

JEFFERSON COUNTY, WEST VIRGINIA
Departments of Planning & Zoning
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MEMORANDUM

TO: JEFFERSON COUNTY PLANNING COMMISSION
FROM: JENNIFER BROCKMAN, DIRECTOR OF PLANNING
DATE: JANUARY 20, 2011
SUBJECT: JANUARY 25, 2011 PLANNING COMMISSION MEETING

Please find attached the following documents for consideration at the October 26, 2010 Planning Commission meeting.

Documents provided:

➤ **January 25, 2011 agenda.**

1. Postponed from the January 11, 2011 meeting: Approval of minutes for the December 14, 2010 meeting.

Approval of minutes for the January 11, 2011 meeting.

Approval of minutes for the January 18, 2011 Planning Commission Workshop.

Documents provided:

➤ **December 14, 2010 minutes with attachment**

➤ **January 11, 2011 minutes with attachment**

2. Citizen Communications.
3. Request for postponement.
4. Postponed from the January 11, 2011 meeting: Discussion and vote on the Planning Commission Meeting Schedule for 2011.

Documents provided:

➤ **2011 Planning Commission Meeting Schedule**

5. Postponed from the January 11, 2011 meeting: Discussion and vote on Submittal of Applications and Supporting Information Draft Policy.

Documents provided:

➤ **Draft Policy on Submittal of Applications and Supporting Information**

6. Postponed from the January 11, 2011 meeting: Review of Revised Land Development Fees.

Documents provided:

➤ **2011 Land Development Fee Proposal.**

7. Discussion of Next Steps and Comments on the Blue Ridge Mountain Final Common Vision Document and Engineering Report.

Documents provided:

➤ **Blue Ridge Next Steps and Comments Final Common Vision**

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

- Report on Old Standard, LLC.
- Report on who is responsible for setting the work plan.
- Report on digitization of files, making them searchable

Documents provided:

➤ **WV Disciplinary Office Letter regarding complaint made by Robert Reynolds.**
➤ **Gibson v. The Jefferson County Planning Commission Court Order**

9. Director's Report.

Documents provided:

➤ **Director's Agenda**
➤ **Activity Report**
➤ **SPARC Noise Memo**
➤ **Summary Minutes of January 5, 2011 Subcommittee Meeting**
➤ **Summary of Meeting with Tom Trumble and Mark Shiavone**
➤ **Draft Policy on Planning Commission Initiated Zoning Text Amendments and Zoning Map Amendments**
➤ **Wild Goose Farm Letter regarding application of SB 595**

10. County Commission Liaison Report.

11. Planning Commission Exchange.

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

Documents provided:

➤ **E-mail from Mr. Hayes reporting on the Jefferson County Public Service District Meeting**

12. President's Report.

13. Actionable Correspondence.

14. Non-Actionable Correspondence.

Documents provided:

➤ **PPC letters**

If you have any questions or any items are missing; please contact the office at (304) 728-3228 from 9:00 a.m. to 5:00 p.m. Thank you.

AGENDA
JEFFERSON COUNTY PLANNING COMMISSION
January 25, 2011

PUBLIC MEETING PROCEDURE:

The President shall identify the matter before the Planning Commission (PC) and ask for a presentation by the applicant or the applicant's representative followed by staff's presentation and recommendation.

Once the applicant has finished speaking, the President shall ask for public comments. As a member of the public, once you are recognized by the President, please come to the podium, state your name, provide any credentials that you believe are appropriate, and make a brief presentation. If you agree with a previous speaker, you may simply say so.

The President may limit the presentation time of speakers.

Once the public comments are completed, the applicant may respond to the public comments.

PC members may ask questions at any time.

A copy of any document or exhibit used by a speaker in his or her address to the PC must be left with the PC and will become part of the official public file on the matter at hand. The applicant or a representative of the applicant may have the opportunity to view the document or material.

Once all speakers have finished, the PC will discuss and then vote on a motion 1) to approve, disapprove, or impose conditions on the application to comply with the Subdivision Ordinance if the application is a final plat; or 2) to approve, disapprove, or approve with conditions a variance request; or 3) to accept or not accept a Community Impact Statement (CIS). The Community Impact Statement is an informal step in the subdivision process and an applicant may proceed with the subdivision proposal whether or not the Planning Commission accepts the CIS.

Public hearings are located in the Charles Town Library meeting room at 200 East Washington Street, at the side entrance on Samuel Street at 7:00 PM

1. Postponed from the January 11, 2011 meeting: Approval of minutes for the December 14, 2010 meeting.
Approval of minutes for the January 11, 2011 meeting.
Approval of minutes for the January 18, 2011 Planning Commission Workshop.
2. Citizen Communications.
3. Request for postponement.
4. Postponed from the January 11, 2011 meeting: Discussion and vote on the Planning Commission Meeting Schedule for 2011.
5. Postponed from the January 11, 2011 meeting: Discussion and vote on Submittal of Applications and Supporting Information Draft Policy.
6. Postponed from the January 11, 2011 meeting: Review of Revised Land Development Fees.
7. Discussion of Next Steps and Comments on the Blue Ridge Mountain Final Common Vision Document and Engineering Report.
8. Reports from Legal Counsel and legal advice to PC.
 - Report on Old Standard, LLC.
 - Report on who is responsible for setting the work plan.
 - Report on digitization of files, making them searchable.

AGENDA
JEFFERSON COUNTY PLANNING COMMISSION
JANUARY 11, 2011
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9. Director's Report.
 - Quarterly report
10. County Commission Liaison Report.
11. Planning Commission Exchange.
 - Report from the Health Department Meeting Liaison.
 - Report from the Public Service District Meeting Liaison.
 - Report from the Jefferson County Development Authority Meeting Liaison.
 - Report from the Water Advisory Committee Meeting Liaison.
12. President's Report.
13. Actionable Correspondence.
14. Non-Actionable Correspondence.

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

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
DECEMBER 14, 2010

The Jefferson County Planning Commission met on Tuesday, December 14, 2010, with the following Commission members present: John Maxey, President; Thomas Trumble, Vice President; Frances Morgan, Eric Smith, Daniel Hayes, Kelly Baty, and Gene Taylor. Staff members present included Jennifer Brockman, Director of Planning and Zoning; Seth Rivard, Planner; Steve Barney, Zoning Administrator; Jonathon Saunders, County Engineer; Stephen Groh, Assistant Prosecuting Attorney; and Julie Quodala, Planning and Zoning Office Manager.

Morgan Eppers and Arnold Dailey was absent with notification.

Mr. Maxey called the meeting to order at 7:05 PM.

1. Approval of the minutes from the November 9, 2010 Planning Commission Meeting.

Mr. Trumble suggested amending page 1 to list Mr. Eric Smith as present. Mr. Maxey suggested the following changes:

- On page 1, section 4, paragraph 2, to change the word "started" to "completed".
- On page 2, line 7, to add the word "them" after "voting on".
- On page 2, last paragraph, line 2, to insert the word "to" between "attempt" and "prevent".
- On page 4, second paragraph, line 4, to insert the word "Counsel" after "Legal" and the word "the" before "County Commission".

Mr. Hayes moved to approve the minutes with the suggested changes. Mr. Trumble seconded the motion which carried unanimously.

2. Citizens Communication:

Ms. Jennifer Syron, resident of Chapel Hill, stated that Berkeley County Engineers were able to examine the roads in Chapel Hill. She relayed that she was informed by the Engineer that the sub grade measured 4 inches, that there was no distinction between the top coat and the base coat, and that construction was not built to specs. Ms. Syron expressed appreciation to the Jefferson County Engineering Department for getting the letter of credit pulled and stated that whatever project is to be done with that bond money to repair the roads should be done completely and correctly. She also conveyed gratitude to the Planning Commission and the Planning Department for their time and commitment.

Mr. Paul Rosa, resident of Charles Town, discussed the policy on land use change requests within a defined Planning Study area, a topic that was withdrawn from the agenda. He commented that, at the November 9, 2010 Planning Commission meeting, Ms. Lyn Widmyer suggested that rezoning petitions along US 340 wait until completion of the 340 Corridor Study. Mr. Rosa stated that he felt this action would take away citizens' property rights and a policy to this effect would be imposing a moratorium.

3. A call for postponements: None.

4. **Tabled from the October 12, 2010 meeting: Request by Barbara Feldman and Barry Whitebook for a waiver from Section 20.203 (D)(2) to waive the requirement for stormwater management, from Appendix A 1.3(A)(15) to waive the need for a topographic study, and from Appendix B 9.4(E)(3) to waive the required width for the access road.**

Mr. Rivard read from his staff report and recommended granting the waiver from the required access width. He reviewed the variance request, and outcome of those variances, that were heard by the Board of Zoning Appeals. Mr. Saunders read from his staff report and raised concern that lack of stormwater management may have an impact on neighboring properties although a slight risk. He also stated that the decrease in the pavement width would not be adequate. He discussed the information provided by the Addressing Department regarding two foot contours. Mr. Saunders expressed concern that the topographical maps may not be accurate without a current survey. However, he stated that the County Engineer was willing to consider utilizing the GIS 2' contours on a trial basis.

Ms. Barbara Feldman, owner, described her business as a healing martial arts center that teaches taichi, qi gong, and karate. She stated that the stormwater runoff would go toward a forsythia bush or a line of trees along the front of the property and that the building would see very little runoff. She explained the reasons that she believed she did not need to have a site plan referencing Article 20.203 of the Subdivision Ordinance.

Mr. Maxey opened the public hearing. Ms. Lynn Welsh, Architect, attested that the ground is flat and that the building is elevated and water flows freely under it. She feels that a site plan would be an unreasonable request.

Ms. Stephanie Simpson, student of Ms. Feldman, agreed that she didn't feel stormwater management would be an issue.

Mr. Eric Smith enters the room at 7:45 PM.

Ms. Feldman explained that classes would be separated by 20 minutes to help control traffic. Mr. Maxey closed the public hearing. Discussion ensued regarding the need or lack of need for a site plan.

Mr. Hayes moved to approve the waiver on the road width (to allow the current 10 foot width instead of the required 20 foot access width). Mr. Maxey seconded the motion. Ms. Morgan asked that reasons for granting the waiver be entered into the record. Mr. Maxey stated that his reasoning would be that a width of the current 10 foot wide access would allow for better stormwater management than the required 20 foot access. Mr. Baty raised concern that granting the variance may be acceptable currently but worried that complaints may be made in the future by neighbors. The motion carried 5 for and 2 opposed (Mr. Trumble and Mr. Baty).

Mr. Hayes moved to approve the waiver of the stormwater management requirement because they have, through whatever faults, basically provided within the spirit of the stormwater management rules. Mr. Maxey seconded the motion which carried 6 for and 1 opposed (Mr. Baty).

Mr. Hayes moved to grant the waiver for the field run topographic survey because the County-provided topographic data will be sufficient for the site plan under the assumption that the applicant is responsible for any discrepancies in that topographic survey. He included that this waiver is only valid because the Planning Commission had chosen to waive the stormwater management requirements. Ms. Morgan seconded the motion on the understanding that this waiver and the use of the County data is a peculiar set of circumstances and that there is no intention to set a precedent. Mr. Maxey stated that a staff developed policy that establishes parameters of using GIS data should be written. The motion carried 5 for and 2 opposed (Mr. Baty and Mr. Trumble).

5. Request by Far Away Farm, LLC for a variance from Section 6.3 of the Subdivision Ordinance to extend the expiration of the Community Impact Statement until March 2, 2015.

Mr. Rivard read from his staff report which recommended denying the variance for extension to March 2, 2015. However, staff could support and recommend granting the variance for a time extension to July 1, 2012. Mr. Saunders deferred to the County Planner for recommendation.

