bank of Charles Town (BCT).**

Mr. Rivard described the location of the property and discussed the Planning Commission's role in this request.

Mr. Eric Smith entered the room at 7:26 PM.

Ms. Annette van Hilst, the applicant's representative, gave a detailed presentation by Power Point. She described the location of the property, showed pictures of the property and detailed how the request was consistent with the 2004 Comprehensive Plan. She reported that the reason for the request was due to the location of the property at a major intersection with a main road leading directly to Harpers Ferry. She stated that it is within the growth area outlined by the 2004 Comprehensive Plan and has access to water and sewer. She commented that the site is appropriate for urban development and is within walking distance to many public buildings.

Mr. Bob Baronner, President of BCT, stated that many people in the room wearing BCT buttons were employees there to show support of the request. He briefly described the charities that BCT donates to, the number of employees and the benefits they receive, and the money given to local citizens to build homes and start businesses.

Mr. J.P. Burns, life-long resident of Jefferson County and BCT board member, gave some history of the bank. He gave several statistics of the success of BCT and stated that many of the dividends are given back to the community. He commented that BCT is a good corporate partner and asked that the request be given fair consideration.

Mr. Keith Berkeley, a local veterinarian and BCT board member, described the number of BCT employees and that 5 million dollars in wages and benefits are paid by BCT every year. He commented that BCT employees participate frequently in community services and have logged more than 2,000 hours to such events since the beginning of the year.

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Mr. Rivard gave his staff report and stated that staff recommends that the Planning Commission find that the request is consistent with the 2004 Comprehensive Plan and forward that recommendation to the County Commission. He stated that the staff finds the request in conformance with the 2004 Comprehensive Plan as found within the staff report. He commented that staff suggested that the applicant consider the surroundings of the property when deciding on architecture, landscaping, signs and lighting standards. Mr. Rivard noted that the Planning Commission may decide to recommend denial of this request due to the historic, natural and cultural resources of this property.

Mr. P. Taylor opened the public hearing.

Mr. Scott Faulkner, representing the Friends of Harpers Ferry, Journey through Hallowed Ground, and the Civil War Trust, distributed a document outlining his comments. He stated that if BCT wanted to build on this property then they would have used the Conditional Use Permit (CUP) process. He commented that the property had been included in the National Park Boundary since 1955. He discussed the significant, multiple layers history of battles which occurred on this property. He reported that Harpers Ferry National Historic Park had attempted to buy the property to incorporate it into the preserved battlefield and that BCT outbid them 4 hours before closing. He stated that if the site were to be used for a facility such as Sheetz, or any other food service, or any store to buy tourist collectibles, then a great disservice would be done to the small businesses in the towns of Bolivar and Harpers Ferry. He urged the Planning Commission to recommend denial of this request stating that the property should remain rural and should be purchased by preservation groups.

Mayor Joe Anderson, mayor of Harpers Ferry, stated that the site is entirely surrounded by park service lands, battlefields, and low intensity single family homes. He commented that commercial use of this property would have a very distracting effect on the otherwise rural, historic character of this area. He reported that the National Park Service had been in the process of negotiating for this property. He stated that BCT should use available commercial lands to develop commercial uses. He raised concern regarding existing traffic issues worsening. He also stated that Harpers Ferry would be required to manage the water and sewer used at the site and requested that the Planning Commission consider the opposition of the City of Harpers Ferry. Mayor Anderson reported that this property should be incorporated into the park lands to preserve its rural and historic nature.

Mr. Andrew Lee, Resource Manager for the National Park Service in Harpers Ferry, read from a letter penned by Rebecca Harriett, Superintendent of the National Park Service. He reported the opposition of the National Park Service and stated it is not consistent with the 2004 Comprehensive Plan. He commented that commercial use on this property would have significant negative impact on historic and scenic values.

Mr. David Hammer, Legal Counsel for the City of Bolivar, stated that the burden of proof of need for the request is on the applicant. He raised concern regarding a letter of support submitted by the Jefferson County Development Authority (JCDA) and stated that the letter contained no mention of the National Park Service or the millions of tourist dollars brought to this area by the National Park Service. He reminded the Planning Commission that, when

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the US 340 Gateway Study issues were being surveyed through MetroQuest, Jefferson County citizens placed the importance of historic and natural resources over retail and commercial development. He reported that citizens also place high importance on traffic safety and travel which will be negatively impacted by a rezoning of this property. He commented that recommending approval of this request is irrational without knowing the future use and the applicant has not met the burden of proof. He urged the Planning Commission to recommend denial of this rezoning and stated this site should remain rural due to its historic surroundings.

Mr. Mike Kennedy, a member of the Harpers Ferry Planning Commission, distributed a report to the Planning Commissioners that showed pictures of the surrounding areas of the property and detailed reasons for recommending denial of the rezoning request. He stated that there has not been significant change in the area since Jefferson County adopted the Zoning Ordinance in 1988. He explained why the request is inconsistent with the 2004 Comprehensive Plan and with the Jefferson County Zoning and Land Development Ordinance citing specific sections of those documents. He requested that the letter of support submitted by the JCDA not be considered as he feels it is based on flawed guidelines.

Ms. Sheila Scoville, resident of Bolivar, stated that the rural character of the area would be destroyed with the greed for commercialization if this rezoning request is approved. She urged the Planning Commission to think about the future and to recommend denial of this request.

Ms. Budge Blake, resident of Bolivar, relayed that she had been a member of the Planning Commission and had also been a member of the Bolivar Planning Commission. She stated that BCT had mentioned that the property may be used as a place where tourist could buy trinkets. She rebutted that there were already plenty of shops in the cities of Bolivar and Harpers Ferry where trinkets could be purchased.

Mr. Jerry Hutton, resident of Harpers Ferry and member of the Harpers Ferry Town Council, discussed his opposition to the request. He commented that approval of the rezoning request would detract from the rural and historic values of the area.

Ms. Barbara Humes, resident of Jefferson County, asked that common sense be used in determining the recommendation for this request. She stated that rezoning this property would not be in the best interest of this community and feels that, if approved; there would be increased traffic, trash, and stormwater management issues. She commented that she has spoken of this request to many visitors to Harper's Ferry who also adamantly oppose the rezoning.

Mr. Mark Dyck, on behalf of the Jefferson County Development Authority, read the letter of support that was included in the packet sent to the Planning Commissioners. Additionally, he commented that he sees an "any change is bad" attitude in the County and would like to see citizens work with the owners on appropriate changes and uses for this property.

Ms. Victoria Drumheller, resident, stated that she owns business property in the area and raised concern over the potential lighting of the property in question.

Mr. Hayes moved to close the public hearing. Mr. Stolipher seconded the motion which carried unanimously.

Ms. Van Hilst rebutted. She stated that she respects the opinions that were discussed. She stated that the proposed use should not be discussed as a part of the rezoning request since that is a part of the site plan process. She also commented that BCT had been and would be willing to consider selling the property to a historic preservation agency if a reasonable offer were to be proposed. She stated that such an offer had not been submitted by any person or agency.

Mr. Stolipher moved to recommend approval of the request to rezone this property from Rural to Residential/Light Industrial/Commercial to the County Commission. Mr. Pellish seconded the motion.

Ms. Eppers stated that the Planning Commission needs to look at all the permitted uses and determine if each falls within the guidelines of the 2004 Comprehensive Plan. She commented that she does not believe that all the uses would be appropriate for this site.

Mr. Pellish stated he feels this request clearly fits the guidelines of the 2004 Comprehensive Plan. He commented that BCT has property rights and that they should be able to do whatever they like with that property that falls within state and local regulations. He stated that the National Park Service should offer a reasonable bid for the property if they would like for it to be preserved. He voiced his support.

Ms. Eppers asked for the list of potential uses to be displayed from the PowerPoint and reiterated that she did not feel that all of these uses would be appropriate for that site or fall within the guidelines of the 2004 Comprehensive Plan. She commented that she may be more comfortable allowing one of the proposed new commercial categories if they are approved. She stated that this category is way too broad for this property location.

Ms. Brockman reminded the Planning Commission that their role was to vote on a recommendation to the County Commission regarding whether the request is in conformance with the 2004 Comprehensive Plan. The County Commission would then hold another public hearing before making their decision.

Mr. Hayes stated that he would not look at the request as a worst case scenario. He commented that certain uses would be prohibited by the small size of the property.

Mr. Baty stated that he agreed with Ms. Eppers that the category of the requested zoning is too broad.

Mr. Stolipher repeated the motion. Mr. P. Taylor made a friendly amendment to add "in accordance with the staff recommended motion". (Attached)

The motion carried 5 for, 4 against (Mr. Baty, Mr. P. Taylor, Mr. Smith, and Ms. Etters).

Mr. P. Taylor called for a break at 9:05 PM. He called the meeting back to session at 9:13 PM.

5. Reports from Legal Counsel and legal advice to PC.

Active Litigation:

- **Far Away Farms**
- **Cedar Meadows Airpark**

Ms. Grove stated that Mr. Stephen Groh was working on the brief for Far Away Farms that would be due this week.

Ms. Grove reported that the case of Cedar Meadows Airpark had been continued until the additional litigation concerning the ownership of the property had been resolved.

6. Director's Report.

Ms. Brockman discussed the website created for public outreach regarding the 2014 Comprehensive Plan efforts. She stated the website is titled "Envision Jefferson 2035" and encouraged Planning Commission members to sign up to follow the page. She also reported that a Facebook page was created for the purpose of posting upcoming events.

Ms. Brockman stated that the 2-year Comprehensive Planner position had been approved by the County Commission and approximately 30 applications had already been received. She reported that the resumes would be reviewed then interviews held in late October.

Ms. Brockman commented that a Steering Committee would be established to assist in the creation of the 2014 Comprehensive Plan. She stated the committee would be comprised of two citizens from each County Commission district and 1 to 3 at-large members and each person would be chosen by the County Commission. She anticipated a kick-off meeting for this committee by mid-November.

Ms. Brockman reported that staff is looking at the benefits versus the cost of hiring a facilitator. She stated that staff had contacted some facilitators who would generate a cost estimate for the department. She commented that if a facilitator were hired, that person would be solely utilized for public meetings.

Ms. Brockman mentioned that an article in the paper reported that the homeowner's of Ryan's Glen are upset by the proposed WVDOH 4-Lane Project on US 340 South which extends from the current 4-lane highway to the Virginia line. She stated that the homeowners of Ryan's Glen were not aware of the project when they bought their homes even though studies were underway at that point. She reported that the homeowners are upset that the Planning Commission and staff approved the subdivision knowing studies were being done to place a highway through that land. She also commented that the homes were built when the market for homes was better and that selling now would mean a loss of money for the

homeowner. She stated that the Planning Commission would not have been able to deny a subdivision on the grounds that a potential highway may be built someday.

Ms. Brockman stated that staff had initiated discussion with State Transportation Officials regarding possible uses for additional funds provided by the Easter Panhandle Transportation Authority for the study of US 340 South.

Ms. Brockman reviewed the upcoming Planning Commission meetings.

7. Monthly Development Activity Report.

Mr. Rivard presented the October Monthly Development Activity Report.

8. County Commission Liaison Report.

Mr. Pellish stated that the County Commission would make a request for the WVDOH to come in and have a discussion regarding better communication between the agencies.

Mr. Pellish reported that the County Commission had a lengthy discussion regarding the request presented by Mr. Peter Corum and Mr. Fred Blackmer to establish another body to resolve potential conflicts between staff and applicants. Mr. Pellish stated that he felt that would be the wrong approach and would complicate the process. Mr. Pellish requested that Mr. Blackmer's request be placed on the 1st meeting in November for discussion of how issues could be resolved in the future. He suggested that Mr. Blackmer make a presentation at the November 13, 2012 meeting.

9. 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.**

Mr. Baty reported that Ms. Alana Hartman, of the WV Department of Environmental Protection, had spoken to the Water Advisory Committee on September 17, 2012 regarding the Chesapeake Bay Watershed Implementation Plan Phases II and III. He stated that discussion topics included financing, concentrated animal feeding operations (CAFOs), other sources of nitrates, and stormwater management. He stated that there would be an event on December 5, 2012 at a place to be determined for public outreach of how the Chesapeake Bay Watershed Implementation Plan would be enacted.

10. President's Report. None.

11. Actionable Correspondence. None.

12. Non-Actionable Correspondence. None.

Mr. Hayes moved to adjourn the meeting at 9:35 PM. Mr. G. Taylor 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.