Mr. Nathan Cochran, Attorney, explained that the request for the extension of time was to allow for the fulfillment of any plat requirements. He asked that any Planning Commission members that were involved in the lawsuit or any of the related proceedings recuse themselves. He specifically named Mr. Maxey, Mr. Taylor, Mr. Trumble, Mr. Baty, Ms. Eppers, and Ms. Morgan. Mr. Cochran asked that, if the Planning Commissioners chose not to recuse themselves, that a stay be put on this agenda item so that a more appropriate tribunal could be addressed.

Mr. Trumble moved to go into Executive Session. Mr. Baty seconded the motion which carried unanimously. Executive Session began at 8:48 PM. Mr. Hayes moved to resume regular session. Mr. Baty seconded the motion which carried unanimously. Executive Session ended at 9:04 PM.

Mr. Maxey, Mr. Trumble, Mr. Baty, Mr. Taylor, and Ms. Morgan all stated that they would not be recusing themselves. Mr. Cochran requested that a stay would be placed on the agenda item so that he could seek a review of the matter from the appropriate court. Ms. Morgan moved to reject the request for a stay or a delay in the proceedings. Mr. Trumble seconded the motion which carried unanimously.

Mr. Cochran reiterated the reason for the variance request and referenced the case of *Jefferson Utilities, Inc. v. Jefferson County Bd. Of Zoning Appeals* as a precedent for granting

a tolling of time. (The staff report reflected that the tolling of time in that case was court ordered.) Mr. Cochran stated that the time extension should not require a variance request and should be granted to Far Away Farms as a matter of right because not granting the extension would be penalizing them for pursuing their legal right to appeal. Mr. Maxey asked that Mr. Cochran address the four criteria for granting a variance according to the Subdivision Regulations. There was discussion regarding why the request was delayed to 5 days before the expiration of the Community Impact Statement. Mr. Cochran then addressed the four criteria for granting a variance stating that:

- 1) The request is not contrary to public interest and that there would be public expense and time if the project had to start again from the beginning and that the development of the property had not been proven to violate any historic issues.
- 2) A literal enforcement of this Ordinance would result in an unnecessary hardship financially for the developer and require additional expense to the County.
- 3) The request is not the result of a self-imposed hardship due to the time in legal proceedings.
- 4) The spirit of the Ordinance will be observed and substantial justice done because Far Away Farms had followed all the requirements presented to them in order to be allowed to proceed with the development.

Mr. Maxey closed the public hearing.

Ms. Morgan moved to deny the request for an extension to the Community Impact Statement. Mr. Trumble seconded the motion which carried unanimously. Mr. Cochran stated that he felt that the Planning Commission did not address the request to extend the time for all platting process deadlines.

Mr. Maxey called for a 5 minute break at 9:39 PM. The meeting resumed at 9:44 PM.

6. Reconsideration of the following motion regarding the Federal Land Rezoning Petition:

Quoted from September 14, 2010 Planning Commission Meeting Minutes ~ Mr. Maxey also presented a draft Resolution to Petition the Jefferson County Commission to amend the zoning map. Mr. Maxey moved to approve the resolution as drafted. Mr. Trumble seconded the motion which carried unanimously.

Ms. Brockman read the Resolution to Petition the Jefferson County Commission to amend the zoning map (attached) which was approved unanimously on September 14, 2010. Mr. Maxey asked if any member would like to reconsider the vote. Mr. Hayes moved to reconsider. Mr. Trumble seconded the motion. There was discussion on whether the County Commission was required to hold a public hearing because a petition was filed even though they found the petition to be insufficient. Mr. Maxey called to question. The motion carried 5 for and 2 opposed (Mr. Maxey and Ms. Morgan). Mr. Taylor moved to discuss. There was no second.

Mr. Trumble moved to table the issue. Mr. Smith seconded the motion. Mr. Trumble withdrew the motion to table and moved to postpone the agenda item to allow for discussion. Mr. Smith seconded the motion.

Mr. Paul Rosa, citizen of Charles Town, urged the Planning Commission to move forward and present the petition to the County Commission and request a public hearing. He cited reasons that he believed that the petition, which was previously submitted to the County Commission, was sufficient. Mr. Rosa requested that documentation that he had provided to the Planning Commission, which included a summary of the Comprehensive Plan and all the points to show consistency of the zoning district, be included in a resolution, should the Planning Commission chose to pursue the petition. He stated that citizens should maintain the right to request rezoning.

Ms. Morgan moved to amend the motion on the floor to provide a date certain for the postponement to take this matter up at the first regularly scheduled meeting in January. Mr. Trumble stated that he would prefer to wait until the first regularly scheduled meeting in February. Mr. Smith withdrew his second. Mr. Trumble withdrew his motion.

Mr. Hayes moved to withdraw the petition filed on November 2, 2010 to rezone Federal Lands. Mr. Maxey seconded the motion which carried 5 for and 2 opposed (Mr. Baty and Ms. Morgan).

Mr. Hayes moved to postpone discussion of this issue to the first regularly scheduled meeting in February. Mr. Trumble seconded the motion. Ms. Morgan offered a friendly amendment to place this item on the agenda for that date. Mr. Trumble and Mr. Hayes accepted the friendly amendment. Mr. Maxey asked that the original petition and the draft petition provided by Mr. Rosa be included with that agenda item. The motion carried unanimously.

7. Appointment of Subcommittee for Budget and Work Plan.

Mr. Maxey asked for volunteers for a subcommittee for the Budget and Work Plan. Mr. Maxey, Mr. Trumble, Mr. Hayes, and Mr. Baty volunteered. Mr. Maxey set the date of the subcommittee meeting for January 5, 2011 at 4 PM.

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

Mr. Groh reported on the status of the *James Gibson, et al v. The Jefferson County Planning Commission Case No. 09-C-364* case.

He provided a written opinion of the proposed Zoning Map policy including a redlined version of the policy including suggested changes. He stated that a hard copy of the official map should be submitted to the County Clerk for recordation. Mr. Maxey asked that this topic be postponed to the December 21, 2010 Planning Commission meeting.

Ms. Brockman discussed the Urban Growth Boundaries (UGB) and the validity of those boundaries on the failed zoning map. She reported that it was determined that County

Commission had approved those boundaries and therefore, if the municipality agreed with those boundaries, they would be adopted. She stated the Corporations of Bolivar and Harpers Ferry, however, were suggesting different boundaries and those would need County Commission approval and that a public hearing would be scheduled.

Mr. Groh stated that the policy on Public Hearings and the Policy on Zoning Map and Text Amendments would require more discussion with staff. He requested to be able to follow up with this topic at the first regularly scheduled meeting in January. Mr. Maxey stated to place this on the agenda for the first meeting in January along with the policy for the submittal of supplemental information.

9. Policy neutral technical amendments of the Zoning Ordinance.

Mr. Barney stated that a full draft of these amendments would not be provided at that time. Ms. Brockman discussed having a work session to review a draft. Mr. Maxey directed that a work session be scheduled for January 18, 2011 at 6 PM. The draft amendments would be distributed at the work session.

10. Discussion of Amended Land Development Review Fees.

Ms. Brockman reported that much work had been done on the review fees however, it was not finalized. Mr. Maxey directed that this item be placed on the January 11, 2011 meeting.

11. Director's Report.

- **Activity Report.** The Activity Report was provided in the agenda packets.
- **Report back on Scott noise agreement and noise regulations.** Ms. Brockman reported that no information of validity had been found on the noise agreement. She stated that she would contact Mr. Dailey in order to gain direction on other documents to search.
- **Meeting dates in 2011.** Ms. Brockman provided a chart of regularly scheduled Planning Commission meetings and their relation to the closest holiday along with proposal of meetings that the Planning Commission may want to cancel. She asked that the Commission review that document for discussion at a later meeting.
- **Follow up on use of topographic data from the County GIS office.** Ms. Brockman recapped that a policy regarding topographic data was being developed.
- **Report on 12/7/2010 Joint County Commission and Planning Commission meeting regarding the Blue Ridge Mountain Communities Watershed Plan.** Ms. Brockman stated that a summary, which included the action that had been taken and what the next steps were, was provided. Mr. Hayes reported that he was reviewing the recommendations and wanted to discuss them at a future date. Mr. Maxey asked that discussion of the Blue Ridge Mountain Plan be placed on the January 25, 2011 Planning Commission meeting. He asked that a summary of the citizen recommendations be provided at that meeting.
- **Upcoming County Commission agenda items:**
 - Urban Growth Boundary Approval Process (12/16/10)
 - Request to Schedule Evening Meetings in 2011 (January 2011)

- Zoning Map Update and Zoning Map Policy (pending PC recommendation)
- Wireless Telecommunications Ordinance Amendment Public Hearing (1/20/11 at 7 PM)
- **Upcoming Planning Commission Meetings.**
 - 12/21/10
 - Ms. Brockman stated a waiver had been submitted for Stasis.
 - 1/11/11 – 1st meeting of the new year
 - Election of Officers
 - Special Called Workshop for Policy Neutral Zoning Ordinance Amendments.
 - This topic was previously discussed under item #9 with a work session set for January 18, 2011 at 6 PM.

12. County Commission Liaison Report.

Ms. Morgan reported on the Tri-County Legislative Summit held December 7, 2010. She stated that Berkley County is proposing to increase the cap of Homeowner's Association Fees to the amount of \$1,000 for the Limited Expense Communities. She reported that Norwood Bentley, Counsel for Berkley County Commission Council, discussed issues regarding the tolling of bonds. Ms. Morgan stated that Morgan County plans to propose reducing the number of eligible voters required to petition for a referendum from 10% to 5%.

13. Planning Commission Exchange.

Mr. Maxey provided a written summary of the Water Advisory Committee meeting, which was held November 15, 2010, in the agenda packet.

Mr. Hayes provided a written summary of the Public Service District meeting, which was held December 6, 2010, in the agenda packet.

Mr. Trumble reported on the Economic Development Authority meeting. Mr. Trumble informed the Planning Commission that there would be a Jefferson County Day held in Charleston. He asked that staff research when it would be held and what steps needed to be taken to participate. He also reported that the year round Farmer's Market was no longer and active project.

14. President's Report.

Mr. Maxey distributed a document from the Office of Disciplinary Counsel that responded to a complaint by Mr. Robert Reynolds, previously a Planning Commission President, regarding advice given by legal counsel to the Planning Commission concerning Far Away Farms. Mr. Maxey pointed out that the letter references a conflict of a Prosecuting Attorney's office counseling both the County Commission and the Planning Commission. Mr. Maxey asked that Planning Commission members review the document for discussion at a later date. Mr. Trumble asked that Mr. Groh provide the Planning Commission with how much of his time is dedicated to Planning Commission issues.

MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
DECEMBER 14, 2010
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Mr. Maxey distributed a copy of a certificate from the Secretary of State's Office regarding Old Standard, LLC and the revocation of their license to do business in the State of West Virginia.

15. **Actionable Correspondence.** None.

16. **Non-Actionable Correspondence.** None.

Mr. Hayes moved to adjourn at 11:30 PM. Mr. Taylor seconded the motion, which carried unanimously. A detailed transcript of the meeting, which was recorded by Julie Quodala, Office Manager, may be found on our website. These minutes were prepared by Amy Puetz, Planning Clerk.