**A Motion Recommending Approval of a
Rezoning for Bank of Charles Town Property
October 9, 2012**

Whereas, Bank of Charles Town has requested rezoning of two parcels; and

Whereas, The property is identified as Parcels 24 and 26 as shown on Tax Map 7 of the Harpers Ferry District, cumulatively consisting of 2.39 acres; and

Whereas, The applicant is requesting both parcels, be rezoned from Rural to Residential-Light Industrial-Commercial; and

Whereas, The requested rezoning process complies with the requirements in accordance with the provisions of Article 12 of the Jefferson County Zoning and Land Development Ordinance, effective July 7, 1988, as amended and West Virginia State Code Section 8A-7-9; and

Whereas, The Planning Commission finds that the requested rezoning is conformance with the adopted 2004 Comprehensive Plan as outlined in the staff report; and

Whereas, The Planning Commission further finds that there have not been major changes of an economic, physical or social nature within the area involved which were not anticipated when the Comprehensive Plan was adopted; and

Whereas, Staff recommends approval of the requested rezoning based on the conditions outlined in the staff report as attached; and

Now therefore be it moved, that the Jefferson County Planning Commission recommends approval of the request for rezoning from Rural to Residential-Light Industrial-Commercial for property identified in the Jefferson County Tax Map as Parcels 24 and 26 as shown on Tax Map 7 of the Harpers Ferry District.

The portion of the record of the Planning Commission meeting pertaining to this application and the official minutes thereof are incorporated herein by reference as if set forth in full herein.

Recommended approval this 9th day of October
By vote of the Jefferson County Planning Commission
By a vote of 5 Yes 4 No

 10/11/12


Planning Commission President

Paul Taylor

Staff Report
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John D. Lowe, III et al (#Z12-03)

Item #4: Request by John D. Lowe, III for a zoning map amendment for property designated as Tax District Shepherdstown, Map: 8, Parcel: Part of 5.

APPLICANT:	John D. Lowe, III
OWNER:	Same as above
DEVELOPER:	Same as above
APPLICANT REPRESENTATIVE:	Richard Klein, P.E. of Alpha Associates, Inc.
PROPERTY LOCATION:	This property is located on Potomac Farms Drive near its intersection with Martinsburg Pike.
LEGAL DESCRIPTION:	District: Shepherdstown; Map: 8; Parcel: part of 5 
ZONING DISTRICT:	2011 Zoning Map: Rural
SURROUNDING PROPERTIES:	2011 Zoning Map North: Residential Growth South: Residential Growth East: Residential Growth West: Residential Growth
LOT AREA:	Site area: 41.14 acres
PROPOSED ACTIVITY:	To rezone this Rural property to a designation of Residential-Light Industrial-Commercial
PLANNING COMMISSION RESPONSIBILITY:	To advise the County Commission as to whether the requested Zoning Map Amendment is consistent with the 2004 Comprehensive Plan.
STAFF FINDING:	In this report Staff presents the various factors related to this property based on the Comprehensive Plan. Staff does find

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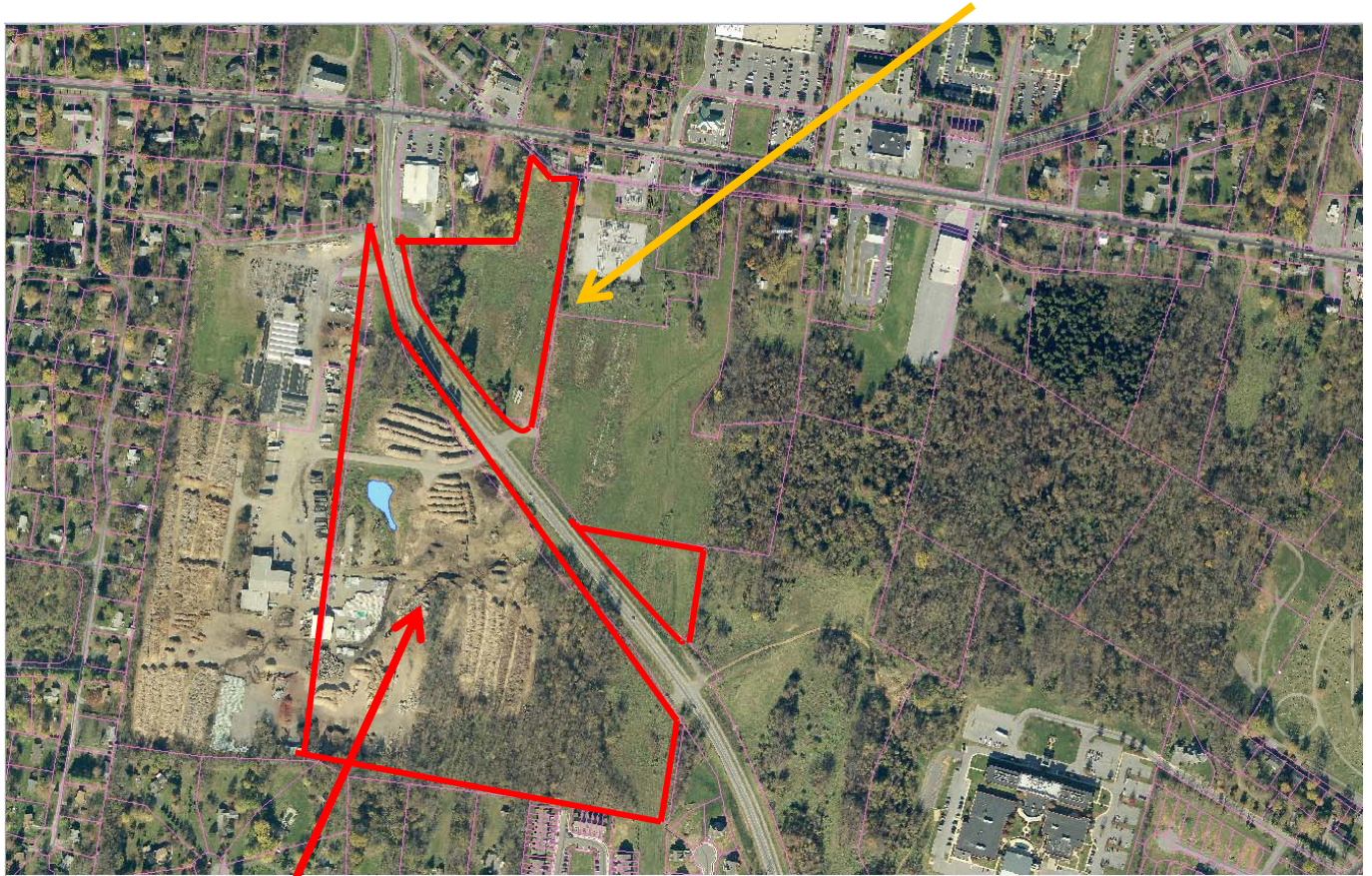
	the plan to be consistent with the 2004 Comprehensive Plan
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Background

The property is currently a 41.14 acre lot that contains the Lowe’s Wood Product and Mulch Facility. The existing use is non-conforming and predates zoning. This parcel is divided by Potomac Farms Drive (Alternative Route 45). The Lowe’s Wood Product and Mulch Facility is on the south side of Potomac Farms Drive covers approximately 33.07 acres of the 41.14 acre lot and the remaining unused 8.07 acres is north of Potomac Farms Drive. The applicant is only requesting that the approximate 8.07 acres north of Potomac Farms Drive be rezoned, as shown in Image 1 below.

Image 1

Part of Parcel Requested for Rezoning



Subject Parcel (composed of 3 sections – all one parcel number)

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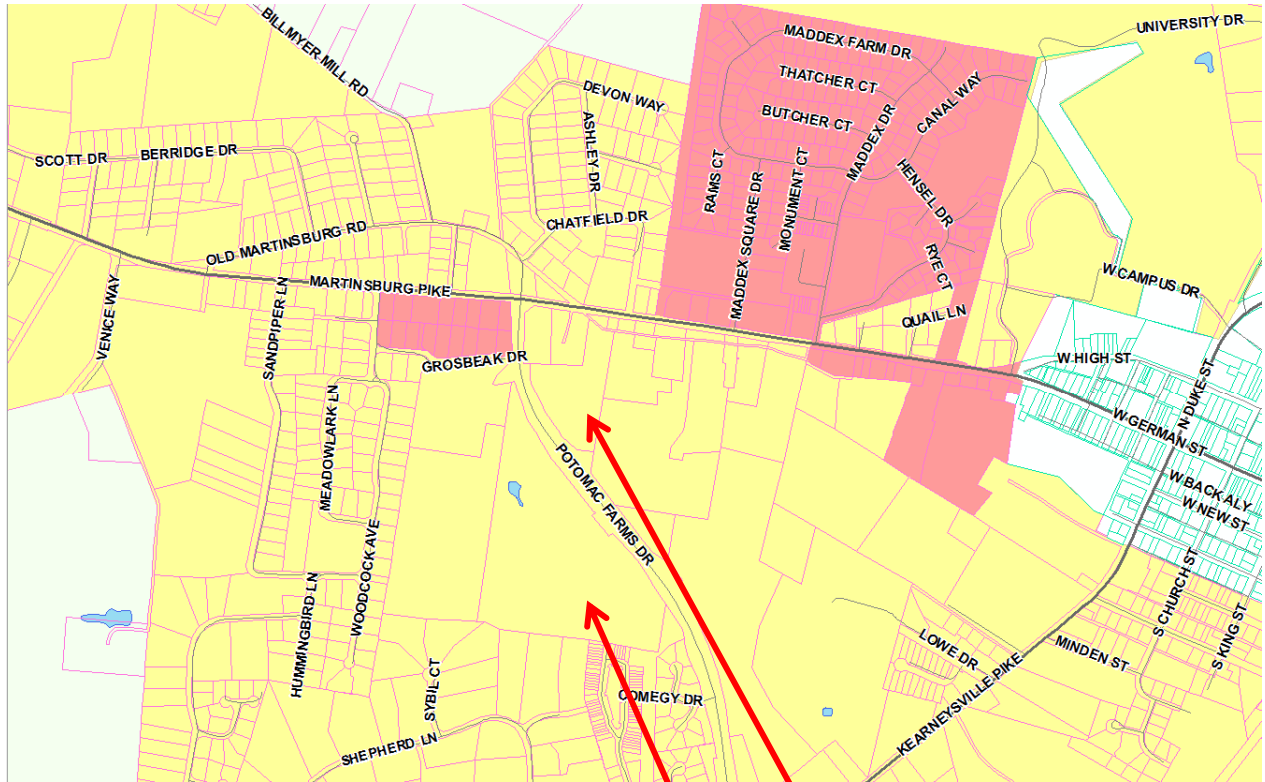
Introduction and Purpose

The portion of Parcel 5, Tax Map 8 of the Shepherdstown District which the subject of the rezoning case is currently vacant.

The parcel is currently zoned Residential Growth. As shown in Image 2 below, the surrounding properties are all zoned Residential Growth. The applicant has requested rezoning of the 8.07 acres from Residential Growth to Residential-Light Industrial-Commercial. The following report has been prepared to assist the efforts of the Jefferson County Planning Commission and Jefferson County Commission to make findings regarding the consistency of the proposed rezoning with the Jefferson County Comprehensive Plan, in accordance with West Virginia State Code requirements.

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Image 2 – Only the portion north of Potomac Farms Drive has been requested in the rezoning application.



Legend

-  Urban Growth Boundary
-  Parcels
-  Tax District Boundary
-  Public/Quasi-Public Land
-  Appalachian Trail

Zoning District

-  Incorporated Town
-  Industrial-Commercial
-  Residential-Growth
-  Residential-Light Industrial-Commercial
-  Rural
-  Village

Subject Parcel

Statutory Authority and Requirements

The West Virginia State Code, Section 12.1(a) provides that the boundaries of zoning districts may be amended by the County Commission with the advice of the Planning Commission. The County Zoning Ordinance also requires that the *“procedure for amendment [by petition] shall be as dictated in Section 8A-1-1 et. Seq. of the West Virginia State Code as amended.”* Concerning amendments by petition, State statute provides that, *“Before amending the zoning ordinance, the governing body with the advice of the planning commission must find that the amendment is consistent with the adopted comprehensive plan.”* [See **WVC 8A-7-9(c)**] This subsection of the State Code also states that, *“If the amendment is inconsistent, then the governing body with the advice of the planning commission, must find that there have been major changes of an economic, physical or social nature within the area involved, which were not anticipated when the comprehensive plan was adopted and those changes have substantially altered the basic characteristics of the area.”*

Scope of this Assessment

This report focuses on whether or not the rezoning application is consistent with the Comprehensive Plan. Based upon the assessment, this report concludes that the aforementioned request is consistent with Comprehensive Plan. Any assumptions and findings contained in this report are limited to the aforementioned proposal to rezone the subject site.

The format for this assessment includes quotes from specific provisions of the Comprehensive Plan, which are identified by page number citation at the end of the sentence where it is quoted. Staff has used these notations and quotations in order to address sections of the Comprehensive Plan as it relates to the proposed rezoning. Identification of the specific page numbers where these provisions can be found in the Plan permits the Planning Commission and/or County Commission to easily locate the particular provision and personally evaluate the provision in the context of the larger Plan document. When available or appropriate, map references are provided with maps located in the Appendix to this report.