Resolution to Petition the Jefferson County Commission to Amend the Zoning Map

WHEREAS the existing Jefferson County Zoning map indicates parcels along Route 340 now owned by the National Park Service and U.S. Customs and Border Patrol as either their original zoning classification or as "National, State and County Facilities"; and

WHEREAS the Jefferson County Planning Commission wishes to revise the zoning map so that it reflects the true underlying zoning classification rather than parcel ownership; and

WHEREAS the current use of these parcels fits the rural zoning classification; and

WHEREAS rezoning these parcels to reflect a rural classification would be consistent with the Jefferson County Comprehensive Plan;

THEREFORE BE IT RESOLVED that the Jefferson County Planning Commission petition the Jefferson County Commission under the provisions of WV Code §8A-7-9 paragraph B to rezone the parcels owned by either the National Park Service of the U.S. Customs and Border Patrol along Route 340 from the current zoning classification to rural.

On September 14, 2010 at the regularly scheduled Planning Commission meeting, the Planning Commission decided with a 5-0 vote to petition the County Commission to rezone Federal Lands along the Route 340 Corridor.

X 

John Maxey
President, Jefferson County Planning Commiss...

MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
JANUARY 11, 2011

The Jefferson County Planning Commission met on Tuesday, January 11, 2011, with the following Commission members present: Thomas Trumble, President; Daniel Hayes, Vice President; Morgan Etters, Secretary; Gene Taylor, John Maxey, Kelly Baty, and Walt Pellish. Staff members present included Jennifer Brockman, Director of Planning and Zoning; Seth Rivard, Planner; Jonathon Saunders, County Engineer; Julie Quodala, Office Manager; and Stephen Groh, Assistant Prosecuting Attorney.

Gene Taylor, Eric Smith, and Arnold Dailey were absent with notification.

Mr. Maxey called the meeting to order at 7:16 PM.

Mr. Maxey introduced Mr. Walt Pellish, County Commissioner and newly appointed liaison to the Planning Commission. Mr. Pellish gave a history of his past career experience and discussed the role of the Planning Commission's involvement in economic development.

1. Election of Officers.

For President, Mr. Hayes nominated Mr. Trumble. Because there were no other nominations or objections to the nomination, Mr. Trumble assumed the position of President.

For Vice-President, Mr. Maxey nominated Mr. Hayes. Because there were no other nominations or objections to the nomination, Mr. Hayes assumed the position of Vice-President.

For Secretary, Mr. Maxey nominated Ms. Etters. Because there were no other nominations or objections to the nomination, Ms. Etters retained the position of Secretary.

2. Approval of the minutes for the December 14, 2010 meeting.

Mr. Hayes moved to approve the minutes for the December 14, 2010 meeting as written. Mr. Baty seconded the motion. Mr. Maxey asked Mr. Groh if, in his review of the minutes, the reasons for denial of the Far Away Farms variance were accurate. Mr. Groh distributed an order that he had written. Mr. Groh stated that he had added a sentence to his order regarding the applicant's failure to show progress with the project and waiting until 5 days before the expiration of the Community Impact Statement to submit a variance request as a reason for denial, although that reason may not have been reflected in the minutes. Mr. Maxey moved to table acceptance of these minutes to the next meeting to give the Attorney and Staff an opportunity to revise the minutes, if necessary, to more closely correspond to the events that evening and to the legal document that the attorney was preparing. Discussion ensued. Mr. Hayes seconded the motion to table acceptance of the minutes which carried 5 for and 1 abstention (Ms. Etters).

Approval of minutes for the December 21, 2010 meeting.

Mr. Trumble moved to approve the minutes as written. Mr. Hayes seconded the motion which carried 5 for and 1 abstention (Ms. Etters).

3. **Citizens Communication:** None.
4. **Request for postponement:** None.
5. **Request by Global Tower Assets, LLC for Approval of the Mitigation of the Visual Impact for the Summit Point Telecommunications Tower (PC file #S10-07).** This project consists of a 199 foot monopole tower. The property is located on the southern portion of the property owned by Summit Point Motor Sports Park with access to the site from Hardesty Road along an existing access road and is designated as Tax District: Kabletown; Map: 17; Parcel: 2 & 3.

Ms. Brockman gave a brief presentation on the visual impact of the telecommunications tower to be mitigated and recommended approval of visual mitigation with the condition that a 15' buffer be included around the perimeter between the fencing and the edge of the leased area, or just outside the leased area, for the purpose of preserving trees in this area or planting trees if the existing trees are cleared. Mr. Maxey asked that more information be provided on the agenda for the next mitigation to make clear that the public is invited to attend and give input.

Mr. Lynn Koerner, Contractor for Global Tower Assets, described the proposed tower, proposed location, and the visual effects on surrounding properties. Mr. Koerner had provided the Planning Staff with several maps, photos, and studies to be used for supporting information. These documents were provided to the Planning Commissioners in the agenda packets.

Mr. Trumble opened the public hearing. Mr. Paul Rosa, citizen of Charles Town, commented that Section 4B.3 of the Zoning Ordinance requires that a fall zone of 100% height of the tower plus 10 feet be provided and that he believed it should be reflected on the site plan. He also questioned whether the tower possibly needed to be 199'. Mr. Rosa stated that he was in favor of approval. Mr. Trumble closed the public hearing.

Mr. Maxey moved to approve the visual mitigation with the staff recommended motion (attached). Mr. Hayes seconded the motion. Mr. Baty offered a friendly amendment to add a provision to include a fall zone. Mr. Maxey did not accept the amendment stating that the project should not be delayed and that the project had met the visual mitigation requirements. Mr. Hayes also did not accept the friendly amendment. Mr. Trumble called to question. The motion carried unanimously.

6. **Discussion and vote on Planning Commission meeting schedule for 2011.**
This item was postponed to the January 25, 2011 meeting.
7. **Discussion and vote on Submittal of Applications and Supporting Information Draft Policy.**
This item was postponed to the January 25, 2011 meeting.
8. **Review of Revised Land Development Fees.**
This item was postponed to the January 25, 2011 meeting.

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

- **Report on Old Standard, LLC.**
- **Report on who is responsible for setting the work plan.**
- **Report on digitization of files, making them searchable.**

This item was postponed to the January 25, 2011 meeting.

10. Director's Report.

This item was postponed to the January 25, 2011 meeting.

11. County Commission Liaison Report.

This item was postponed to the January 25, 2011 meeting.

12. Planning Commission Exchange.

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

This item was postponed to the January 25, 2011 meeting.

13. President's Report.

This item was postponed to the January 25, 2011 meeting.

14. Actionable Correspondence. None.

15. Non-Actionable Correspondence. None.

Mr. Pellish moved to adjourn at 8:25 PM. Mr. Maxey seconded the motion, which carried unanimously. A detailed transcript of the meeting, which was recorded by Julie Quodala, Office Manager, may be found on our website. These minutes were prepared by Amy Puetz, Planning Clerk.

**A Motion Recommending Approval of a
Visual Mitigation for a Global Tower Assets Cellular Tower
January 11, 2011**

Whereas, Global Tower Assets has requested a 195 foot cell tower on the property owned by William H. Scott Inter Vivos Trust; and

Whereas, The property is located at 201 Motorsports Park Circle, Summit Point WV 25446 and is identified as Parcels 2 & 3 as shown on Tax Map 17 of the Kabletown Tax District, cumulatively consisting of 425.34 acres; and

Whereas, In the Rural District the Planning Commission is required to review the visual mitigation as outlined in 4B.4(b)(2)b; and

Whereas, The tower is in all conformance with technical requirements of the Zoning and Land Development Ordinance and Subdivision and Land Development Regulations; and

Whereas, Staff recommends approval of the requested visual mitigation based on the conditions outlined in the staff report attached, which includes a 15 foot landscape buffer around the perimeter of the fencing consisting of trees either preserved or planted; and

Now therefore be it moved, that the Jefferson County Planning Commission approves the requested visual mitigation for the Global Tower Assets tower, including the landscaped buffer, for property identified in the Jefferson County Tax Map as Parcels 2 & 3 as shown on Tax Map 17 of the Kabletown Tax District.

Recommended _____ this __ day of _____ 2011
By vote of the Jefferson County Planning Commission
By a vote of _ Yes _ No

Commission President

JEFFERSON COUNTY, WEST VIRGINIA

Department of Planning

116 East Washington Street

P.O. Box 338

Charles Town, West Virginia 25414

Phone: (304) 728-3228

Fax: (304) 728-8126

Email: planningdepartment@jeffersoncountywv.org

January 11, 2011

Listed below are the scheduled Planning Commission meeting dates for 2011. These dates consist of the 2nd & 4th Tuesday of every month. If you have any questions, please contact the Planning Department at the above referenced number.

January 11, 2011

January 25, 2011

February 8, 2011

February 22, 2011

March 8, 2011

March 22, 2011

April 12, 2011

April 26, 2011

May 10, 2011

May 24, 2011

June 14, 2011

June 28, 2011

July 12, 2011

July 26, 2011

August 9, 2011

August 23, 2011

September 13, 2011

September 27, 2011

October 11, 2011

October 25, 2011

November 8, 2011

November 22, 2011 (Week of Thanksgiving – usually cancelled)

December 13, 2011

December 27, 2011 (Between Christmas and New Year's – usually cancelled)

JEFFERSON COUNTY PLANNING COMMISSION

116 East Washington Street
P.O. Box 338
Charles Town, West Virginia 25414

Email: planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

Fax: (304) 728-8126

MEMO

TO: Planning & Zoning Staff
FROM: John Maxey, Planning Commission President
DATE: January 25, 2011
RE: Planning Commission Policy – Submittal of Applications & Supporting Information

Any applicant who wishes to submit an application to be considered by the Planning Commission must submit the application and all supporting information to Staff three weeks prior to the Planning Commission meeting. The late submittal of supporting information could result in the discussion of the item being tabled until the next regularly scheduled Planning Commission meeting. Additionally, the basis of the Planning Commission's decision will be upon the testimony heard at the public hearing and the supporting information submitted before the deadline. Should the application submitted be tabled or postponed the applicant shall have three business days to submit any further or requested information.

Approved by vote _____ For, _____ Against on January 25, 2011.

Effective Date: January 25, 2011.

X

Tom Trumble
Planning Commission President

JEFFERSON COUNTY, WEST VIRGINIA
Department of Planning & Zoning
116 East Washington Street, 2nd Floor
P.O. Box 338
Charles Town, West Virginia 25414

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

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

MEMO

TO: Planning Commission Members
FROM: Jennifer M. Brockman, AICP, Director, Planning and Zoning Department
DATE: January 25, 2011
RE: 2011 Land Development Fee Proposal

After the adoption of the November 2008 Subdivision Regulations, the Planning Commission and Planning, Zoning, and Engineering staff initiated a review of the 2001 Land Development Fees to determine if they accurately reflected the costs associated with development review activities. The effort to develop actual cost recovery fees was thoroughly vetted and received considerable input. In October 2010, the County Commission reviewed the last version of the cost recovery fees forwarded to them by the Planning Commission and determined that, at this time, cost recovery would result in fees that were too high and were not realistic for the current economy. The County Commission sent the fees back to the Planning Commission to reconsider the proposal. Later that month, the Planning Commission directed staff to utilize the new format developed during the cost recovery analysis that reflects the newer Subdivision Regulation processes and modify the current land development fees to reflect a 20% increase above current levels.

Attached is the 2011 Land Development Fee proposal, which is in the format requested by the Planning Commission that generally reflects a 20% increase in fees. Fees listed in blue italics are for tasks for which no fee currently exists. In some cases, staff recommended a fee and in some cases we left it at zero for the Commission's consideration. Additionally, it should be known that under the current fee structure, fees for major subdivisions are calculated at the initial submittal and divided into payments of 30, 30, and 40 percent that are paid during separate review phases. The total fee was utilized to calculate the 20% increase; however, staff is recommending that a larger portion of that total fee be paid for the Preliminary Plat review, as most of the review works occurs at that stage, with a very small portion of the fee reserved for the final review prior to recordation. Planning and Zoning staff are still working with the Engineering staff to ensure all tasks for which they currently charge fees are accurately reflected on this fee schedule. Minor edits may occur and will be presented at the January 25, 2011 meeting.

Finally, it should be noted that the fees being presented to the Planning Commission do not include proposed changes to the Building Permit fees, because these are under the purview of the County Commission. However, the building permit fees will be attached to the Planning Commission approved, proposed land development fees at the County Commission's request, so that all fees related to Planning, Zoning and Engineering can be approved at the same time.

Staff recommends that the Planning Commission host a public outreach meeting (either a public hearing or workshop) regarding the new proposed fees, during a regularly scheduled Planning Commission meeting with the goal of incorporating comments into a version to forward to the County Commission in the near future.

Planning, Zoning & Engineering Departments'
Proposed Land Development Fee Schedule
 January 2011

Minor Residential Subdivision	Final Plat	Review for Recording
Base Fee Per Plat	\$240	\$0
Plus Per Lot Fee	\$240	\$0

Merger Deed Plat	Final Plat	Review for Recording
Base Fee Per Plat	\$120	\$0
Plus Per Lot Fee	\$120	\$0

Minor Non-Residential Subdivision	Final Plat	Review for Recording
Base Fee Per Plat	\$360	\$0
Plus Per Lot Fee	\$600	\$0

Major Residential Subdivision	Concept Plan	Preliminary Plat (each phase)	Final Plat (each phase)	Review for Recording
Base Fee Per Plat	1-50 Lots \$300	\$200	\$100	\$60
Plus Per Lot Fee	50+ Lots \$1,200	\$300	\$150	\$30

Major Non-Residential Subdivision	Concept Plan	Preliminary Plat (each phase)	Final Plat (each phase)	Review for Recording
Base Fee Per Plat	1-50 Lots \$300	\$200	\$100	\$60
Plus Per Lot Fee	50+ Lots \$1,200	\$300	\$200	\$100

Mobile Home Park Subdivision	Concept Plan	Site Plan
Base Fee Per Park	\$150	\$150
Plus Per Gross Project Acre		\$120
Per Mobile Home Pad		\$240
Per Principal Building		\$120

Campground Site Plan	Concept Plan	Site Plan
Base Fee Per Project	\$150	\$150
Plus Per Gross Project Acre		\$120
Per Campsite		\$60
Per Principal Building		\$120

Planning, Zoning & Engineering Departments'
Proposed Land Development Fee Schedule
 January 2011

Townhome, Condominium, Apartment & Motel/Hotel Site Plan	Concept Plan	Site Plan
Base Fee Per Plat	\$150	\$150
Plus Per Gross Project Acre		\$120
Per Principal Building		\$240
Per Unit		\$120

Cell Tower Site Plan	Site Plan
Base Fee Per Plan	\$1200

Minor/Limited Site Plan	Site Plan
Base Fee Per Plan	\$1200

Minor/Full Site Plan	Site Plan
Base Fee Per Plan	\$2400
Plus fee for area > 5,000 sq. ft. of impervious area plus disturbed area.	\$0.02 per sq. ft. of impervious + disturbed area over 5,000 sq. ft.

Major/Full Site Plan	Concept Plan	Site Plan
Base Fee Per Plan	\$600	\$3600
Plus fee for area > 5,000 sq. ft. of impervious area plus disturbed area.		\$0.04 per sq. ft. of impervious + disturbed area over 5,000 sq. ft.

Redline or Minor Revision	Preliminary Plat	Final Plat	Site Plan
Base Fee Per Plan (up to 3 different revisions on one submission)	\$180	\$180	\$180

Planning, Zoning & Engineering Departments'
Proposed Land Development Fee Schedule
 January 2011

<u>Zoning Items</u>	<u>Fee</u>
Zoning Ordinance Text Amendment Application	\$1200
Zoning Ordinance Map Amendment Application (Rezoning)	\$1200 + \$60 per acre
Conditional Use Permit (CUP) Application without LESA	\$300 + \$60 per acre
Conditional Use Permit (CUP) Application with LESA	\$300 + \$60 per acre 50% returned if the project fails LESA 0% returned if the project fails LESA & loses and appeal to BZA
Modification of existing CUP requiring Board/Commission Approval	\$300 + \$30 per acre
Appeal of CUP once issued by Board/Commission	\$300 per appeal filed
Zoning Variance Application	\$120 per section varied
Multiple Use Variances	\$240
Zoning Variance Application (construction/use has commenced prior to BZA approval)	\$180
Administrative Appeal Application (each issue appealed constitutes a separate appeal)	\$120/per item
Zoning Map Interpretation	No Charge
Zoning Text Interpretation	No Charge
Zoning Certificate	\$75
<u>Subdivision Items</u>	<u>Fee</u>
Pre-Proposal Conferences	No Charge
Lot Line Adjustment/Merger	\$120
Subdivision Ordinance Waiver Request	\$120
Minor Final Plat or Site Plan Amendment	\$180
Clerical/Scrivener Error	\$50

Planning, Zoning & Engineering Departments'
Proposed Land Development Fee Schedule
 January 2011

<u>Engineering Items</u>	<u>Fee</u>
Inspection Fee – Land Development Site Inspection	\$60
Re-inspection – Land Development failed inspections	\$60
Construction Bond – Time Extension Request (by staff or CC)	\$60
Construction Bond – Surety Renewal	<i>\$0</i>
Floodplain Ordinance – Floodplain Delineations	\$12
Floodplain Ordinance – 100 Yr. Flood Elevation Determination	\$12
Floodplain Ordinance – Review of LOMA, LOMR or LOMR-F requests	<i>\$0</i>
<u>Miscellaneous Items</u>	<u>Fee</u>
Aerial Photograph	\$18
Comprehensive Plan	\$14
Zoning Map (small – 11 x 17)	\$6
Zoning Map (medium – 24 x 36)	<i>\$12</i>
Zoning Map (large – 36 x 54)	\$24
CD (copy of meetings, electronic copy of files, etc.)	\$10
Zoning Ordinance	\$30
Subdivision Regulations	\$30
Copies (letter, legal & 11"x17")	\$1/page*
Copies (plan sheets, maps, etc.)	\$7.50/sheet*
*Note: The charge for copies is subject to change and shall be the prevailing rate as set by the County Commission of Jefferson County.	

Note: The fee amounts shown in bold, italicized blue font are services for which there is no current established fee.

Note: These fees do not include any Building Permit fees.

Note: All projects vested in process prior to the adoption of this fee schedule will utilize the fee schedule last amended in January 2001.

JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning & Zoning

116 East Washington Street, 2nd Floor

P.O. Box 338

Charles Town, West Virginia 25414

Phone: (304) 728-3228

Fax: (304) 728-8126

Email: planningdepartment@jeffersoncountywv.org

MEMORANDUM

TO: JEFFERSON COUNTY PLANNING COMMISSION

FROM: SETH RIVARD, COUNTY PLANNER

DATE: JANUARY 20, 2011

SUBJECT: BLUE RIDGE NEXT STEPS AND COMMENTS REGARDING FINAL COMMON VISION

The Common Vision for the Jefferson County Blue Ridge Mountain Communities Area is not a document that can simply be implemented in its current form. Vision statements tend to be large concepts and ideas. They often need to be embarked upon in a series of phases or action items and frequently need a plan of action to accomplish the vision goal. This vision document is a collection of thoughts from those who participated in the outreach process. As such the concepts are broad and wide ranging. Subsequently, additional progression needs to occur for the vision to be properly implemented. Staff has outlined the following topics actions as next steps in implementing the Common Vision:

- Regroup the Committee
 - What they thought of the process
 - Their thoughts on the document
 - Their ideas for next steps
 - Their interest in assisting in moving components of the document forward
 - Their views on a Small Area Mountain Plan
- Drafting a Small Area Mountain Plan
 - May require the assistance of a consulting firm
 - Develop an existing land use plan
- Contact Dr. Villa regarding final data he may have pertaining to water sampling
 - Results he obtained and what the results mean for areas of the Mountain

Staff would hope that after a very productive outreach session in which new bridges were built with stakeholders of the Mountain that the process could continue to move forward implementing the vision.

If you have any questions, please contact the Planning and Zoning office at (304) 728-3228 from 9:00 a.m. to 5:00 p.m. Thank you.

STATE OF WEST VIRGINIA
OFFICE OF DISCIPLINARY COUNSEL
2008 KANAWHA BOULEVARD, EAST
CHARLESTON, WEST VIRGINIA 25311

Office: (304) 558-7999

Fax: (304) 558-4015

Website: www.wvdc.org

Chief Lawyer Disciplinary Counsel
Rachael L. Fletcher Cipoletti
Senior Lawyer Disciplinary Counsel
Andrea J. Hinerman
Lawyer Disciplinary Counsel
Renée F. Frymyer
Jessica H. Donahue

November 5, 2010

Mr. Robert I. Reynolds
188 Norman Lane
Shepherdstown, WV 25443

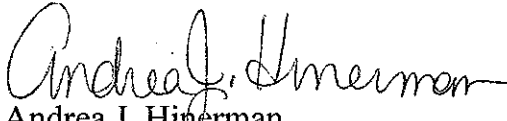
Re: *Complaint against Michael D. Thompson, Esquire*
I.D. No. 08-01-455

Dear Mr. Reynolds:

Enclosed please find a copy of the Investigative Panel Findings and Conclusions with respect to your complaint against the above-referenced attorney. This matter has been investigated by this office and was reviewed by the full Investigative Panel of the Lawyer Disciplinary Board at its October 30, 2010 meeting. The Panel determined that further action is not warranted and your complaint has been dismissed.

Thank you for bringing this matter to the attention of the Lawyer Disciplinary Board.

Sincerely,


Andrea J. Hinerman
Senior Lawyer Disciplinary Counsel

AJH/mal

Enclosure

cc: Walter M. Jones, III, Esquire (w/enc.)

**LAWYER DISCIPLINARY BOARD
INVESTIGATIVE PANEL CLOSING**

I.D. No.: 08-01-455

Date Complaint Received: September 30, 2008

COMPLAINANT: Robert I. Reynolds
188 Norman Lane
Shepherdstown, West Virginia 25443

RESPONDENT: Michael D. Thompson, Esquire
119 East Liberty Street
Charles Town, West Virginia 25414

BAR NO.: 3747

THE INVESTIGATION OF THIS MATTER having been completed and a report having been made to the Investigative Panel of the Lawyer Disciplinary Board, the Panel orders that this complaint be closed for the following reasons:

STATEMENT OF FACTS

Complainant Robert I. Reynolds, as President of the Jefferson County Planning Commission, filed this complaint against Michael D. Thompson, Esquire, a licensed member of the West Virginia State Bar.¹

A. Complaint:

Complainant stated that Assistant Prosecuting Attorney (“APA”) James Casimiro, III, represented the Jefferson County Planning and Zoning Commission (“Planning

¹ At the time this complaint was filed, Respondent was the elected Prosecuting Attorney for Jefferson County, West Virginia. In addition, it also appears that Complainant is no longer a member of the Jefferson County Planning Commission.