It should also be noted that the Comprehensive Plan states, *“Its recommendations are (by their nature and intent) general and, as such, sometimes conflicting. It will not be difficult to find two that individually justify and conflict with many land use proposals.”* In that sense, there are many plan references that are identified in this report that can or may appear to support or fail to support a finding of consistency between the proposed rezoning and the Comprehensive Plan. In the final analysis, each member of the Planning Commission and the County Commission will need to weigh the degree to

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which various plan provisions are of greater or less importance, in establishing their respective findings regarding the application.

Finally, this report provides an account concerning the proposed rezoning based on review of the various plan sections and elements. The recommendations should be considered the professional opinion of staff; no more and no less. Since the Planning and Zoning Staff has no statutory authority to make decisions in this regard, we defer to the Planning Commission and subsequently the County Commission for any final recommendation or decision that may be forthcoming with respect to the subject application.

Relevant Comprehensive Plan Elements and Commentary

Existing Zoning District:

The Comprehensive Plan notes that, *“This district (Residential Growth) and the ‘Residential-Light-Industrial-Commercial’ Zoning District, are co-mingled and comprise a strong majority of the ‘Designated Growth Area (pg. 71).”* This statement acknowledges that the Residential Growth district is a growth oriented district. In addition to a broad range of urban density residential uses, the district permits day care centers, hospitals, nursing homes, and churches. This zoning district should not be considered a limited use district.

Proposed Zoning District:

The Comprehensive Plan provides the following perspective on the Residential-Light Industrial-Commercial zoning district, which the applicant is requesting:

- *“...commonly referred to as the “mixed use” zone, permits uses of a light industrial and commercial nature, as well as a spectrum of residential and institutional uses ranging from single-family dwelling units to multi-family apartments and group homes. Residential uses must conform to the standards set forth in the Residential Growth District, but industrial and commercial uses are required to conform to a set of specific performance criteria, which include numerical measurements of several factors for uses that may have nuisance effects on adjacent uses (pg 71).”*
- *“There are two issues regarding this district that should be studied as part of planned amendments to the Zoning Ordinance. First, most ordinances that have “mixed use” zones require certain minimum percentages of land usage in residential, commercial and dedicated open space. Jefferson County’s Ordinance doesn’t. Land in this district can be developed entirely for commercial or residential use or any combination thereof (pg 71).”*

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The Plan does detail some of the potential benefits of the Residential-Light Industrial-Commercial District and a number of concerns with the district. While this district is defined as mixed used, it does not require any mixing of uses, it merely allows for the possibility. The district allows two vaguely defined uses as permitted by right, “Commercial Uses” or “Uses of light industrial.” “Uses of light industrial” is essentially defined by uses that are not defined as heavy industrial and commercial uses. There is wide latitude for the ability to interpret what qualifies as light industrial use. These two terms allow for some interpretation of what they mean and what is permitted. As such, there are a variety of uses that could be proposed on the subject property, each of which could have very different impacts.

It should be noted that the broadness of this zoning category often raises concerns and is one of the primary reasons that new commercial zoning categories are currently under development and consideration.

Growth Area:

This parcel is located within the area defined by the Comprehensive Plan as the Shepherdstown “growth area,” as found on page 75 of the Plan and Image 3 below. Since the subject parcels are located both in the growth area and near an existing urban area of Shepherdstown, the Plan supports the request.

The 2004 Comprehensive Plan does reference a “Shepherdstown Area” of the Plan. However, the discussion regarding this area is limited. The elements noted in the “Shepherdstown Area” are:

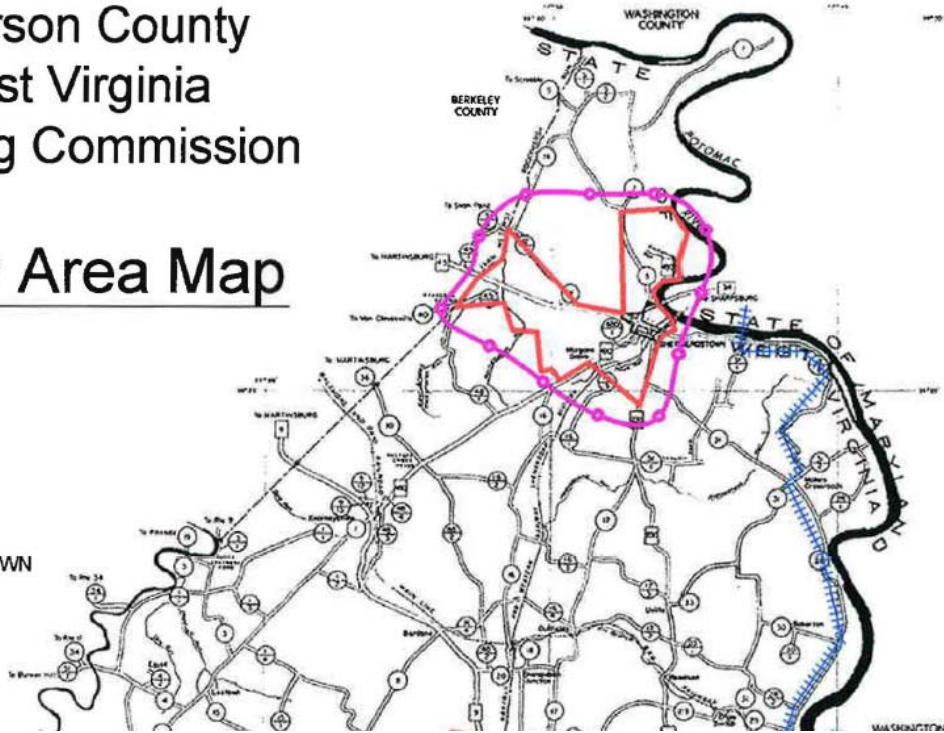
- WV 45 by-pass has assisted in relieving congestion in Shepherdstown
- A significant amount of the area to the north, south and west of Shepherdstown is zoned Residential Growth and Residential-Light Industrial-Commercial. The rationale for this statement is to highlight the zoning rights that are established and the significant growth that is permitted in those two districts.
- Due to the unique nature of Shepherdstown, future development needs to be closely managed and monitored.

The Shepherdstown Area does note two elements that support the request. This property is currently zoned Residential Growth, which is a growth district and does allow a fair amount of development. However, the notion that area surrounding Shepherdstown should be developed in an appropriate fashion is pertinent to this rezoning request. While there is a concern regarding some uses in the Residential-Light Industrial-Commercial District, many of the uses are compatible with the surrounding area. Growth should occur where there is existing infrastructure and near urban cores. This request follows that principle.

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Image 3

Jefferson County
West Virginia
Planning Commission
Study Area Map



NOTE: BOUNDARIES SHOWN
ARE APPROXIMATE.

LEGEND

- 1. GROWTH AREA
- 2. CATTAIL CREEK STUDY
- 3. CT/R STUDY
- 4. SHEPHERDSTOWN STUDY
- 5. PACK HORSE FORD STUDY

Transportation Impacts:

Access to this property is from Potomac Farms Drive. There is no functional access to Route 45/Martinsburg Pike. Potomac Farms Drive has been designed to manage additional traffic loads.

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October 23, 2012

Water and Sewer Proximity:

This parcel can be served by Shepherdstown water and sewer. Water is available along Route 45 and sewer is at Maddox Farms. The Comprehensive Plan encourages urban level development to be on a central water and sewer system, whether public or privately owned. Therefore, the requested rezoning would conform to this aspect of the 2004 Comprehensive Plan and its growth plan. In the future, any development of this property shall be on the Shepherdstown public water and sewer system.

Staff Recommendation

Staff finds the aforementioned proposed rezoning to be consistent with the 2004 Comprehensive Plan. There is urban level development surrounding much of the property, and urban level water and sewer services are available for the property. There is existing transportation infrastructure designed to handle increased growth. As such, Staff finds the requested rezoning is reasonable. The subject parcels are within the identified growth areas as defined in the 2004 Plan.

**A Motion Recommending Approval of a
Rezoning for Lowe Property
October 23, 2012**

Whereas, John D. Lowe III has requested a rezoning of part of a parcel; and

Whereas, The applicant has requested that 8.07 acres, a part of Parcel 5 as shown on Tax Map 8 of the Shepherdstown District, cumulatively consisting of 41.14 acres, be subject to the rezoning; and

Whereas, The part of Parcel 5 subject to rezoning is generally defined as being the section north of Potomac Farms Drive.

Whereas, The applicant is requesting both parcels, be rezoned from Residential Growth to Residential-Light Industrial-Commercial; and

Whereas, The requested rezoning process complies with the requirements in accordance with the provisions of Article 12 of the Jefferson County Zoning and Land Development Ordinance, effective July 7, 1988, as amended and West Virginia State Code Section 8A-7-9; and

Whereas, The Planning Commission finds that the requested rezoning is conformance with the adopted 2004 Comprehensive Plan as outlined in the staff report; and

Whereas, The Planning Commission further finds that there have not been major changes of an economic, physical or social nature within the area involved which were not anticipated when the Comprehensive Plan was adopted; and

Whereas, Staff recommends approval of the requested rezoning based on the conditions outlined in the staff report as attached; and

Now therefore be it moved, that the Jefferson County Planning Commission recommends approval of the request for rezoning from Residential Growth to Residential-Light Industrial-Commercial for property identified in the Jefferson County Tax Map as Part of Parcel 5 as shown on Tax Map 8 of the Shepherdstown District.

The portion of the record of the Planning Commission meeting pertaining to this application and the official minutes thereof are incorporated herein by reference as if set forth in full herein.

Recommended approval this 23th day of October
By vote of the Jefferson County Planning Commission
By a vote of ___ Yes ___ No

Planning Commission President



JEFFERSON COUNTY, WEST VIRGINIA

Application Number: 712-03

Departments of Planning and Zoning

Date Application Received: 7-24-12

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

Staff Initials: ALC

Charles Town, WV 25414

Application Fee: #1450.00

www.jeffersoncountywv.org/government/departments/planning-and-zoning-department.html CK# 57171

Email planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

Email zoning@jeffersoncountywv.org

Fax: (304) 728-8126

Zoning Map Amendment (Rezoning)

Pursuant to Article 12, a Zoning Map Amendment is a procedure to amend the official Zoning Map of the County by changing the zoning designation of a property. In order for a proposed amendment to be approved, the County Commission, with the advice of the Planning Commission, must find that the amendment is consistent with the adopted Comprehensive Plan, or if it is inconsistent, must make findings in accordance with the requirements of 8A-7-8 et seq of the WV State Code. All Amendments to the Zoning Map require a Public Hearing to be held by the Planning Commission for the purpose of making a recommendation to the County Commission. Subsequently, all recommended map amendments require a Public Hearing before the County Commission prior to a final determination.

Property Owner Information

Name of Property Owner: John D. Lowe, III, et. al.

Mailing Address: P.O. Box S

City: Shepherdstown State: WV Zip Code: 25443

Phone Number: 304/876-2546 Email: _____

Applicant Contact Information

Applicant Name: John D. Lowe, III

Mailing Address: P.O. Box S

City: Shepherdstown State: WV Zip Code: 25443

Phone Number: 304/876-2546 Email: _____

Applicant Representative

Name of Representative: Richard Klein, P.E., Alpha Associates, Inc.

Address of Representative: 535 W. King Street

City: Martinsburg State: WV Zip Code: 25401

Phone Number: 304/264-0051 Email: _____

RECEIVED

JUL 24 2012

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

Physical property details

Physical Property Address: 777 Potomac Farms Drive

City: Shepherdstown State: WV Zip Code: 25443
Tax District: Shepherdstown Map #: 8 Parcel #: p/o 5
Parcel Size: 8.07 Acres Deed Book: 1021 Deed Book Page #: 626

Current Zoning District

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

Proposed Zoning District

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

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

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

See Attached Petition

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

See Attached Petition

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

See Attached Petition

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

- Yes, I request that the Planning and Zoning Staff present the petition
No, I prefer to present the petition

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

The plat or sketch must be pursuant to Zoning Ordinance, Section 7.4 (b). The sketch plan shall include the entire original parcel as it appeared on the date this ordinance took effect. The property proposed for development shall be drawn to a reasonable scale (eg. 1" = 50', 1" = 100', or 1" = 200'). The sketch plan shall show, in simple form, the proposed layout of lots, parking areas, recreational areas, streets, building areas, and other features in relation to each other and to the tract boundaries. Contour lines should be superimposed on the sketch plan. Natural features such as woods, watercourses, prominent rock outcroppings, sinkholes and quarries shall be delineated.

Is Plat or Sketch Plan attached?

- Yes
No

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

Signature of Property Owner: [Handwritten Signature] Date: 7/24/12

Received By: [Handwritten Signature: Christina Chalmers] Date: July 24, 2012

Signature of Property Owner _____ Date _____

Received By _____ Date _____

The Planning Commission is required to set a public hearing on the proposed Zoning Map Amendment within 60 days of the date upon which a complete petition is presented to the Planning Commission at a Planning Commission Meeting. A complete petition, and related fees, shall be submitted to Departments of Planning and Zoning for placement on the Planning Commission agenda at least two (2) weeks prior to the meeting date at which the petition will be presented. Upon request, Planning and Zoning staff can present the petition to the Planning Commission on behalf of the applicant for purpose of setting the public hearing date. At the conclusion of the Planning Commission's Public Hearing, or at the next regular Planning Commission meeting, the Planning Commission shall make a recommendation to the County Commission regarding approval or disapproval of the requested Map Amendment. This recommendation shall be forwarded to the County Commission within four (4) weeks of final Planning Commission action.

The Planning Commission finds this request consistent/inconsistent with the Comprehensive Plan by a vote of ___ for and ___ against, this day of ___, ___ (Year)

- Recommended
Not Recommended

The County Commission finds this request consistent/inconsistent with the Comprehensive Plan by a vote of ___ for and ___ against, this day of ___, ___ (Year)

- Approved
Disapproved

Final Determination/Other Comments



712-03

July 20, 2012

Ms. Jennifer Brockman
Director
Jefferson County Planning and Zoning
PO Box 338
Charles Town, WV 25414

RECEIVED

JUL 20 2012

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

Re: Petition for Map Amendment
Lowe Products, Inc.
Rezoning 10 Acre Property
Shepherdstown District, Map 8, Parcel 5

Dear Ms. Brockman,

On behalf of our client, Lowe Products, Inc., we are submitting a Petition for Map Amendment for the referenced property. The property is currently zoned Residential Growth and the Applicant is seeking a map amendment for the Residential/Light Industrial/Commercial District. Lowe Products, Inc. is located in Shepherdstown and proposes to develop a commercial subdivision on approximately 8.07 acres of land that fronts Potomac Farms Drive.

A check in the amount of \$1,450.00 is enclosed to cover the application fee. Please place this petition on the next available Planning Commission meeting agenda.

Please contact us if you have any questions or require additional information at this time. Thank you.

Sincerely,
Alpha Associates, Incorporated

A handwritten signature in blue ink that reads 'Richard W. Klein'.

Richard W. Klein, PE
Chief Executive Officer

Attachment: Petition for Map Amendment w/Exhibits

**§8A-7-9 PETITION
REQUEST FOR MAP AMENDMENT
John D Lowe, III, ET. Al.
July 18, 2012**

Property Owner and Applicant:

John D. Lowe, III, ET. Al.
P.O. Box S
Shepherdstown, WV 25443

Request: The Lowe family owns a 41.14 acre parcel of land near Shepherdstown that was split into two parcels when the Route 45 Connector Road (which is now called Potomac Farms Drive (Alternate Route 45)) was built between Route 45 and Route 480 in 2000/2001. Prior to the Potomac Farms Drive's construction, the property was utilized as a part of the Lowe's Wood Product and Mulch Facility. The portion of the property to be considered for the map amendment is the approximate 8.07 acre portion of the parcel that is on the Northeast side of Potomac Farms Drive. Although the entire parcel shares the same Tax Identification, the property is now two separate parcels due to the DOH Right of Way that was purchased for Potomac Farms Drive. The property is currently zoned Residential Growth and was so designated in 1988 when the original zoning ordinance was adopted in Jefferson County. This petition is a request for a map amendment and rezoning of the property from the Residential Growth District to the Residential/Light Industrial/Commercial District.

Section of Ordinance:

Article 12 of the Jefferson County Zoning and Development Review Ordinance, as amended.

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

Substantiation for the Request:

1. The request is consistent and very much compatible with the 2004 Jefferson County Comprehensive Plan. The plan's applicable recommendations are explained in the Petition.
2. Since the Zoning Ordinance was adopted in 1988, there have been several significant changes in the neighborhood. The most significant change was the construction of the Connector Road which functions as a bypass around Shepherdstown. This road bisected the Applicant's property. Other changes in the neighborhood include the development of the Maddex Commercial Area (Food Lion, etc.); the construction of the Clarion Conference Hotel and National Training Center; the enhancement to the entrance to the western campus of Shepherd University; and, the development of the Colonial Hills Subdivision. These and other changes are described in the Petition.
3. The Petition will also try to demonstrate that there was an error in the original zoning map. This property should have been given a commercial classification since the property was part of the Potomac Farms Nursery and Lowe Wood Product operations and was located behind a commercial area along Route 45. Lowe Products, Inc. has been in operation for over 40 years.

Tax Information:

Shepherdstown Tax District, Map 8, P/O Parcel 5

Deed Book Reference:

Deed Book 1021 at Page 626

Sketch Plat:

Attached

Tract Size:

Approximately 8.07 Acres

Petition Includes a Discussion on:

The compatibility of the proposed change with the Jefferson County Comprehensive Plan.

The change of transportation characteristics and neighborhood from when the original zoning ordinance was adopted in 1988.

A. Comprehensive Plan Compatibility

Among the many recommendations in the 2004 Jefferson County Comprehensive Plan, the following recommendations address items pertinent to this map amendment:

Recommendation 3.18 on Page 64:

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

Response: This property is currently zoned Residential Growth. As such, it can develop into a very dense housing development which can include apartments and townhouses. The requested Residential/Light Industrial/Commercial designation will essentially cut down the amount of land that can be used for residential purposes. In this case, there are already multiple residential developments in the area (Maddex Subdivision, Kensington Townhouse development, Tollhouse Woods and Colonial Hills Subdivision), so the ideal development would be a commercial business park that will allow businesses to service these housing developments. The map amendment would take land from the high density residential growth zone and allow it to develop into a commercial business park that would increase the tax base, provide employment opportunities and provide commodities to the surrounding residential growth.

On Page 71 of the Comprehensive Plan, it states that only 5% of Jefferson County is zoned for commercial and industrial development. It goes on to state that there is a need to maximize the potential for commercial development to offset the demands of residential development. In this case, this map amendment will allow the addition of this needed commercial development. The plan also states, that every mixed use property that develops entirely for residential use is a lost opportunity for ‘much needed commercial development’.

Recommendation 4.01 on Page 78:

“It is the vision of this Comprehensive Plan that development will be concentrated within the designated growth areas”.

Response:

The area of the requested map amendment is located directly within the Shepherdstown’s Growth Area as depicted on page 75 of the Comprehensive Plan. The map is attached to this petition. There are only two areas that are shown as Growth Areas on this map: the one around Shepherdstown; and, the one along the Route 340 Corridor. These areas are the only areas that are expressly earmarked for growth in the Plan. This fact makes the property uniquely qualified for commercial development. Also, since the property is already zoned for residential growth, it would only make sense to allow the property to develop commercially. Very little land has been added to the commercial districts since the ordinance was adopted in 1988. New land should be added to the commercial districts in order to keep pace with the lands that have developed residentially within the growth areas.

These recommendations reinforce the fact that this rezoning is consistent and compatible with the Comprehensive Plan.

B. Change of Neighborhood

The neighborhood has undergone significant changes since the zoning ordinance was adopted. In 1988, the Shepherdstown Wastewater Treatment Plant was nearing capacity and that is probably one of the reasons that more land wasn’t zoned for mixed uses at that time. That Shepherdstown Treatment Facility is now nearing the completion of a major upgrade and can now support additional growth. Another huge change in the neighborhood very specific to the subject property is that the Route 45 Connector Road (Potomac Farms Drive) bisected the property in 2000/2001. This change will be further discussed in the Change of Transportation Characteristics’ part of the petition. Finally, the neighborhood has added a significant amount of residential units in several subdivisions including Maddex, Kensington, Tollhouse Woods and Colonial Hills. Along with this residential growth, other commercial areas have also developed since 1988, leaving a deficit of available commercial land in and around the growth areas of the County.

The following are changes in the neighborhood that would specifically support the requested change from Residential Growth to the Residential/Light Industrial/Commercial District:

1. Availability of Public Utilities:

Public Water is already in this neighborhood and Wastewater facilities can be extended to this neighborhood now that the Shepherdstown Wastewater Treatment Plant has expanded its capacity. It has long been the goal of Shepherdstown to extend its sewer services along Route 45. This map amendment would allow the applicant to participate in that extension. One of the Comprehensive Plan's primary objectives is to:

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

In this case, the water is already available in the area and sewer is obtainable at the applicant's cost. There would be no unreasonable costs to the community, since the additional utility customers would allow the Town to keep the rates stabilized.

Regarding schools, the property is already zoned for high density residential growth. Therefore, the map amendment could only provide for a lessened impact on the schools, since the addition of the commercial component would reduce the number of residential units permitted.

2. Growth in the Area:

Several large residential projects have been developed in this area that would certainly benefit from the additional commercial growth that would be permitted with this map amendment. Four of these, Colonial Hills, Tollhouse Woods, Kensington Townhouses and Maddex Subdivision, are residential developments that are approved with a significant number of residential units. Although the Maddex development has a limited amount of commercial services available to the residents in the Maddex Subdivision, Colonial Hills, Tollhouse Woods and Kensington Townhouses are approved mostly as a residential developments. When built out, these developments would most certainly need nearby commercial services available to their residents. Due to the limited area of Shepherdstown and the traffic congestion and parking problems within the town, it is imperative that commercial services be made available to the residents outside of town. Otherwise, the town would be overwhelmed. Furthermore, these new commercial services should not have a negative impact on the businesses within the Central Business District of Shepherdstown, because of the unique collection of eclectic shops that are already in town. As exhibited in other growth areas, such as Arlington and Alexandria, Virginia, these types of shops continue to thrive in their downtowns.

The other significant development in the area that was built after the zoning ordinance was adopted is the Clarion Conference Hotel and National Training Center. This hotel and conference center hosts major federal government training programs and conferences. The people attending these functions would also benefit from the availability of commercial services in the area. A participant at the facility would have the ability to walk to both this property and downtown Shepherdstown for commercial services.

The primary area that is zoned for commercial uses in the Shepherdstown Growth area is essentially developed. There was very little area in the Shepherdstown Growth Area that was zoned mixed use when the zoning ordinance was adopted. Most of that area was the Maddex Farm area that is now either fully developed commercially or already platted into residential lots. From this standpoint, it is vital to change some of the residential land into a commercial zone. Otherwise, commercial growth in the Shepherdstown Growth Area will not be able to meet the demands of the residentially zoned and/or developed properties in that growth area. This map amendment is a perfect opportunity to take some property slated for residential use and allow it to develop commercially. This map amendment would provide a balance of land available for both residential and commercial development.

C. Change of Transportation Characteristics:

Please note that this property is already zoned Residential Growth. As such, there should be little significant difference in traffic from this property if it is rezoned to mixed-use. A mixed-use development would have a more favorable outcome regarding traffic since some of the local residents could utilize the commercial services available if the property is rezoned. The major change to this area from a transportation standpoint was when Potomac Farms Drive (Alternate Route 45) was constructed through the Applicant's property. The State even built two commercial grade entrances into the Applicant's property. This would allow the property to develop into a commercial center without direct access points to the Connector Road. This scenario would not be conducive to the development of a 'strip mall'. In fact it would provide an opportunity to develop into a comprehensive interconnected commercial neighborhood.

The addition of this road, along with the expanded entrance into the western campus of Shepherd University, has considerably changed the transportation characteristics of the neighborhood. These two improvements have allowed traffic to bypass Shepherdstown to keep pass through traffic away from the more congested areas of town. The addition of commercial services in the western suburb of Shepherdstown should further reduce commercial traffic in the downtown area of Shepherdstown, without negatively affecting the unique collection of shops in town.

D. Error in the Original Zoning Map

When the Zoning Ordinance was adopted, this property was part of the land owned by the Lowe family that was being used for the Lowe Wood Products and mulching operation and the Potomac Farms Nursery. It is perplexing that the property wasn't given the commercial or industrial classification consistent with the existing use at the time of the ordinance adoption. The property is also directly behind the property that housed the Potomac Supermarket and adjacent to a large electric substation. Accordingly, the entire area should have been zoned either commercial or mixed-use. The Potomac Supermarket property is now utilized as a collection of commercial and retail space including a Subway and a Dollar General. Once the property was bisected by Alternate Route 45, this portion of the property became even more suited for commercial development, since it was separated from the main portion of the Lowe Products' operation.

E. Current Permitted Uses on the Subject Property

The property can currently be subdivided or developed into a dense residential development by virtue of its Residential Growth designation. Furthermore, under Article 4, Sections 4.3(f) and 4.3(g); and, §8A-7-10(c) of the West Virginia State Code, as amended, the property can also be used for the expansion or continued development of the Lowe Products, Inc. operation. These provisions allow for the expansion and continued development of agricultural, industrial and manufacturing operations that existed in Jefferson County when the original zoning ordinance was adopted.

Accordingly, the subject property can currently be used for the Lowe Products operation and/or for a residential development. As such, the requested mixed-use district would only allow the added commercial component to the possibilities of land development on this parcel. The Applicant is requesting the change, because the commercial aspect seems to be the most desirable use in this area. Furthermore, it appears that the County Commission has been very supportive of enhanced business opportunities in Jefferson County that this map amendment would allow.