COPY

Commission”), and APA Stephanie F. Grove represented the Jefferson County Board of Zoning Appeals.² Complainant stated that it was the understanding of the Planning Commission that “the assignment of counsel was intended to avoid any conflict of interest between counsel to these independent bodies.” On April 17, 2008, the Supreme Court of Appeals of West Virginia issued a memorandum opinion reversing an Order of the Circuit Court of Jefferson County which had affirmed the denial by the Board of Zoning Appeals of a Conditional Use Permit (hereinafter “CUP) to Far Away Farms, LLC, (hereinafter “Far Away Farms”).³ The Supreme Court found that the Board of Zoning Appeals lacked jurisdiction to deny Far Away Farms the CUP and referred the matter back to the Planning Commission with directions to the Planning Commission to approve the CUP.

At an April 22, 2008 meeting of the Planning Commission, APA Casimiro advised the Planning Commission about the recent Supreme Court ruling, and stated that the matter would be returned to the Board of Zoning Appeals for action. Complainant stated that Planning Commission did not hear anything further about the matter for nearly three months.

The Planning Commission had a meeting scheduled for July 22, 2008. Just prior to this meeting, the members were advised that APA Grove, who represented the Board of Zoning Appeals, would attend the meeting and present a memorandum discussing the recent Supreme Court Order regarding Far Away Farms. The President of the Planning Commission asked APA Grove for a copy of the memorandum prior to the July 22, 2008

² APA Grove and APA Casimiro were employed in the “Civil Division” of the Jefferson County Prosecuting Attorney’s office.

³ See, Far Away Farm, LLC v. Jefferson County Board of Zoning Appeals, et al., 664 S.E.2d 137 (W.Va. 2008).

meeting. Additionally, the Commissioners asked that APA Grove attend the subsequent meeting after they had a chance to discuss the matter. Complainant stated that Respondent denied both of the Planning Commissioners' requests.

At the July 22, 2008 meeting, APA Grove advised the Planning Commission that the Board of Zoning Appeals had filed a petition for rehearing on May 19, 2008, and that the petition for rehearing had been denied on June 11, 2008. The Board of Zoning Appeals had also filed a Joint Motion for Stay of Mandate on June 16, 2008. APA Grove told the Planning Commission that in her opinion, the Supreme Court ruling was illegal in several respects. The Planning Commission was advised that it must immediately approve the Far Away Farms CUP or the Planning Commissioners would individually risk contempt of court and possible incarceration. Complainant stated that APA Grove also advised the Planning Commission that it could direct its attorney, APA Casimiro, to pursue legal action in the Federal Court. The Planning Commission took no action at the July 22, 2008 meeting and placed the matter on the Agenda for its August 12, 2008 meeting. APA Grove assured the Planning Commission that she would attend this next meeting.

However, APA Grove did not attend the August 12, 2008 meeting. APA Casimiro attended the meeting and advised the Planning Commission that if the CUP were not approved, the Prosecuting Attorney would not represent the Planning Commission or any of its members in court. After discussion in executive session, Complainant stated that the Planning Commission, under legal duress, granted the CUP for Far Away Farms, but expressly stated that the Planning Commission was not waiving its right to challenge the Supreme Court ruling and reserved the right to rescind the CUP if the Planning

Commission's challenge was successful. The CUP was approved and signed at the August 26, 2008 meeting of the Planning Commission.

At the September 9, 2008 meeting of the Planning Commission, APA Casimiro presented a draft petition to collaterally attack the Supreme Court's April 17, 2008 ruling. Complainant stated he believed the petition was to be filed in the United States District Court for the Northern District of West Virginia. Complainant stated that APA Casimiro assured the Planning Commissioners that while he would file the petition, he would need the County Commission to approve paying the filing fee. APA Casimiro stated he intended to present his request for payment of the filing fee at the County Commission's September 11, 2008 meeting.

On September 12, 2008, APA Casimiro informed the Planning Commission, via email, that he had been directed by Respondent not to file the petition in the United States District Court. Furthermore, Complainant also alleged that on or about September 12, 2008, Respondent "without discussion or notice, withdrew as counsel to the Planning Commission with regard to the its appeal of the [Supreme Court's order regarding Far Away Farms.]" Complainant asserted that "there is now a question as to whether Respondent was misrepresenting his intentions in order to secure the approval of the [CUP for Far Away Farms.]"

B. Respondent's Response

Respondent initially stated that the complaint should be dismissed because Complainant has never been represented individually by Respondent. Alternatively, if the complaint was filed on behalf of the Planning Commission, Respondent argued that it should

be dismissed as it appeared that the Commission did not vote to file an ethics complaint. Respondent could not identify any discussion of filing an ethics complaint on any meeting agenda for the Planning Commission. Respondent stated that while the filing an ethics complaint against him was discussed at the September 23, 2008 meeting of the Planning Commission, it was not noted anywhere on the Agenda, in violation of West Virginia open meeting laws, W.Va. Code § 6-9A-1 *et seq*, and the Planning Commission Bylaws.

In response to the allegation raised in the complaint, Respondent stated that the dual roles of the Prosecuting Attorney's Office were created for the purpose of providing separate counsel to the Planning Commission and to the Board of Zoning Appeals, and that this procedure was explained and consented to by Complainant. Respondent maintained that counsel for the Board of Zoning Appeals had no duty to inform the Planning Commission of any legal action contemplated by the Board of Zoning Appeals because the Planning Commission had not been a party to the appeal of the CUP in the underlying matter.

Respondent stated the Supreme Court's ruling was confusing because the Supreme Court had directed the Planning Commission, which had not been a party to the appeal, to issue the CUP to Far Away Farms. Respondent stated that as a result of the confusion, the Office of the Prosecuting Attorney, through APA Grove, filed a Motion for Reconsideration (Petition for Rehearing) on behalf of the Board of Zoning Appeals. The Motion for Reconsideration was denied by the Supreme Court, as was the Request for a Stay of the Mandate pending a ruling on a Petition for a Writ of Certiorari which was filed in the Supreme Court of Appeals for the United States. The Petition for Writ of Certiorari was denied by the United States Supreme Court by Order entered November 18, 2008.

Respondent maintained that the chronology of these events was important for two reasons. First, Respondent argued that at no time were the interests of the Board of Zoning Appeals and Planning Commission adverse. Respondent said that opposition to the Supreme Court ruling was vigorously pursued by counsel for the Board of Zoning Appeals, which was the only party to the proceedings. Second, at the July 22, 2008 meeting, counsel for the Board of Zoning Appeals provided to the Planning Commission a detailed opinion regarding the legal ramifications of the Supreme Court's Order and failure to comply with the same. Respondent said that although APA Grove was counsel for the Board of Zoning Appeals, it was appropriate for her to "provide legal guidance" to the Planning Commission concerning the Supreme Court's Order. Respondent again stated that as both the Planning Commission and the Board of Zoning Appeals were opposed to the issuance of the CUP, their positions were not adverse to each other.

Respondent maintained that Complainant presented no evidence to demonstrate any "factual support" for the allegation that Respondent had a personal interest in the issuance of a CUP for Far Away Farms. Respondent stated that he did not have any relationship with any person having an interest in the issuance of the CUP to Far Away Farm.

Regarding the allegations that he wrongfully declined or terminated the representation of the Planning Commission by the Office of the Prosecuting Attorney, Respondent asserted that the statements made by APA Casimiro at the August 12, 2008 meeting were taken out of context. Respondent stated that neither the July 22, 2008 opinion letter by APA Grove nor the August 12, 2008 memorandum by APA Casimiro stated that the Prosecuting Attorney's Office would withdraw from further representation. Instead, Respondent stated that APA

Grove's letter provided an opinion regarding the Planning Commission's responsibility in the matter, and stated that the Planning Commissioners would be individually liable for any attorney fees, bonds or fines if they did not follow the Supreme Court's directive, were unsuccessful in challenging the directive and were found to have been acting in bad faith. APA Casimiro's memorandum presented a brief statement supporting the July 22, 2008 opinion letter from APA Grove and addressed potential causes of action for a petition to be filed in federal court. Respondent also stated the Prosecuting Attorney's Office did not withdraw from all representation of the Planning Commission. Respondent maintained that the Prosecuting Attorney's Office continues to provide legal representation to the Planning Commission in all matters except those related to Far Away Farm and to this complaint.

Respondent stated he first learned of the Planning Commission's intent to file suit against the individual Justices of the Supreme Court of Appeals of West Virginia on or about September 10, 2008, when he obtained and reviewed a copy of the draft pleading which was attached as Exhibit 6 to this complaint. Respondent stated that the basis of that pleading was a claim for violation of civil rights under 42 U.S.C. § 1983, naming each Justice of the Supreme Court individually. Respondent stated that he researched the issue and concluded that the Planning Commission "could not bring a due process claim and that an injunction could not issue". Respondent said that based on this conclusion, he directed APA Casimiro not to file the lawsuit. Respondent also cited Rule 3.1 of the Rules of Professional Conduct which provides, in part, that "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law...."

On or about September 12, 2008, APA Casimiro sent a brief email to the Planning Commission advising them that they would need to hire outside counsel if they planned to pursue the proposed federal lawsuit. Furthermore, Respondent stated that APA Casimiro offered, in his email, to discuss the matter in person with the Planning Commission at its next meeting but the offer was declined. Respondent stated that the Planning Commission instead opted to file the instant complaint and to express their dissatisfaction with him to the Jefferson County Commission.

Respondent maintained that the decision not to file the federal lawsuit had no adverse effect on the interests of the Planning Commission. Respondent said there was a two year statute of limitations governing the filing of a civil rights claim and, because the Order was issued on April 17, 2008, the statute had not yet run. Further, the County Commission had subsequently approved the hiring of outside counsel to provide a legal opinion to the Planning Commission concerning the proposed litigation. Respondent maintained that, under the Rules of Professional Conduct, an attorney can decline or terminate representation if the client insists on pursuing an objective the attorney considers repugnant or imprudent.

C. Complainant's Reply

Complainant stated that public records demonstrate he had standing to file the ethics complaint, that he did so "in discharge of his duties as President of the Planning Commission," and that the complaint was an official action of the Planning Commission. Complainant also stated his reply was "submitted on behalf of and at the direction of the Jefferson County Planning Commission."

Complainant stated that when administrative or managerial issues are to be discussed, they are listed as "President's Report or Planning Commission Exchange" on the Agenda. Complainant said that both the Prosecuting Attorney's Office and the Planning Commissioners were notified prior to the September 23, 2008 meeting of the specific text of matters to be considered at the upcoming meeting. Complainant also stated that APA Casimiro was a "full participant" in the proceedings, and at no time did he advise the Planning Commission about possible violations of the open meetings laws. Complainant maintained that all actions taken by the Planning Commission were discussed in open session as required by statute and in accordance with Advisory Opinion No. 2006-09 issued on September 7, 2006, by the West Virginia Ethics Commission Committee on Open Governmental Meetings.

Complainant reiterated the allegations from the original complaint and stated he believed it was ironic that the response to the complaint provided the first explanation the Planning Commission received for Respondent's decision to terminate the representation. Complainant stated that the "essence of the Planning Commission complaint is that the client deserves legal analysis and interpretation from his attorney."

Complainant also disputed Respondent's assertion that the Planning Commission was fully apprised of the litigation involving the Board of Zoning Appeals and the April 17, 2008 Supreme Court decision. Complainant maintained that the Planning Commission did not receive notice of the Supreme Court's decision until July 22, 2008. Complainant also stated that the Planning Commission's intention was to follow APA Casimiro's legal strategy and pursue legal action to challenge the Supreme Court's Order. Complainant stated that APA

Casimiro declined the Planning Commission's requests to explain Respondent's decision to terminate the representation. Complainant maintained that the Planning Commission was always interested in receiving an explanation. Finally, Complainant stated that "[i]t is unacceptable to have this Planning Commission policy decision overridden without explanation. It is doubly unacceptable to have efforts to receive such an explanation rebuffed."