F. General Policy of the Comprehensive Plan

There is a lot of narrative in the Comprehensive Plan that is outside of specific recommendations that supports this map amendment. The most important sections are some of the general policies of the Plan, which include:

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

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

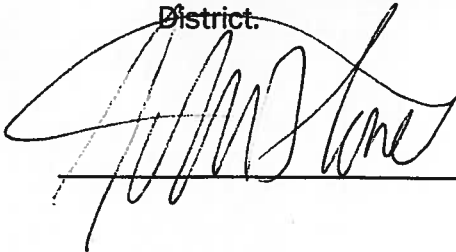
The County should 'Encourage growth and development in areas where sewer, water, schools, and other public facilities are available or can be provided without unreasonable costs to the community'; and,

The County should 'Encourage and support commercial, industrial, and agricultural activities to provide a diversified and sound local economy'.

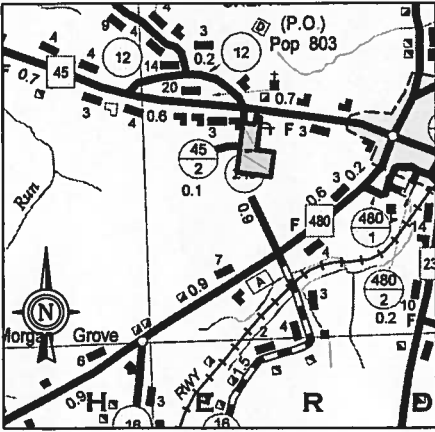
Finally, the Plan contains a land use policy map that includes this land in one of two Growth Areas in Jefferson County. This Growth Area Map is the only land use policy map in the Plan. As such, the map should be a vital piece of evidence to support the requested map amendment.

G. Summary:

The Applicant is requesting a map amendment for this 8.07 acre parcel for the benefit of economic development in Jefferson County. As such, this Petition is requesting a map amendment by the County Commission. The Applicant believes that: the 2004 Comprehensive Plan; the general philosophy of the County Commission regarding business enhancement in Jefferson County; the apparent error in the original zoning classification; and, the changes in the neighborhood from when the original zoning ordinance was adopted, all support the requested map amendment. The requested rezoning will change this property's zoning designation from the Residential Growth District to the Residential/Light Industrial/Commercial District.



7/19/12
Date



SCALE: 1" - 1 MILE

N/F
ROY F. AND PATRICIA
DICK
DB: 358 PG. 591
TM: 8 PARCEL 5.2

N/F
S&T GROUP LLC
TM: 8 PARCEL 5.4
DB: 1000 PG. 103

N 41°58'00" W
145.40'

OLD WV RT 45

N 75°10'00" W
57.10'

N/F
POTOMAC EDISON
DB: 493 PG. 633
TM: 8 PARCEL 10.8

N 72°43'50" W
475.70'

S 19°15'37" W
383.85'

N 15°05'00" E
1308.20'

N/F
JOHN D. LOWE III ET AL
DB: 1021 PG. 626
TM: 8 PARCEL 6 & 6.2

N/F
JESSE RYNIER VAN EVERA, JAMES W. VAN
EVERA, LINDA HEANEY, LIVING TRUST.
DB: 817 PG. 375
DB: 545 PG. 104

2000.00'
S 15°13'00" W

POTOMAC FARMS DRIVE
(ALT. RT. 45)

675.10'
N 73°57'00" W

N/F
JOHN D. LOWE III ET AL
TM: 8 PARCEL 5
DB: 1021 PG. 626

N 16°09'00" E
1005.00'

N/F
MARK-COLONIAL LLC
TM: 8 PARCEL 10
DB: 989 PG. 175

S 73°24'00" E
1343.90'

N/F
MARK-COLONIAL LLC
COLONIAL HILLS PHASE 1 & 2
P.B. 20 SLIDE 4



ALPHA ASSOCIATES, INC.
535 WEST KING STREET
MARTINSBURG, WV 25401
PHONE: 304-264-0051
FAX: 304-264-0707
TOLL FREE: 877-264-0051
www.thinkALPHAfirst.com

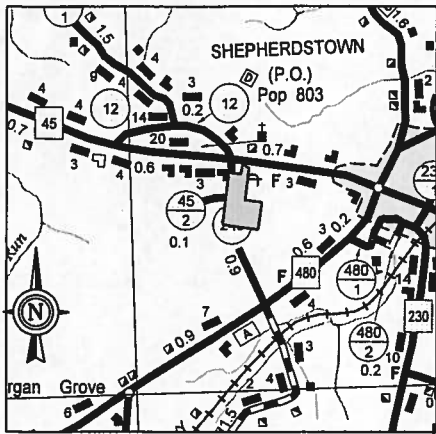
NOTE:

1. BEARING AND DISTANCES FOR THE PROPERTY LINES WERE TAKEN FROM THE WVDOH RIGHT-OF-WAY PLANS FOR THE SHEPHERDSTOWN CONNECTOR DATED 1999.

SCALE: 0 500'



LOWE PRODUCTS PROPERTY MAP
PRIOR TO 1988



SCALE: 1" = 1 MILE

N/F
 ROY F. AND PATRICIA
 DICK
 DB: 358 PG. 591
 TM: 8 PARCEL 3.2

WV RT 45

N/F
 S&T GROUP LLC
 TM: 8 PARCEL 5.4
 DB: 1000 PG. 103

OLD WV RT 45

N/F
 JOHN D. LOWE III ET AL
 DB: 933 PG. 643
 TM: 8 PARCEL 6 & 6.2

N 72°43'50" W
 475.70'

N 75°10'00" W
 57.10'

S 19°15'37" W
 383.85'

ENTRANCE CONSTRUCTED
 BY WVDOT

ROCK OUT
 CROP

APPROXIMATE
 ACREAGE 8.07 ACRES

N/F
 POTOMAC EDISON
 DB: 493 PG. 633
 TM: 8 PARCEL 10.8

ROCK OUT
 CROP

EXISTING TREE
 LINES

POTOMAC FARMS DRIVE
 (ALT. RT. 45)

N/F
 JOHN D. LOWE III ET AL
 DB: 933 PG. 643
 TM: 8 PARCEL 6 & 6.2

N/F
 JOHN D. LOWE III ET AL
 TM: 8 PARCEL 5
 DB: 1021 PG. 626

N/F
 JESSE RYNIER VAN EVERA, JAMES W. VAN
 EVERA, LINDA HEANEY, LIVING TRUST.
 DB: 817 PG. 375
 DB: 545 PG. 104

ENTRANCE CONSTRUCTED
 BY WVDOT

NOTE:

1. BEARING AND DISTANCES FOR THE PROPERTY LINES WERE TAKEN FROM THE WVDOT RIGHT-OF-WAY PLANS FOR THE SHEPHERDSTOWN CONNECTOR DATED 1999.
2. THE PROPERTY TO BE REZONED IS APPROXIMATELY 8.07 ACRES.
3. THERE ARE NO STREAMS, WETLANDS, CAVES, OR SINKHOLES ON THE PROPERTY.
4. THERE ARE NO MANMADE FEATURES ON THE PROPERTY.
5. THERE ARE NO KNOWN GRAVE SITES OR OTHER HISTORICAL SITES ON THE PROPERTY.
6. THE PROPERTY IS SERVED BY TWO COMMERCIAL ACCESS DRIVES CONSTRUCTED BY THE STATE HIGHWAY DEPARTMENT ON POTOMAC FARMS DRIVE.
7. THE RIGHT-OF-WAY WAS TAKEN BY CONDEMNATION ORDER DATED JULY 7, 2002.

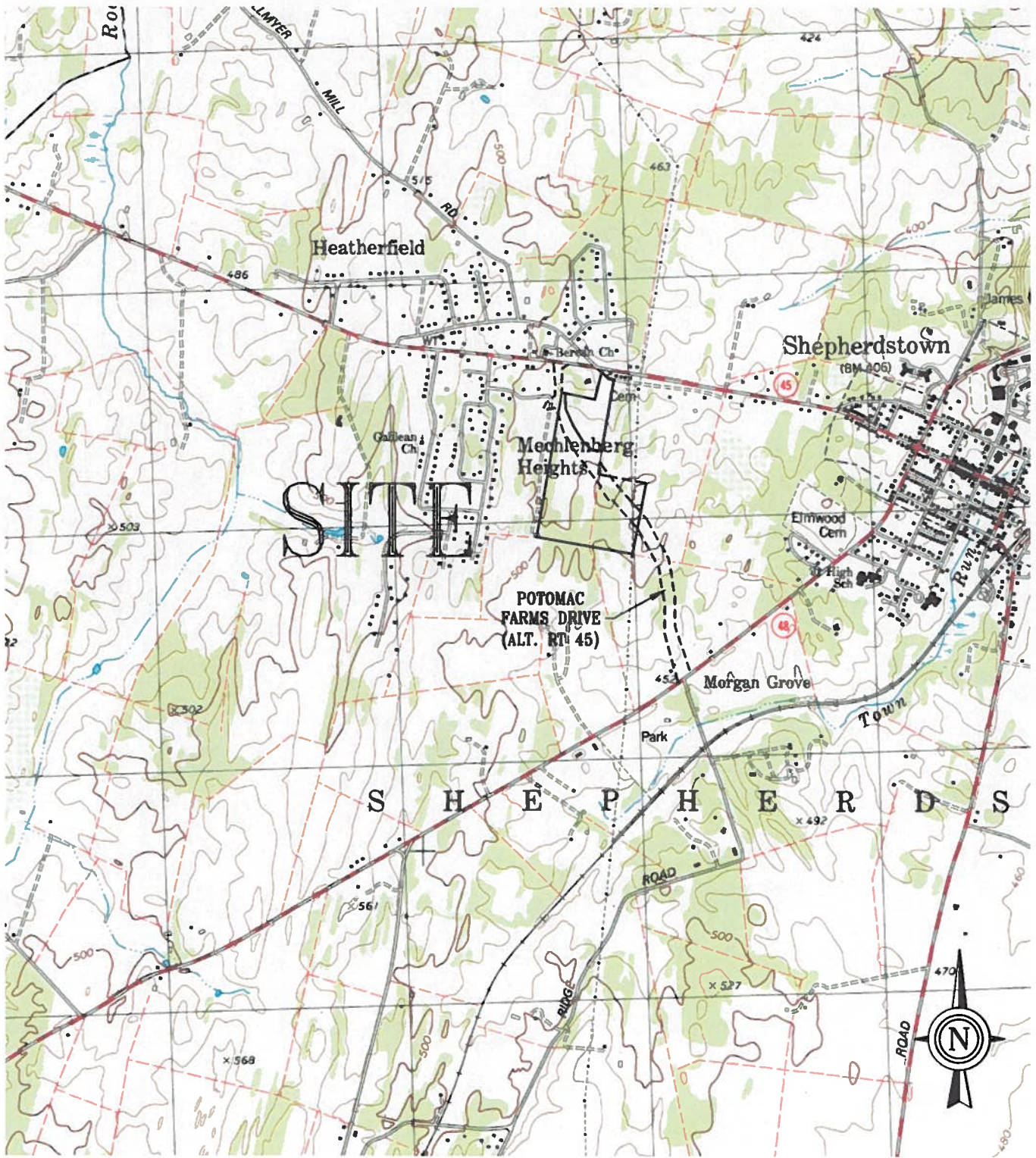


ALPHA ASSOCIATES, INC.
 535 WEST KING STREET
 MARTINSBURG, WV 25401
 PHONE: 304-264-0051
 FAX: 304-264-0707
 TOLL FREE: 877-264-0051
 www.thinkALPHAfirst.com

LOWE PRODUCTS PROPERTY MAP
 PRESENT DAY

SCALE:





ALPHA ASSOCIATES, INC.
535 WEST KING STREET
MARTINSBURG, WV 25401
PHONE: 304-264-0051
FAX: 304-264-0707
TOLL FREE: 877-264-0051
www.thinkALPHAfirst.com

SCALE - 1" = 2,000'

U.S.G.S. MAP OF PROPERTY



WV 45

SITE



ALPHA ASSOCIATES, INC.
535 WEST KING STREET
MARTINSBURG, WV 25401
PHONE: 304-264-0051
FAX: 304-264-0707
TOLL FREE: 877-264-0051
www.thinkALPHAfirst.com

Image © 2012 GeoEye
Image U.S. Geological Survey
Image USDA Farm Service Agency
© 2012 Google



0 500'
SCALE:

LOWE PRODUCTS AERIAL PHOTO MAP

Staff Report
 Jefferson County Planning Commission Meeting
 October 23, 2012

APPROVALS:	
Concept Plan:	October 11, 2011 - Approved by the Planning Commission. Concept Plan consisted of proposed 350.50 sq. ft. shop & 529 sq. ft. office / SP for 4200 sq. ft. building.
Site Plan:	<ul style="list-style-type: none"> • November 10, 1998 - Approved by the Planning Commission for land altering activity within a floodplain. • July 22, 2003 – Approved by the Planning Commission for a 2400 square foot addition. • November 4, 2011 - Approved by the Planning Commission for 4200 sq. ft. building.
Planning Commission Responsibility:	To advise the County Commission as to whether the requested Zoning Map Amendment is consistent with the 2004 Comprehensive Plan.
Staff Findings:	In this report Staff presents the various factors related to this property based on the Comprehensive Plan. Staff does not find the plan to be consistent with the 2004 Comprehensive Plan.