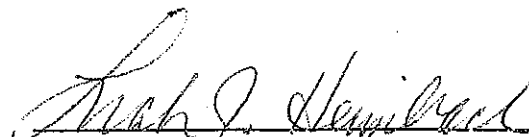
REASON CLOSED

The positions of the parties in this matter are in sharp dispute. Respondent, as the then Prosecuting Attorney of Jefferson County, was the statutory representative of the County Commission and the Board of Zoning Appeals, and therefore cannot act adversely to those bodies. However, it appears that in the matter involving Far Away Farms a conflict of interest arose out of the Prosecuting Attorney's representation of both entities. Regardless of Respondent's statutory responsibility to both entities, the Rules of Professional Conduct regarding conflicts of interest were created for many reasons, one of which is to preserve the duty of loyalty of a lawyer to a client which is an essential element in the relationship and it appears that the attorney-client relationship between the Office of the Prosecuting Attorney and the Jefferson County Planning Commission suffered during the Far Away Farm matter.

Furthermore, lack of communication and lack of diligence are by far the most frequently made complaints against lawyers by clients and it is clear that Complainant was dissatisfied with the handling of the Far Away Farm CUP matters and the notice and advice provided to the Planning Commission. After careful review of the evidence, but also mindful that neither Complainant nor Respondent remain in their elected offices, the Lawyer

Disciplinary Board concludes that the evidence is insufficient to establish that Respondent violated the Rules of Professional Conduct. In this forum, a violation of the Rules of Professional Conduct must ultimately be proven by clear and convincing evidence and that burden cannot be met in this matter. Nonetheless, it would have been a better practice for Respondent to have taken steps to ensure that Complainant and the Planning Commission were aware of the situation involving Far Way Farms and the potential conflict between the two governmental bodies should have been recognized in a more timely manner. Furthermore, it appears that the handling of the disengagement of the Office of the Prosecuting Attorney from the representation of the Planning Commission could have been handled in a more direct and efficient manner. As no further action on this complaint is warranted, the matter is closed.

CLOSING ORDERED on the 30th day of October, 2010 and **ENTERED** this 3rd day of November, 2010.


Leah J. Heimbach, Chairperson
Investigative Panel
Lawyer Disciplinary Board

S. Groh

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

DR. JAMES GIBSON AND
BARBARA GIBSON,
Plaintiffs,

v.

Civil Action No. 09-C-364

RECEIVED
JAN 03 2011
JEFFERSON COUNTY
CIRCUIT COURT

THE JEFFERSON COUNTY
PLANNING COMMISSION
A Public Body,
Defendant.

ORDER

THIS MATTER came on this 8th day of December, 2010, upon the papers and proceedings formerly read and had herein; upon the appearance of Barbara Gibson, Plaintiff, in person and by J. Michael Cassell; upon the appearance of Steven Groh, Assistant Prosecutor on behalf of the Planning Commission.

The Court convened this hearing as a Status and Scheduling Conference. It appearing to the Court that there is now pending a Motion to Dismiss filed by the Defendant and it further appearing that the parties have filed their Briefs in support of and in opposition to the Motion to Dismiss.

Plaintiff requested that the Court consider the Motion to Dismiss based upon the Briefs of the parties and counsel for the Defendant did not object. It appearing that both the Plaintiff and Defendant requested that the Court defer the scheduling of a Trial and other Pre-Trial matters to allow the parties to have an opportunity to resolve this matter by negotiation in the event the Motion to Dismiss is denied. Accordingly it is hereby

ADJUDGED and ORDERED that the Plaintiff has an opportunity to file a Proposed Order within thirty (30) days or on or before January 8, 2011 and the Defendant may review Plaintiff's Proposed Order and file a Proposed Order within fifteen (15) days after service of Plaintiff's Proposed Order if the Defendant so chooses. Upon receipt of the Proposed Orders of the parties, the Motion to Dismiss will be ripe for a Decision. It is further

ORDERED that the Court will schedule another hearing with the parties in March, 2011 to conduct a Status and Scheduling Conference.

The Clerk shall enter the foregoing as of the day and date first above-written and shall transmit attested copies to all counsel of record. *and the undersigned.*

2 e's

M. Cassell

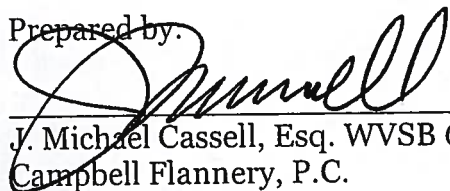
S. Groh

1-4-11 JMC



Hon. John L. Henning
Judge of the Circuit Court of
Jefferson County, West Virginia

Prepared by:



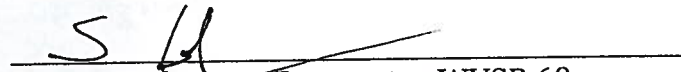
J. Michael Cassell, Esq. WVSB 670
Campbell Flannery, P.C.
201 N. George Street, 2nd Floor
Charles Town, West Virginia 25414
304-725-5325/telephone
304-724-8009/facsimile

A TRUE COPY
ATTEST:

LAURA E. RATTENI
CLERK, CIRCUIT COURT
JEFFERSON COUNTY, W.VA.

BY 
DEPUTY CLERK

Seen and Agreed:



Steven Groh, Asst. Prosecutor WVSB 6831
P. O. Box 729
Charles Town, West Virginia 25414
(304) 728-3243/telephone

JEFFERSON COUNTY, WEST VIRGINIA
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Director's Report
January 25, 2011
Planning Commission Meeting

- 1) Activity Report (attached)
- 2) Update on SPARC Noise Agreement (memo attached)
- 3) Summary Minutes of January 5, 2011 Annual Report/Work Plan/Budget Subcommittee Meeting and set next subcommittee meeting date and time (attached)
 - Quarterly Report (This document will be distributed at the meeting.)
- 4) Summary of Meeting with Tom Trumble and Mark Schiavone regarding County IT Support for Planning and Zoning (attached)
- 5) Draft Policy: Planning Commission initiated Zoning Text Amendments and Zoning Map amendments (attached)
- 6) Wild Goose Farm letter regarding application of SB 595 provisions (attached)
- 7) Update on Urban Tree Canopy Project
- 8) Update on US 340 Plan
- 9) Recent CC action:
 - a) Zoning Map Update and Zoning Map Policy (1/6/11)
 - b) Request to Schedule Evening Meetings in 2011 (1/13/11)
- 10) Upcoming CC agenda items:
 - a) Wireless Telecommunications Ordinance Amendment Public Hearing (1/20/11, 7 pm)
 - b) Public Hearing to Amend the County Zoning Map to consider Urban Growth Boundaries for Harper's Ferry and Bolivar (1/27/11, 7 pm)
- 11) Upcoming PC meetings:
 - a) February/March 2011

- Finalization of Policy Neutral Zoning Ordinance Amendments for Public Hearing
- Finalization of Annual Report, Budget, Work Plan

b) April 2011

- Special 2 hour PC Meeting in April to meet training requirements established by CC including old and new members
- US 340 Kick-off Meeting to be scheduled

Christine Chalmers

To: PLANNING COMMISSION
Subject: RE: WEEKLY ACTIVITY CALENDAR

MONDAY, JANUARY 17, 2011 MARTIN LUTHER KING HOLIDAY – OFFICE CLOSED

TUESDAY, JANUARY 18, 2011

10:00 am – 11:30 am STAFF MEETING
1:00 pm – 2:30 pm JENNIE & STEVE – WEEKLY ZONING MEETING
2:00 pm SETH – MEETING WITH TODD / RE: HISTORIC LANDMARK MEETING
3:00 pm – 4:00 pm JENNIE & SETH – WEEKLY PLANNING MEETING
6:00 pm JENNIE, SETH, STEVE & JULIE – PC WORKSHOP

INTERN DOUGLAS GRIFFITH – WORK / 9:00 am – 4:00 pm

WEDNESDAY, JANUARY 19, 2011

-
8:00 am JENNIE – MEETING WITH TOM TRUMBLE
2:30 pm STEVE & MASON – MEETING WITH PAUL RACO / RE: JOHN LOWE
3:30 pm STEVE – SITE VISIT / EBENEZOR CHURCH

THURSDAY, JANUARY 20, 2011

9:00 am - COUNTY COMMISSION MEETING
9:00 am JENNIE – COUNTYWIDE UTILITY COALITION /
LOCATION: KEARNEYSVILLE DISTRICT OFFICE
11:00 am STEVE & SETH – MEETING WITH ED JOHNSON / RE: MASON M/S
2:00 pm SETH & STEVE – MEETING WITH JOHN SEKERIK / RE: HIGHLAND FARMS
2:00 pm – 3:15 pm SETH – SMARTCODE MEETING IN RANSON / RE: SPRAW REPAIR
3:00 pm JENNIE, STEVE & JENNILEE – BOARD OF ZONING APPEALS MEETING

INTERN DOUGLAS GRIFFITH – WORK / 1:00 pm – 4:00 pm

FRIDAY, JANUARY 21, 2011

8:00 am – 9:30 am JENNIE – MEETING WITH TOM TRUMBLE
10:00 am – 11:00 am JENNIE, STEVE & SETH – WEEKLY “IRF” UPDATE MEETING
2:00 pm – 3:00 pm JENNIE, SETH, JULIE – MEETING WITH ROGER & BECKY /
RE: LAND DEVELOPMENT FEES

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MEMO

TO: Planning Commission Members
FROM: Jennifer M. Brockman, AICP, Director, Planning and Zoning Department
DATE: January 11, 2011
RE: Research related to Public Input into Noise Issues at Summit Point Raceway and Orchards

Staff research has revealed that the public discussion, which occurred at various Planning Commission meetings, related to noise at Summit Point Raceway and Orchards (as it was then known) was not related to a specific project. Rather, it was related to a discussion of what the property's limitations were in relation to the expansion under the nonconforming provisions of the Zoning Ordinance in effect at that time. The discussion resulted in a text amendment that specified the parameters of their expansion capabilities.

This memo includes a summary of the various discussions that took place at multiple Planning Commission meetings, which occurred from mid-2000 through the adoption of the text amendment in January 2002. Please note that while noise was a primary issue in the discussion that occurred in late 2001, the resulting text amendment did not address noise, other than to require a 200 foot setback from the property line for raceway expansion. The full language of the Zoning Ordinance text, as it relates to the Summit Point Raceway non-conforming use, is as follows:

“Section 4.3 Nonconforming Uses

Any building, structure or premises lawfully existing at the time of the adoption of this ordinance, or lawfully existing at the time that this ordinance is subsequently amended, may continue to be used even though such building, structure, or premises does not conform to use, setbacks or dimensional regulations of the zoning district in which it is located or the regulations of the Development Review System; subject, however to the following provisions:

- (j) The nonconforming use automobile racing facility located on property specifically described as Tax Map 17, Parcels 2, 2.1 and 5 in the Kabletown District is permitted to expand as herein described:
 - (1) The commercial/competitive racing circuit as measured on January 10, 2002, particularly 25,344 linear feet may add an additional 8,870 feet of commercial/competitive raceway surface, in accordance with (and not in addition to) the provisions of Section 4.3 of this Ordinance. The surface shall conform to a required 200 foot setback from all property lines.
 - (2) May add dormitory lodging with food service facilities that do not contain internally lit signs.
 - (3) May add automobile related research and development facilities.
 - (4) May add other automobile related facilities only for vehicles that are used on-site, including, but not limited to warehousing, parts, supplies and service.

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JANUARY 10, 2002]”

The following is a summary of the discussions that occurred at the Planning Commission meetings regarding this topic.