Background

The Jefferson Asphalt Company property is a 34.27 acre lot located on Route 51 (Middleway Pike). The existing use is non-conforming and predates zoning. The site is used for vehicle storage, repair, asphalt production, and company offices. As can be seen in the history above, there are structures on the property, with the most recent site plan processed in November 4, 2011.

Introduction and Purpose

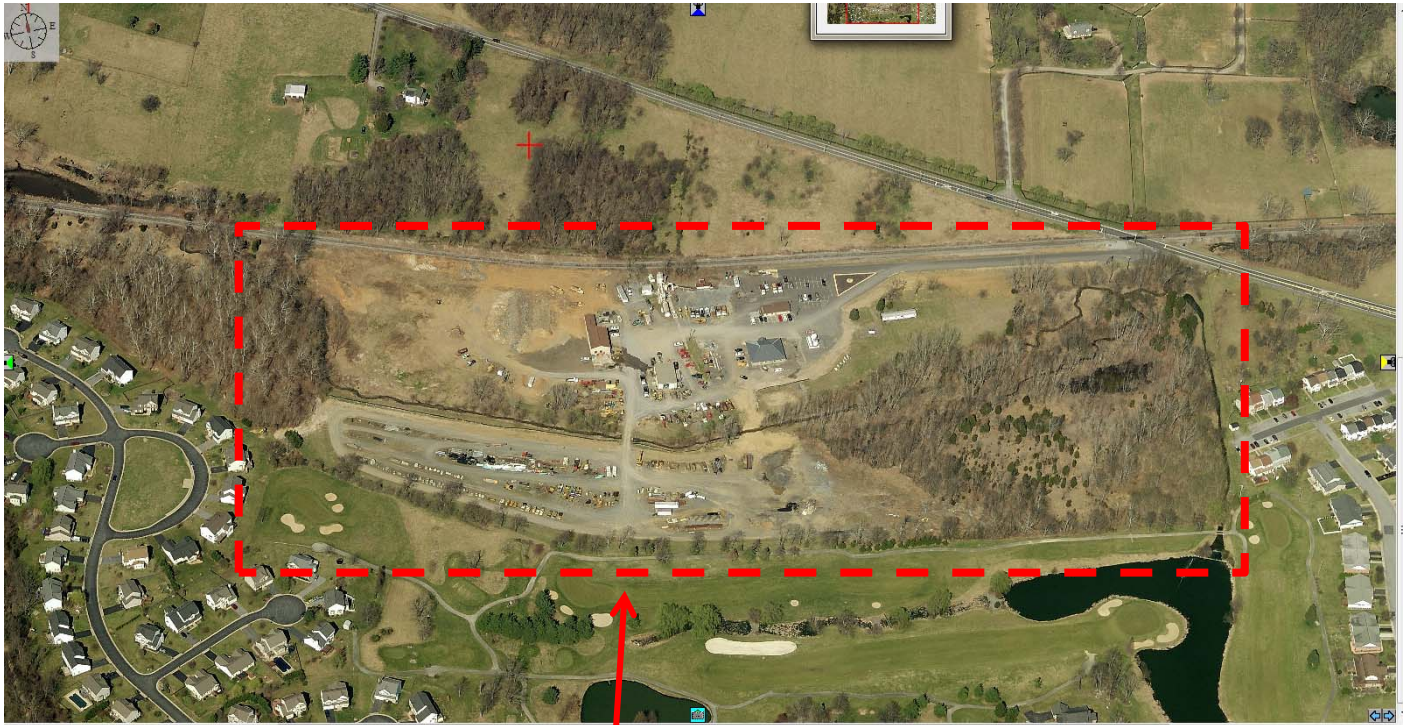
The subject property is identified as Parcel 7 on Tax Map 13 in the Charles Town District and is directly adjacent to the residential developments of Tuscawilla Hills and Locust Hills. (Image 1).

The parcel is currently zoned Rural. The properties to the north are zoned Rural with large residential lots; properties to the south and west are zoned Rural and consist of the Locust Hill residential development and golf course; and properties to the east are

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zoned Residential Growth and consist of the Tuscowilla townhomes development (Image 2). The applicant has requested rezoning the 34.27 acres from Rural to Residential-Light Industrial-Commercial. The following report has been prepared to assist the efforts of the Jefferson County Planning Commission and Jefferson County Commission to make findings regarding the consistency of the proposed rezoning with the Jefferson County 2004 Comprehensive Plan, in accordance with West Virginia State Code requirements.

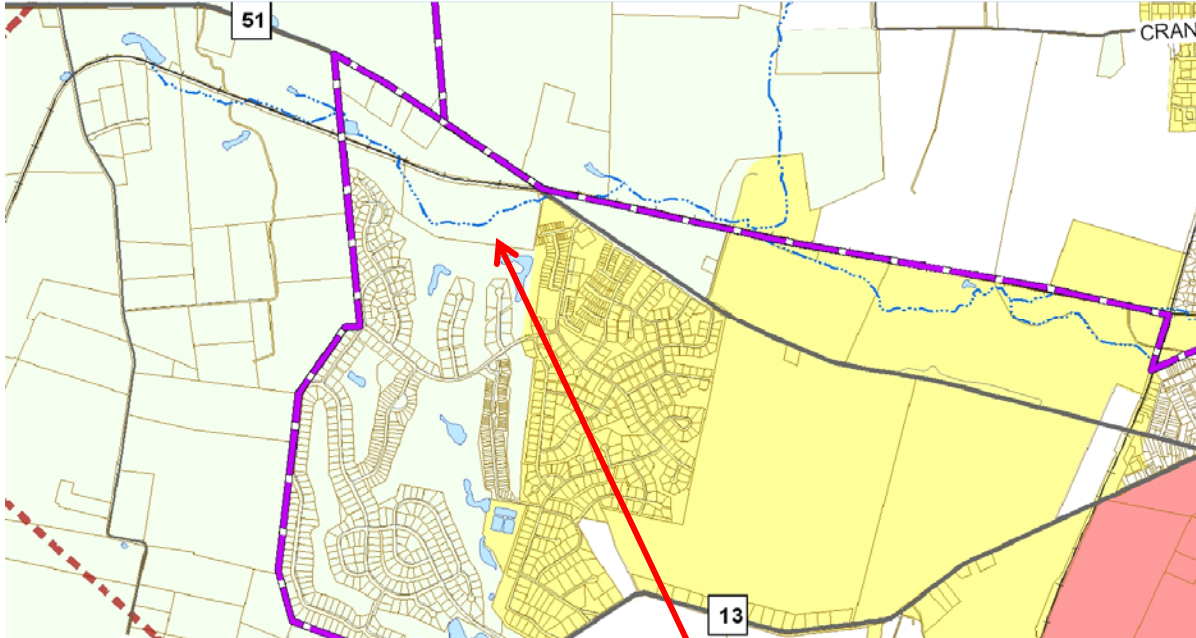
Image 1



General Location of Subject Property

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Image 2



Legend

-  Urban Growth Boundary
-  Parcels
-  Tax District Boundary
-  Public/Quasi-Public Land
-  Appalachian Trail

Zoning District

-  Incorporated Town
-  Industrial-Commercial
-  Residential-Growth
-  Residential-Light Industrial-Commercial
-  Rural
-  Village

Subject Property

Statutory Authority and Requirements

The West Virginia State Code, Section 12.1(a) provides that the boundaries of zoning districts may be amended by the County Commission with the advice of the Planning Commission. The County Zoning Ordinance also requires that the *“procedure for amendment [by petition] shall be as dictated in Section 8A-1-1 et. Seq. of the West Virginia State Code as amended.”* Concerning amendments by petition, State statute provides that, *“Before amending the zoning ordinance, the governing body with the advice of the planning commission must find that the amendment is consistent with the adopted comprehensive plan.”* [See **WVC 8A-7-9(c)**] This subsection of the State Code also states that, *“If the amendment is inconsistent, then the governing body with the advice of the planning commission, must find that there have been major changes of an economic, physical or social nature within the area involved, which were not anticipated when the comprehensive plan was adopted and those changes have substantially altered the basic characteristics of the area.”*

Scope of this Assessment

This report focuses on whether or not the rezoning application is consistent with the Comprehensive Plan. Based upon the assessment, this report concludes that the aforementioned request is not consistent with Comprehensive Plan. Any assumptions and findings contained in this report are limited to the aforementioned proposal to rezone the subject site.

The format for this assessment includes quotes from specific provisions of the Comprehensive Plan, which are identified by page number citation at the end of the sentence where it is quoted. Staff has used these notations and quotations in order to address sections of the Comprehensive Plan, as it relates to the proposed rezoning. Identification of the specific page numbers where these provisions can be found in the Plan permits the Planning Commission and/or County Commission to easily locate the particular provision and personally evaluate the provision in the context of the larger Plan document. When available or appropriate, map references are provided with maps located in the Appendix to this report.

It should also be noted that the Comprehensive Plan states, *“Its recommendations are (by their nature and intent) general and, as such, sometimes conflicting. It will not be difficult to find two that individually justify and conflict with many land use proposals.”* In that sense, there are many plan references that are identified in this report that can or may appear to support or fail to support a finding of consistency between the proposed rezoning and the Comprehensive Plan. In the final analysis, each member of the Planning Commission and the County Commission will need to weigh the degree to

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which various plan provisions are of greater or less importance, in establishing their respective findings regarding the application.

Finally, this report provides an account concerning the proposed rezoning based on review of the various plan sections and elements. The recommendations should be considered the professional opinion of staff; no more and no less. Since the Planning and Zoning Staff has no statutory authority to make decisions in this regard, we defer to the Planning Commission and subsequently the County Commission for any final recommendation or decision that may be forthcoming with respect to the subject application.

Relevant Comprehensive Plan Elements and Commentary

One of the weaknesses of the 2004 Comprehensive Plan is that there is not a future land use map. Additionally, not all areas of the County are adequately addressed. There are some areas of the County that are discussed in a fair amount of detail in the Comprehensive Plan; however there are other areas of the County, where the Plan is relatively silent regarding future planning impacts and opportunities in those areas.

When the Comprehensive Plan is silent, the directive found in state law that "...the governing body with the advice of the planning commission must find that the amendment is consistent with the adopted comprehensive plan..." is difficult to observe. It is reasonable to speculate that if the plan does not address certain areas or locations of the County, that the Plan anticipated that those areas would not fundamentally change from their 2004 condition or that it expected that any change in use in those areas would seek a Conditional Use Permit (CUP).

Staff does not believe that there have been major changes of an economic, physical or social nature within the area that were not anticipated when the current Comprehensive Plan was written in 2004, which would justify the request. The zoning districts in that area have not changed since the adoption of zoning in 1988, and as such, any build out of adjoining parcels was anticipated. This report focuses on conformance to the Comprehensive Plan.

Existing Zoning District:

The Comprehensive Plan notes that *"The Rural District contains two predominant uses: agriculture and low density residential development (pg 67)."* In recent years, value added agricultural processes have been added as permitted uses in the Rural District. The Rural District also provides *"...a process that allowed property owners to propose many other types of uses on particular properties if they received a "conditional use" permit from the Planning Commission (now the Board of Zoning Appeals). This process*

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also included a development review system in which higher density subdivisions may be permitted in the Rural District, provided that the site and the proposed development passed a weighted point-system... (pg 67)”

Proposed Zoning District:

The Comprehensive Plan provides the following perspective on the Residential-Light Industrial-Commercial zoning district, which the applicant is requesting:

- *“...commonly referred to as the "mixed use" zone, permits uses of a light industrial and commercial nature, as well as a spectrum of residential and institutional uses ranging from single-family dwelling units to multi-family apartments and group homes. Residential uses must conform to the standards set forth in the Residential Growth District, but industrial and commercial uses are required to conform to a set of specific performance criteria, which include numerical measurements of several factors for uses that may have nuisance effects on adjacent uses (pg 71).*
- *There are two issues regarding this district that should be studied as part of planned amendments to the Zoning Ordinance. First, most ordinances that have "mixed use" zones require certain minimum percentages of land usage in residential, commercial and dedicated open space. Jefferson County's Ordinance doesn't. Land in this district can be developed entirely for commercial or residential use or any combination thereof (pg 71).*

The Plan does detail some of the potential benefits of the Residential-Light Industrial-Commercial District and a number of concerns with the district. While this district is defined as mixed used, it does not require any mixing of uses, it merely allows for the possibility. The district also allows two vaguely defined uses as permitted by right, “Commercial Uses” or “Uses of light industrial.” “Uses of light industrial” is essentially defined by uses that are not defined as heavy industrial and commercial uses. There is wide latitude for the ability to interpret what qualifies as light industrial use. These two terms allow for some interpretation of what they mean and what is permitted. As such, there are a variety of uses that could be proposed on the subject property, each of which could have very different impacts.

It should be noted that the broadness of this zoning category often raises concerns and is one of the primary reasons that new commercial zoning categories are currently under consideration.

Existing Use:

The site is currently used by Jefferson Asphalt for production of asphalt and their operational offices. As noted by the applicant, since the current use is protected by West Virginia State Code, it is permitted to exist regardless of zoning. While the use is

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non-conforming, the applicant has the right to continue to use the property. Staff does acknowledge that there is little about this property that is “rural” in nature, however that criteria alone does not constitute a justification for a rezoning.

Growth Area:

The parcel is not located within the “growth area” as defined on page 75 of the Comprehensive Plan. The development of Tuscawilla Hills to the east is within the growth area and this property is outside the growth area. Locust Hill subdivision and golf course located to the south of the Jefferson Asphalt property is also located outside the growth area and has been approved via the Conditional Use Permit process. Tuscawilla Hills was developed in the Residential Growth District and that zoning has been in place since the adoption of zoning in 1988. Since the subject parcel is located outside the growth area identified in the 2004 Plan, the Plan does not support the request.

While it may be tempting to make a determination that since the subject property is adjacent to the growth area boundary line; that it could be considered for rezoning, if the growth area boundary is not respected, the value of the boundary doesn't hold any meaning.

It should be noted that while this property is not within the County's Comprehensive Plan Growth Area, it is now located with the Charles Town Urban Growth Boundary identified on the County Zoning Map which would allow it to pursue annexation into Charles Town if contiguity can be established.

Transportation Impacts:

The Comprehensive Plan discusses the critical role of the transportation routes, noting:

- *“With the increase in population in the last three decades, Jefferson County's roads have had to bear the combined burden of increased traffic volume and heavier commercial vehicles. As a result, the deficiencies of the highway and road systems have become more critical. Inadequate funding and increases in transportation demand are conditions which probably will be facing the people of Jefferson County indefinitely (pg. 26).”*

The Plan Policies state:

- *This Plan identifies strategies to assure that community facilities and transportation infrastructure are provided in sequence with new development.*

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As many people are aware, the fact that inadequate funding and increased transportation demands are conditions the County is likely to continue to face indefinitely is ominous.

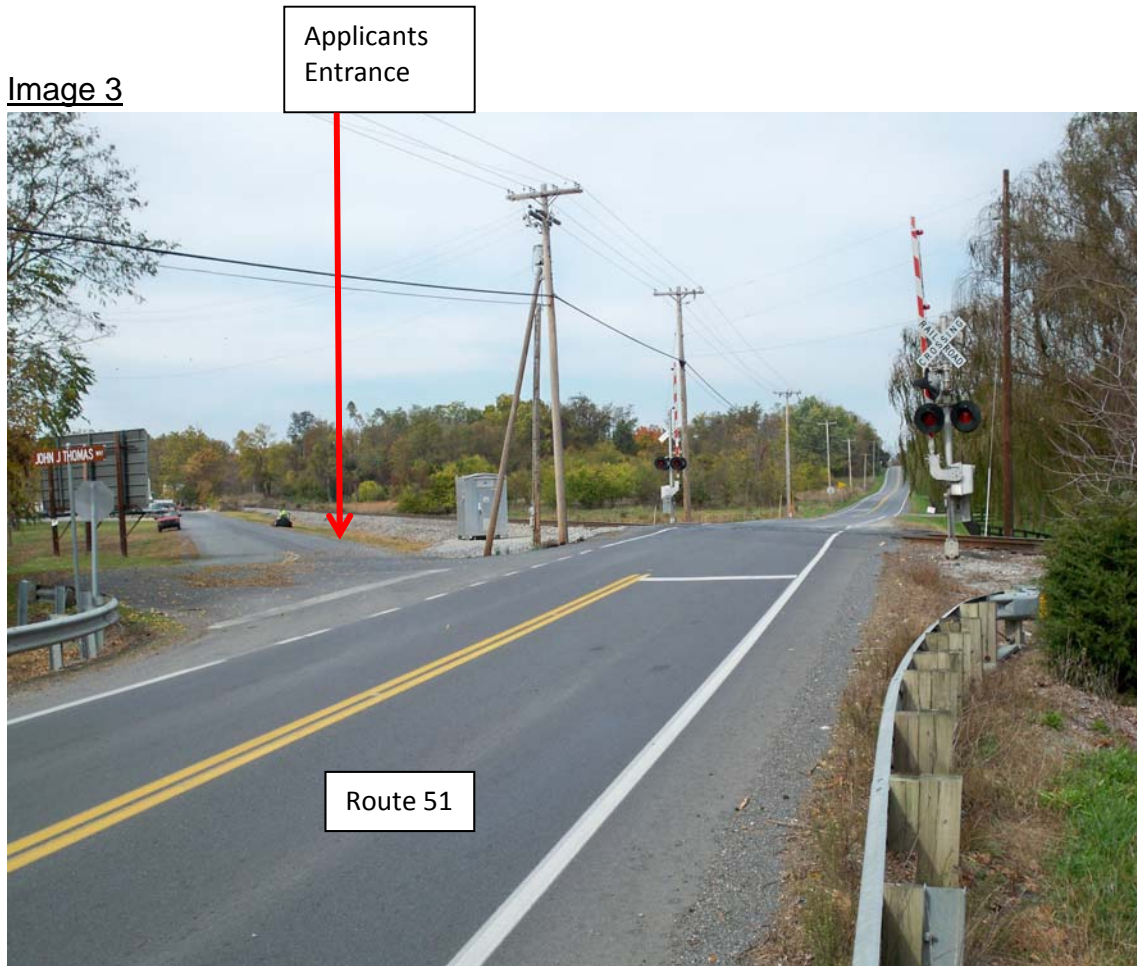
As required in Article 12 of the Zoning Ordinance, one of the requirements for considering a rezoning is addressing the transportation characteristics. This analysis should not be taken lightly, as there are real implications of traffic impacts when considering a rezoning. It would not be in the interest of surrounding residents to downplay the importance of the need to address transportation impacts related to the requested rezoning.

This property has only one small area of entry on to Route 51 and that access point is hampered by railroad tracks bisecting the entrance at an angle. (Image 3) This makes for an unsafe access point and also complicates future improvements for access to this site. While the Department of Highways may have made improvements to Route 51 in this area, those improvements did not anticipate any potential increase in the traffic related to this site.

The requested land designation, Residential-Light Industrial-Commercial, is a robust district with many uses that could increase the transportation characteristics beyond the current use. This area along Rt. 51 is already hampered by long existing transportation conditions. Nearly any change in use will result in increased activity that will cause a negative decline in safe and convenient travel in this area. The application for rezoning states that a portion of the property may be considered in the future for possible residential uses.

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Image 3



Assertion that there is an Error in the Zoning Map

The applicant contends that this site should have been zoned Residential-Light Industrial-Commercial since 1988. Their basis for this statement is that this business was on the property when zoning was adopted. It is true that this business was in operation at the time zoning was adopted. It is not always inevitable that when zoning is adopted that all existing uses are granted zoning designations that are tailored to that use. It would probably be unlikely that the district currently being requested by the applicant would be the district of choice for their operation. This operation would still have been a non-conforming use in the Residential-Light Industrial-Commercial District.

Staff Recommendation

Staff does not recommend approval of the requested rezoning from Rural to Residential-Light Industrial-Commercial. While staff respects the applicant's strong local business operation, the Comprehensive Plan does not support the request.

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The property is located outside the growth area as defined in the Comprehensive Plan. The transportation infrastructure at this location is inadequate for additional traffic without significant improvements and the requested district intensifies those inadequacies.

There have not been major changes of an economic, physical or social nature within the area that were not anticipated when the current Comprehensive Plan was written in 2004, which would justify the request.

Considering the existing business operation and use of the property, Staff believes that the Conditional Use Permit (CUP) for their operation would be more appropriate than a rezoning. A Conditional Use Permit could be crafted for the particular use proposed and allow the flexibility that fits the needs of the applicant.

**A Motion Recommending Approval of a
Rezoning for Jefferson Asphalt Property
October 23, 2012**

Whereas, Jefferson Asphalt has requested rezoning; and

Whereas, The property is identified as Parcel 7 as shown on Tax Map 13 of the Charles Town District, cumulatively consisting of 34.27 acres; and

Whereas, The applicant is requesting the parcel to be rezoned from Rural to Residential-Light Industrial-Commercial; and

Whereas, The requested rezoning process complies with the requirements in accordance with the provisions of Article 12 of the Jefferson County Zoning and Land Development Ordinance, effective July 7, 1988, as amended and West Virginia State Code Section 8A-7-9; and

Whereas, The Planning Commission finds that the requested rezoning is not conformance with the adopted 2004 Comprehensive Plan as outlined in the staff report; and

Whereas, The Planning Commission further finds that there have not been major changes of an economic, physical or social nature within the area involved which were not anticipated when the Comprehensive Plan was adopted; and

Whereas, Staff does not find the request in conformance with the adopted 2004 Comprehensive Plan of the requested rezoning based on the conditions outlined in the staff report as attached; and

Now therefore be it moved, that the Jefferson County Planning Commission does not recommends approval of the request for rezoning from Rural to Residential-Light Industrial-Commercial for property identified in the Jefferson County Tax Map as Parcel 7 as shown on Tax Map 13 of the Charles Town District.

The portion of the record of the Planning Commission meeting pertaining to this application and the official minutes thereof are incorporated herein by reference as if set forth in full herein.

Recommended approval this 23th day of October
By vote of the Jefferson County Planning Commission
By a vote of ___ Yes ___ No

Planning Commission President



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

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

Charles Town, WV 25414

Application Number: #712-04

Date Application Received: 8-03-12

Staff Initials: CJC

Application Fee: \$2750.00

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

Email planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

Email zoning@jeffersoncountywv.org

Fax: (304) 728-8126

Zoning Map Amendment (Rezoning)

Pursuant to Article 12, a Zoning Map Amendment is a procedure to amend the official Zoning Map of the County by changing the zoning designation of a property. In order for a proposed amendment to be approved, the County Commission, with the advice of the Planning Commission, must find that the amendment is consistent with the adopted Comprehensive Plan, or if it is inconsistent, must make findings in accordance with the requirements of 8A-7-8 et seq of the WV State Code. All Amendments to the Zoning Map require a Public Hearing to be held by the Planning Commission for the purpose of making a recommendation to the County Commission. Subsequently, all recommended map amendments require a Public Hearing before the County Commission prior to a final determination.

Property Owner Information

Name of Property Owner: Jefferson Asphalt Products, Inc.

Mailing Address: 9390 Middleway Pike

City: Charles Town State: WV Zip Code: 25414

Phone Number: 304/725-2539 Email: _____

Applicant Contact Information

Applicant Name: John and Mike Thomas

Mailing Address: 9390 Middleway Pike

City: Charles Town State: WV Zip Code: 25414

Phone Number: 304/725-2539 Email: _____

Applicant Representative

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

Address of Representative: 22 Van Clevesville Road

City: Kearneysville State: WV Zip Code: 25430

Phone Number: 540/336-8494 Email: agvh@frontiernet.net

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Physical property details

Physical Property Address: 9390 Middleway Pike

City: Charles Town State: WV Zip Code: 25414

Tax District: Charles Town Map #: 13 Parcel #: 7

Parcel Size: 34.27 Deed Book: 313 Deed Book Page #: 435

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

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

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

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

See Attached.

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

See Attached.

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

See Attached.

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

- Yes, I request that the Planning and Zoning Staff present the petition
- No, I prefer to present the petition

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

The plat or sketch must be pursuant to Zoning Ordinance, Section 7.4 (b). The sketch plan shall include the entire original parcel as it appeared on the date this ordinance took effect. The property proposed for development shall be drawn to a reasonable scale (eg. 1" = 50', 1" = 100', or 1" = 200'). The sketch plan shall show, in simple form, the proposed layout of lots, parking areas, recreational areas, streets, building areas, and other features in relation to each other and to the tract boundaries. Contour lines should be superimposed on the sketch plan. Natural features such as woods, watercourses, prominent rock outcroppings, sinkholes and quarries shall be delineated.

Is Plat or Sketch Plan attached?

- Yes
- No

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

[Signature] 8/2/12
Signature of Property Owner Date
[Signature] 8/2/12
Signature of Property Owner Date

Received By Date

Received By Date

The Planning Commission is required to set a public hearing on the proposed Zoning Map Amendment within 60 days of the date upon which a complete petition is presented to the Planning Commission at a Planning Commission Meeting. A complete petition, and related fees, shall be submitted to Departments of Planning and Zoning for placement on the Planning Commission agenda at least two (2) weeks prior to the meeting date at which the petition will be presented. Upon request, Planning and Zoning staff can present the petition to the Planning Commission on behalf of the applicant for purpose of setting the public hearing date. At the conclusion of the Planning Commission's Public Hearing, or at the next regular Planning Commission meeting, the Planning Commission shall make a recommendation to the County Commission regarding approval or disapproval of the requested Map Amendment. This recommendation shall be forwarded to the County Commission within four (4) weeks of final Planning Commission action.