Date of Meeting	Discussion Points	Was Noise Discussed?	Action Taken
08/22/00	Peter Chakmakian & Bill Scott expressed the desire to expand the race track in order to become more competitive in the research & development field.	No	PC requested the applicant draft a proposed text amendment to the Zoning Ordinance.
10/24/00	Mr. Chakmakian provided the PC with a draft amendment to the Zoning Ordinance on behalf of Summit Point Raceway & Orchards. He presented 5 alternatives to address this issue.	No	PC will review proposal & then decide on further action if necessary. A public hearing will be advertised if one is to be scheduled.
11/14/00	Paul Raco reminded the PC that the Raceway decision is still pending.	No	PC docketed the item for discussion for their 11/28/00 agenda.
11/28/00	David Turley, president of Citizens Against Raceway Expansion (CARE), provide the PC with a proposed amendment to the Zoning Ordinance. Scott Sudduth, attorney for CARE, provided the PC w/ a written response to the Mr. Chakmakian's proposed amendments.	Yes	None
	Discussion by PC on how to proceed with the proposals submitted by Mr. Chakmakian on behalf of Summit Point Raceway & Orchards.	No	PC voted to follow the Standard Procedures for Consideration of Amendments to the Ordinances Under its Jurisdiction as adopted by the Commission on 11/19/99, beginning with II.A of that process.
01/16/01	Special Meeting of the PC to discuss the text amendment proposals for Summit Point Automotive Raceway. Cam Tabb stated he was elected to be a moderator between the Raceway and CARE. Mr. Chakmakian requested the PC place this item on the 02/13/01 PC meeting. Scott Cane & Peggy Slater requested that the Raceway be required to install a sound barrier to contain noise levels & that they be of a muffler or barrier type.	Yes	PC voted to allow both parties until 02/13/01 to present a mutually agreed upon proposal.
02/13/01	Mr. Chakmakian stated that the Raceway & CARE need an additional 2 weeks to complete the joint proposal.	No	PC appointed a Committee to review the proposed amendments with the condition that they not convene until March to allow the applicants time to complete the proposal.
08/28/01	Summit Point Raceway Committee recommendation.	No	PC voted to accept the proposal & advertise for a public hearing on 10/16/01
09/25/01	Correspondence: Mr. Bockmiller presented his response to a letter received from David Turley of CARE regarding the public hearing process for the Raceway.	No	PC voted to amend the letter to remove a reference that states that the PC may shorten the process as it has been decided by the PC that the full process will be followed in this case since it is the first one since the PC adopted the procedures on 10/12/99.
10/16/01	Special Meeting: Public Hearing on Raceway draft text amendments. Major concerns listed: noise; traffic congestion; use not belonging in a residential neighborhood; fire arms range; restricting night training; property values; distinction between dormitory & hotel; alcohol	Yes	PC voted to place this item on the PC's agenda at a later date for discussion by the PC.

Date of Meeting	Discussion Points	Was Noise Discussed?	Action Taken
	consumption in dormitory; mass manufacturing & concern of school attracting terrorists. Bill Scott offered that 1) noise levels would be kept to 103 decibels at the property lines, 2) no unmuffled engines would be allowed from 7:00 pm until 7:00 am, 3) continued planting of vegetative sound absorbing barriers & 4) prohibition of night shooting.		
11/13/01	Discussion by PC on proposed amendments by the Raceway. The PC felt the primary concern of the public opposed to the proposal was the noise factor.	Yes	PC voted to move forward with the process & schedule the public hearing on the proposed amendments & change the wording of the setback requirement to require a 200 foot setback from all boundary lines for the enlarged track.
11/27/01	Correspondence: Legal advertisement for Summit Point Public Hearing on Zoning amendments.	No	None. Informational.
12/11/01	Public hearing: Mr. Bockmiller stated that after the public hearing the PC could, 1) forward the proposed amendments to the CC, 2) they can amend the proposals & forward the revised amendments to the CC, or 3) they can reject and deny the amendments. Public opposed to the expansion addressed: issue of noise, restricting decibel levels, lack of definitions which favors the race track, increased clientele at the racetrack, unlimited hotel & restaurant facility, broadness of proposed amendments, and lack of definition for automobile related activities. Public in support addressed: noise was not a nuisance, it's the responsibility of the home purchaser to research the area before buying, tracks need to be competitive in the research & development field, decibels are below levels considered to be unsafe, scrutiny of this business in comparison to other businesses desiring to expand, benefits of training facility to law enforcement, military & government personnel, revenue generate for the County, voluntary installation of noise abatement measures, and generosity of owners to County & community.	Yes	PC voted to send the amendment to the CC for adoption.
12/14/01	CC discussed petition filed by the PC to amend the Zoning ordinance.	No	CC voted to revise the amendment to, 1) clarify 35% expansion, 2) clarify tax maps & entity, 3) definition of research & development, 4) definition of dormitory, 5) vehicles on-site
12/21/01	CC discussed changes made to the petition.	No	CC voted on 2 minor text edits.
01/10/02	Raceway text amendment to the Zoning Ordinance went into effect.	No	No action was need from the CC.

From this record, it appears that, in 2002, both the Planning Commission and County Commission determined that the greater setback related to the raceway expansion would assist in minimizing the noise discussed during the text amendment process. While there were promises made by the applicant at public meetings, it does not appear that the Planning Commission has the authority to see that these promises are adhered to, as they are not a part of the adopted Zoning Ordinance.

The County does have a noise ordinance stating that the County Commission declares that “noise levels in excess of 65 decibels (dB), which levels are either intermittent or continuous for a duration of at least thirty minutes, to be a hazard to public health and safety in Jefferson County, West Virginia, exclusive of any municipality therein, and where such noise levels rise to the level of a public nuisance, the same are subject to abatement by the procedures set forth herein.” This ordinance is enforced by the County Sheriff’s Department.

The noise ordinance does, however, provide for the following exceptions, all of which appear to apply to the noise generated by the Summit Point Raceway:

- (8) Sporting events;
- (12) Legal use of firearms including hunting and shooting activities; and
- (13) Activities by the federal, state or local governments.

Amy Puetz

From: Jennifer Brockman [jbrockman@jeffersoncountywv.org]
Sent: Friday, January 07, 2011 2:02 PM
To: 'Amy Puetz'
Subject: FW: Table of Relative Sound Levels
Attachments: Sound Levels Table.pdf

For packet under SPARC discussion

Jennie Brockman, Director
Jefferson County Department of Planning and Zoning Office (304) 728-3228

-----Original Message-----

From: kbaty@frontiernet.net [<mailto:kbaty@frontiernet.net>]
Sent: Tuesday, January 04, 2011 1:01 PM
To: Jennifer Brockman
Cc: John Maxey; kelly baty
Subject: Table of Relative Sound Levels

Good day Jennie:

I am attaching a table of relative sound levels that may be of assistance in our consideration of noise pollution in the county, specifically the Summitt Point Raceway issue. Would you please distribute-next we meet on the matter? I regret that the quality of the table is not better, but it should suffice for info. purposes. Thank you.

Best regards,

Kelly

SOUND LEVELS

The decibel (dB) table below compares some common sounds and shows how they rank in potential harm to hearing. 70 dB is the point at which noise begins to harm hearing. To the ear, each 10 dB increase seems twice as loud.

Sound Levels and Human Response		
Common sounds	Noise Level [dB]	Effect
Rocket launching pad (no ear protection)	180	Irreversible hearing loss
Carrier deck jet operation Air raid siren	140	Painfully loud
Thunderclap	130	
Jet takeoff (200 ft) Auto horn (3 ft)	120	Maximum vocal effort
Pile driver Rock concert	110	Extremely loud
Garbage truck Firecrackers	100	Very loud
Heavy truck (50 ft) City traffic	90	Very annoying Hearing damage (8 Hrs)
Alarm clock (2 ft) Hair dryer	80	Annoying
Noisy restaurant Freeway traffic Business office	70	Telephone use difficult
Air conditioning unit Conversational speech	60	Intrusive
Light auto traffic (100 ft)	50	Quiet
Living room Bedroom Quiet office	40	
Library Soft whisper (15 ft)	30	Very quiet
Broadcasting studio	20	
	10	Just audible
	0	Hearing begins

Top

MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
ANNUAL REPORT AND BUDGET & WORK PLAN SUBCOMMITTEES MEETING
FOR
FISCAL YEAR 2012

Two subcommittees of the Jefferson County Planning Commission met on Wednesday, January 5, 2011, at 4:00 p.m. with the following Commission members present: John Maxey, President; Thomas Trumble, Vice President; Daniel Hayes and Kelly Baty. Staff members present included Jennifer Brockman, Director of Planning and Zoning; Seth Rivard, Planner; Steve Barney, Zoning Administrator; and Julie Quodala, Planning and Zoning Office Manager. Also in attendance was Todd Fagan, County GIS Specialist.

Mr. Maxey called the meeting to order stating that the point of the meeting was to leave with a list of projects to consider incorporating into the Annual Report and subsequently the Work Plan and Budget for fiscal year 2012. Ms. Brockman started the discussion by presenting the fiscal year 2011 Planning and Zoning budgets and expenditures to date, stating that she had received direction from Tim Boyde to reflect the next step in the pay scale approved by the County Commission. While discussing budgeting, Mr. Trumble highlighted the need to analyze the amount of staff hours required to complete the large planning projects proposed by the County Commission and Planning Commission compared to available staff hours, after subtracting hours needed to cover daily inquiries and development review. This type of analysis would allow for an estimate of work that could feasibly be completed within one fiscal year period. Ms. Brockman reminded the subcommittees that the budget is a Department document and that she is receiving direction from the County Administrator on content and time frames.

The Planning Commission generally agreed with the format of the Annual Report submitted last year, but did suggest that this year's Annual Report start with highlighting the large projects we are currently working to complete and then allowing the reader to understand all of the daily tasks that are simultaneously being completed.

Todd Fagan presented data collected by the GIS Department, as well as data collected Victoria Myers with the County Assessor's Office. This data showed the number of tax parcels by magisterial district and the number of buildings, as well as addressable structures within each district. Mr. Fagan further explained the data is very raw, but that there is the ability to refine the data in coming years as the County invests in the needed technology to collect and store the data.

Mr. Maxey stated that with greater GIS capability and the data GIS can collect and provide to the Planning Department, there is an ability to provide the public with an accurate picture of the state of Planning within Jefferson County. Being able to compare this data from year to year would then allow for an analysis and suggest recommendations regarding economic development opportunities, as well as preservation possibilities. Additionally, this analysis and subsequent recommendation would then allow the Planning Commission to make recommendations to the County Commission regarding water, sewer and traffic. The need to increase this capability needs to be in future work plans.

Minutes

Annual Report, Budget and Work Plan Subcommittee Meeting

January 5, 2011

Page 2 of 2

Mr. Trumble stated that the ability to backup our paper documents in electronic form, therefore providing security and guaranteeing the integrity of the Planning and Zoning Department documents, is a prime concern and should be noted in the Annual Report and Work Plan.

Mr. Maxey wrapped up the meeting stating that the next meeting date should be set in order to complete the development of the Annual Report. The Planning Commission's goal is to submit the Annual Report to the County Commission in mid March.

JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning & Zoning

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MEMORANDUM

TO: Planning Commission

FROM: Jennifer Brockman, Director – Departments of Planning & Zoning

DATE: January 20, 2011

SUBJECT: Meeting with Mark Schiavone regarding County “IT” Support for Planning and Zoning

Thomas Trumble, Planning Commission Vice President; Mark Schiavone, Coordinator of Capital Planning and Management; Jennifer Brockman, Director of Planning and Zoning and Julie Quodala, Office Manager of Planning and Zoning met on Monday, January 10, 2011 at 10:00 a.m. regarding the County’s computer infrastructure and the ability of supporting a searchable document management system that could receive and store filled forms submitted through the County Planning and Zoning website.