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

- Recommended
- Not Recommended

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

- Approved
- Disapproved

Final Determination/Other Comments

712-04

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JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

PETITION FOR MAP AMENDMENT
PERSUANT TO §8-7-9 OF THE WEST VIRGINIA STATE CODE, AS AMENDED
Jefferson Asphalt Products, Inc.
August 1, 2012

Owner/Applicant:

Jefferson Asphalt Products, Inc.

Substantiation for the Request:

1. The property is currently classified as Rural on the Jefferson County Zoning Map and the Applicant is seeking a map amendment for the Residential/Light Industrial/Commercial Classification. The requested district is known as the Mixed-Use Zone. The Applicant believes that this change is consistent with the 2004 Jefferson County Comprehensive Plan, as evidenced in this application;
2. Jefferson Asphalt believes that the Rural Zoning Classification is inconsistent with the historic use of the property and is therefore an error in the original zoning map that was adopted in 1988;
3. With the development of Locust Hill, there has been a change in the neighborhood, since the Jefferson County Zoning Ordinance was adopted in 1988; and,
4. Charles Town and Jefferson County have approved the Charles Town Urban Growth Boundary and this property is located within that boundary.

Tax District, Map and Parcel Number:

Charles Town Tax District, Map 13, Parcel 7

Deed Book Reference:

Deed Book 315 at Page 435

Plat:

Attached

Tract Size:

34.27 Acres

Discussion on:

Comprehensive Plan compatibility of the proposed change: See Below.

Any Change of transportation characteristics and neighborhood from when the original ordinance was adopted: See Below.

Background:

Jefferson Asphalt has been operating on the subject property since 1968. Prior to Jefferson Asphalt, the property was operated as a commercial/industrial quarry operation. When zoning went into effect in 1988, the property was used industrially with the asphalt batch plant on the property; and, commercially with offices and shops related to the asphalt plant and offices for the development and contracting businesses that were operated by the principals of Jefferson Asphalt. Currently, the property is used for offices, a portion of the asphalt production and shops for maintenance and repair associated with all of the businesses. Jefferson Asphalt has operated commercially and industrially on this property for over 43 years. Prior to that, the property was used commercially and industrially as a quarry since the mid-20th century.

Jefferson Asphalt also has an asphalt batch plant located on another property in Jefferson County. A portion of the production has moved to the other batch plant. However, under §8-7-10 of the West Virginia State Code and Article 4, Sections 4.f and 4.g, Jefferson Asphalt does retain the right to operate the industrial batch plant used in the manufacturing of asphalt. This is true regardless of the zoning classification. Furthermore, there is a portion of the property that is in the FEMA 100 Year Floodplain. A study is underway to determine the exact limits of the floodplain. The Applicant believes that the floodplain area will be reduced by FEMA as a result of that study. Please note that the Applicant will comply with the Jefferson County Floodplain Management Ordinance during the development of the property.

Jefferson Asphalt recently went through the Jefferson County Site Plan Process for additional offices and shops associated with the property. During that process, the Staff suggested that the Applicant seek a rezoning for the property. The Applicant stated that they would start the rezoning process after the site plan was approved because of urgency of the site plan at that time.

1. Comprehensive Plan Compatibility

The Applicant believes that the following recommendations support the map amendment:

Recommendation 3.02 on page 24 states: "The County Commission should study the impact of current development trends and issues, and the issue of municipal annexation and attempt to gain the cooperation of the municipalities to create a long term annexation strategy acceptable to all jurisdictions."

Comment: This recommendation was implemented, in part, by the adoption of Charles Town's Urban Growth Boundary. Recommendation 3.02 was written in an effort to facilitate cooperation between Jefferson County and the municipalities during a time period in the early 2000's when annexations were prevalent. These boundaries are an attempt to identify areas in the County (outside of municipalities) that both jurisdictions recognized were available for growth. The Charles Town Urban Growth Boundary was adopted by both Charles Town and Jefferson County and includes the Applicant's property. This demonstrates that the future development of this parcel has been recognized by Charles Town and Jefferson County. As such, the rezoning of this property to the mixed-use zone is very much consistent with Recommendation 3.02.

Recommendation 3.03 on page 25 states: "When considering amendments to the Ordinances and Zoning Map to incorporate decisions based on the recommendations of this Plan, the County should address the ordinances in their entirety including: a. The preparation of a comprehensive 'existing land use map'".

Comment: This 'existing land use map' would show that the subject property would be commercial and industrial. It would also show the property is surrounded by the railroad track to the north and by two large mixed use communities along the other borders. Locust Hill Subdivision and Tusawilla Hills Subdivision contain commercial uses, as well as a mix of single family detached units, duplex units and townhouse units. In addition, Tusawilla Hills has numerous apartment units. These communities demonstrate that the area has long been a 'mixed-use' neighborhood. As such, the rezoning of the Jefferson Asphalt property would fit ideally within this area of residential and commercial uses. Jefferson Asphalt's property has a long history of commercial and industrial use and the addition of a residential component, especially along the Locust Hill and Tusawilla Hills' property lines would be very compatible with the neighborhood. Therefore, when considering this amendment to the Zoning Map, Recommendation 3.03 appears to support the request based on the existing uses in the neighborhood.

Recommendation 3.12 on Page 54 states: “The County should investigate mechanisms to foster the maintenance of land in farm uses and stem the erosion in the availability of the non-renewable resource of farmland.”

Comment: In this case, the Applicant’s property is already a long established developed site. The property is also located with Charles Town’s Urban Growth Boundary. Therefore, the complete development of this property would not negatively affect the farmland inventory in Jefferson County. As a property within the Urban Growth Boundary, it is a site that is recognized in an area for the comprehensive future growth of the County.

Recommendation 3.18 on Page 64 states: “The County should continue to pursue new industrial and commercial development in order to diversify its economy, increase the tax base and thereby mitigate the problems of increasing residential growth, and provide quality employment opportunities to its workforce.”

Again, this property is already an established commercial and industrial site. However, its ability to fully develop commercially is limited because of its Rural Zoning Classification. This property is certainly not rural with the existing commercial and industrial uses on the property. The map amendment would allow the property to maximize its potential for commercial expansion in accordance with this recommendation. Accordingly, the map amendment would be consistent with Recommendation 3.18.

Recommendation 3.23 on Page 72 states: “In order to accommodate additional traffic demand anticipated through the enlargement of Charles Town and Ranson, The County should promote the design and construction of an at-grade western arterial road west of Charles Town – Ranson, which incorporates the Huntfield spine road as the southern third of this new road.”

Comment: This recommendation demonstrates that the Comprehensive Plan anticipated growth on the western fringes of Charles Town and Ranson. This is the Plan’s recommendation for a western ‘bypass’ around Charles Town and Ranson. Although in recent past, the County has concentrated its attention on the eastern side of the metropolitan area, the plan does recognize that the western and southern areas of Charles Town and Ranson should also be targeted for growth and expansion. Therefore, the rezoning of this property would be compatible with this Recommendation (3.23).

Two of the Plan's policies also appear to support this request:

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

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

Regarding these policies, the property is already being used for commercial operations and the Applicant would like the ability to further develop the property commercially without being considered a nonconforming use. Again, this property was used as such for many years prior to the adoption of the Zoning Ordinance. The Applicant would also like the opportunity to provide housing units in the area of the property that is surrounded by Locust Hill and Tusawilla Hills.

Two of the Statement of Goals in the Plan state that the Plan should:

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

'Encourage and support commercial, industrial, and agricultural activities to provide a diversified and sound local economy'.

Regarding these goals, the property is already being operated as a commercial and industrial site. It would only make sense to make these uses conforming with the Zoning Ordinance by rezoning it to mixed-use. The Applicant does not want to seek a rezoning to Commercial and Heavy Industrial, because they have no desire to locate other heavy industrial uses or adult uses on the property. Also, the property is already recognized as an Urban Growth Area on the Zoning Map.

With regard to the availability of sewer and water facilities, these services are already available to the site. Charles Town obtained the water and wastewater treatment facilities in Tusawilla Hills in the mid-2000s. These facilities are currently undergoing a substantial upgrade and are now a part of the Charles Town utility system.

Based on these aspects of the Comprehensive Plan, the requested rezoning is both consistent and compatible with the Jefferson County 2004 Comprehensive Plan.

2. Change of Neighborhood

Availability of Central/Public Water and Wastewater Treatment Facilities:

Although public utilities were available in Tuscahill Hills when the original zoning ordinance was adopted, these services are now owned by the City of Charles Town. As stated earlier, a goal of the Comprehensive Plan is to encourage growth and development where public sewer and water services are available. This property will continue to be served by Charles Town's facilities when the property is further developed.

Adjacent and Surrounding Commercial and Residential Subdivision Approval and Intensity of Use have changed:

Although Tuscahill Hills existed at the time of the adoption of the Zoning Ordinance, the subdivision was not as developed. The townhouse and duplex sections adjacent to this property were sections that were developed near the end of the completion of Tuscahill Hills. Also, the tenants of the commercial shops have change hands several times over the years.

The entire Locust Hill development also was approved after zoning went into effect. This development included the commercial golf course and clubhouse. Locust Hill is a mixed-use development that borders the Applicant's property on the southern and western boundaries.

Both of these mixed-use developments contain high density residential and commercial uses. These developments nearly surround the Applicant's property. As such, the rezoning of this property to Residential/Light Industrial/Commercial would be entirely compatible with the existing mixed-use neighborhood.

Creation of the Charles Town Urban Growth Boundary

The Applicant's property is now located within the Charles Town Urban Growth Boundary. This boundary did not exist when the zoning ordinance was originally adopted. As stated previously, this boundary was, in part, created for the County and City to recognize this area as an Urban Growth Area. This area should be zoned to take advantage of this designation. As the Comprehensive Plan suggests, this boundary was created to reduce the competitive edge between the County and Charles Town as it relates to land use. Accordingly, this area should be rezoned to mixed-use in order to realize the purpose of an Urban Growth Boundary.

3. *Change of Transportation Characteristics (from when the original ordinance was adopted):*

There have not been many changes in the transportation characteristics and road network; however the changes that were made were beneficial to the site. Locust Hill added an additional entrance onto Route 13 (Summit Point Road), which provided an additional route for traffic to travel into Charles Town or points south of Tusawilla Hills.

The most significant change to the road system was the major hill that was taken out in front of Tusawilla Hills on Route 51. This enhancement removed a major vertical hump, as well as widened the shoulder area. Other changes to this area included the reduction of the speed limit along Route 51 and improvements to Route 51 on both sides of the railroad tracks in front of the Applicant's property.

These transportation and road improvements were significant and certainly should support the map amendment requested in this petition.

4. *Error in the Zoning Map:*

The Applicant's property had well-established commercial and industrial businesses on the property when the original Zoning Ordinance was adopted. The property is also located next to a railroad and along a major east-west thorough fare in Jefferson County. As such, the property should always have been included in one of the commercial zones. Furthermore, Tusawilla Hills, which is adjacent to the Applicant's property, was already a well-established mixed-use residential and commercial development. This further illustrates that the property should have been zoned to be compatible with Tusawilla Hills.

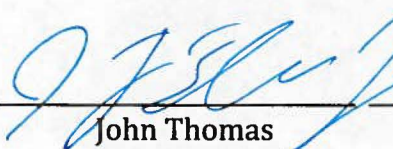
The mixed-used nature of the neighborhood when the ordinance was adopted combined with the addition of the Locust Hill mixed-use development after the zoning ordinance was adopted makes this an ideal location for the Residential/Light Industrial/Commercial District.

The fact that this property is located within the Charles Town Urban Growth Boundary is further evidence that this property is zoned incorrectly. As mentioned earlier, the Charles Town Urban Growth Boundary was approved by both Charles Town and Jefferson County and has been added to the official Jefferson County Zoning Map. All of the property within this designated growth boundary should be permitted to develop to its fullest extent to take advantage of the growth designation.


The rezoning of the Applicant's property would be appropriate based on the fact that the property has continued to operate commercially and industrially for over 40 years and is surrounded by two mixed-use communities.

5. Conclusion:

The Applicant is requesting that the County Commission of Jefferson County approve a map amendment to the Jefferson County Zoning Map. This map amendment will change the zoning classification on the applicant's property from the Rural District to the Residential/Light Industrial/Commercial District. The Applicant believes that this request is supported by the 2004 Jefferson County Comprehensive Plan. The Applicant believes that this map amendment is also supported by the reasons set forth in this petition, which include the Change of Neighborhood, an Error in the Zoning Map and the creation and adoption of the Urban Growth Boundary.



John Thomas 8/2/12
Date



Mike Thomas 8/2/12
Date