The following issues and possible solutions were discussed:

1. The Planning and Zoning Department does not have the ability to electronically store legacy files. Also, there is a lack of redundancy with the small amount of documents that we do currently have electronically.

Solution:

A searchable document management system would allow the Department the capability of storing all legacy files as electronic documents once scanned. Since there would be one central database for all Department data, it would be possible to invest in an offsite backup system for the data management system thus providing redundancy.

2. The Planning and Zoning Department does not have some basic computer aided abilities that should be met before purchasing a document management system. For example, the Department does not have a linked calendar system. Although every Department employee does have Microsoft Outlook installed on their computer, there is no ability to have a linked calendar due to the need of Microsoft Exchange Server.

Solution:

Purchasing Microsoft Exchange Server would allow the entire County to have linked calendars.

3. Another issue that affects more than Planning and Zoning has been reduced productivity due to multiple server “outages”. Additionally, the Department has nearly reached the threshold for the

size limit on the RAID server, where all of our electronically generated documents are currently stored. A further concern is that our current computer based infrastructure is not secure.

Solution:

After much discussion with Mark Schiavone, it would seem logical to ask the County to invest in switching to a domain based system, as it would provide the ability to have a secure intranet with a very stable base to add programs and databases over time.

Sequentially, it seems logical to ask the County Commission to consider investing in the following items:

1. Upgrading our current servers to reduce outages.
2. Purchasing Microsoft Exchange Server.
3. Updating our infrastructure to a domain based system, rather than a workgroup based system.
4. Purchase a searchable document management system for the proper storage of current and legacy files.
5. Hire a temporary employee to scan all legacy files so that they can be input into the document management system.

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MEMO

TO: Planning Commission Members
FROM: Jennifer M. Brockman, AICP, Director, Planning and Zoning Department
Stephen Groh, Assistant Prosecuting Attorney, Civil Division
DATE: January 11, 2011
RE: Draft Policy on Planning Commission initiated Zoning Text Amendments and Zoning Map amendments

1. Thoughts on Relevant Portion of WV Code 8A (see Appendix A)

WV Code 8A provides for two primary ways that a locally adopted Zoning Ordinance can be amended. While standard planning considerations differentiate between amendments to the text of the Ordinance and to the zoning map associated with the Ordinance, 8A does not clearly differentiate between “text” and “map” amendments¹ other than the type of notice required.

- a) WV Code 8A-7-8 delineates the process by which the governing body can initiate an amendment. In this circumstance, the governing body (the County Commission) must request input from the planning commission as to whether the proposed amendments are consistent with the comprehensive plan. The County Commission then makes findings either that the proposal is consistent with the comprehensive plan or that “major changes . . . have substantially altered the basic characteristics of the area”.

It is our opinion, major policy-level re-writes or updates to the Zoning Ordinance should best occur in this manner. In typical planning practice, a planning commission that is interested in revising the locally adopted Ordinance would present a list of amendments to consider to the governing body (i.e.: in the form of a work plan) and the governing body would agree to the tasks and refer it back to the planning commission for research, a recommended proposed wording, and recommendations related to the findings required. Most states then require the planning commission to hold its own public hearing prior to sending a final recommendation to the governing body. WV’s law does not speak to the public hearing process associated with a

¹ In planning parlance a “Text Amendment” is a change in the language of the Ordinance that applies to all similar property county-wide, such as a change in principal permitted uses in a district. A “Map Amendment” is a change that only applies to a specific property, such as changing the zoning designation. While it is conceivable to change the text of the ordinance to only apply to a specific property (one example is the changes to the ordinance related to Summit Point Raceway properties) the availability of the LESA based CUP process and best planning practices make such property-specific “text” changes disfavored.

change initiated by the County Commission but typical planning practice recommends a more thorough public process in preparing a recommendation to the governing body.

§8A-7-8 permits the governing body to make a zoning map amendment which would utilize this same referral process.

We recommend that the Planning Commission process for proposing significant policy-level amendments to the Zoning Ordinance text follow this process. This recommendation is based upon best planning practices and upon deference to the officials elected to make such major policy-level changes to local land use.

Currently we have provided the County Commission with a list of proposed amendments to the Zoning Ordinance that we are working on which includes both the “policy neutral” amendments and the wireless telecommunications ordinance so those can continue to be processed under this scenario.

While the text of §8A could be clearer in some areas, there does not appear to be a practical process by which a citizen can initiate a text amendment other than taking the proposal to the County Commission for them to initiate it. This is because any citizen petition requires “owners 50% or more of the real property” and a text amendment applies county-wide and it is unlikely that 50% of the land owners in the entire county could jointly petition.

- b) WV Code 8A-7-9, outlines the process by which the planning commission or the owners of fifty percent or more of the real property in the area to which to petition relates may formally petition to amend the Ordinance. The Planning Commission may initiate “text” or “map” amendments through the petition process. As discussed above, we believe land owners, as a practical matter, are limited to petition for zoning map amendments only. If landowners submit their petitions to the Planning Commission, the Planning Commission must conduct a public hearing within 60 days. If the Planning Commission is initiating the petition, the petition is to be submitted to the Clerk of the County Commission who is the elected County Clerk and the County Commission must conduct a hearing within 60 days.

While the formal petition process is always open to the Planning Commission, best planning practices and respect for the governing body make it more appropriate for the Planning Commission to avoid the formal petition process for major policy-level proposal. In the case of minor map or text amendments or mere technical corrections the formal petition process is more appropriate as such matters are typically within the main area of concern for a planning commission. However, the Planning Commission may always proceed by making a request to the County Commission to make proposed changes. Given the busy work schedule of the County Commission, especially during certain times of year, allowing the County Commission the flexibility to set hearing dates outside a 60 day deadline would be appropriate.

2. Thoughts on Article 12 of the Jefferson County Zoning Ordinance (see Appendix B)

Article 12 of the Jefferson County Zoning Ordinance contains similar confusion as to the difference in the processes between a landowner submitting a map amendment, the Planning Commission initiating a map amendment, and the development of various text amendments. While the Article is entitled “Map and Text Amendments”, it has no specific provisions for text amendments. Staff recommends initiating an amendment to Article 12 that clarifies that 12.3(a) is the procedure for a map amendment by a landowner, with the petition containing the information currently listed under (b) submitted to the Planning Commission; create a new (b) that details a similar process for

Planning Commission initiated map amendments, with the petition submitted to the County Commission and County Clerk. Additionally, staff recommends creating a new section 12.4 that details the process for a text amendment initiated by a citizen or the Planning Commission consistent with WV Code 8A-7-8. Discussion should occur as to whether this could be processed as a part of the current “policy neutral” amendments process.

3. Next Steps

Following Planning Commission comments and legal review, staff recommends that Article 12 be amended to include any decisions regarding clearly delineating the process for amending the Zoning Map or Zoning Ordinance text and included in upcoming public workshops or hearings for consideration in the current round of Zoning Ordinance amendments. A first draft of these amendments for discussion purposes only can be found in Appendix C.

DRAFT

APPENDIX A
West Virginia State Code Requirements

Relevant Sections of West Virginia State Code, Chapter 8A are as follows:

§8A-7-8. Amendments to the zoning ordinance by the governing body.

(a) 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. 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 was not anticipated when the comprehensive plan was adopted and those changes have substantially altered the basic characteristics of the area.

(b) When a proposed amendment to the zoning ordinance involves a change in the zoning map classification of any parcel of land, or a change to the applicable zoning ordinance text regulations that changes the allowed dwelling unit density of any parcel of land, the governing body shall, at least thirty days prior to the enactment of the proposed amendment if there is not an election, or at least thirty days prior to an election on the proposed amendment to the zoning ordinance:

- (1) Give written notice by certified mail to the landowner(s) whose property is directly involved in the proposed amendment to the zoning ordinance; and
- (2) Publish notice of the proposed amendment to the zoning ordinance in a local newspaper of general circulation in the area affected by the zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code.

§8A-7-9. Amendments to the zoning ordinance by petition.

(a) After the enactment of the zoning ordinance, the planning commission or the owners of fifty percent or more of the real property in the area to which the petition relates may petition to amend the zoning ordinance. The petition must be signed and be presented to the planning commission or the clerk of the governing body.

(b) Within sixty days after a petition to amend the zoning ordinance is received by the planning commission or the governing body, then the planning commission or the governing body must hold a public hearing after giving public notice. The public notice of the date, time and place of the public hearing must be published in a local newspaper of general circulation in the area affected by the proposed zoning ordinance, as a Class I legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code, at least fifteen days prior to the public hearing.

(c) If the petition to amend the zoning ordinance is from the owners of fifty percent or more of the real property in the area, then 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. 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.

APPENDIX B
Jefferson County Zoning Ordinance Requirements

The Jefferson County Zoning Ordinance currently states:

ARTICLE 12. MAP AND TEXT AMENDMENTS

Section 12.1 Purpose

- a) These regulations, restrictions, provisions, and the boundaries of districts provided herein may from time to time be amended, modified, or repealed by the County Commission. Any person, individual, board, commission or bureau of the County may petition the County Commission for such change.
- b) The County Commission shall refer any amendment or alteration of this Ordinance to the Planning and Zoning Commission for analysis, study, report, and recommendations.

Section 12.2 Procedure for Amendment by Governing Body

- a) After the enactment of the zoning ordinance, the governing body of the County may amend the zoning ordinance without holding an election.
- b) 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.

Section 12.3 Procedure for Amendment by Petition

- a) The procedure for amendment shall be as dictated in §8A-1-1 et seq of the West Virginia State Code, as amended.
- b) Petitions to the County Commission for an amendment must contain the following information:
 - 1. Substantiation for the request
 - 2. Tax District, Map and Parcel number
 - 3. Deed Book reference
 - 4. Plat or sketch pursuant to Section 7.4 (b)
 - 5. Tract size
 - 6. Discussion on:
 - a. Comprehensive Plan compatibility of the proposed change.
 - b. Any change of transportation characteristics and neighborhood from when the original ordinance was adopted

APPENDIX C

Proposed Revisions to Jefferson County Zoning Ordinance Article 12

The following is a proposed draft amendment to Jefferson County Zoning Ordinance Article 12:

ARTICLE 12. MAP AND TEXT AMENDMENTS

Section 12.1 Purpose

- a) These regulations, restrictions, provisions, and the boundaries of districts provided herein may from time to time be amended, modified, or repealed by the County Commission. Any person, individual, board, commission or bureau of the County may petition the County Commission for such change.
- b) The County Commission shall refer any amendment or alteration of this Ordinance to the Planning ~~and Zoning~~ Commission for analysis, study, report, and recommendations.

Section 12.2 Procedure for Amendment by ~~Governing Body~~County Commission

- a) After the enactment of the zoning ordinance, including both text and map, the governing body of the County may amend the zoning ordinance without holding an election.
- b) Before amending the zoning ordinance text or map, the governing body, with the advice of the planning commission, must find that the amendment is consistent with the adopted comprehensive plan.

Section 12.3 Procedure for ~~Map~~ Amendment by Petition

- a) The procedure for processing a map amendment initiated by the owners of fifty percent or more of the real property in the area to which the petition relates shall be as dictated in §8A--74-19 et seq of the West Virginia State Code, as amended.
- ~~b) Petitions~~ for a map amendment initiated by landowners shall be submitted to the ~~Planning~~County Commission and shall for an amendment must contain the following information:
 1. Substantiation for the request
 2. Tax District, Map and Parcel number
 3. Deed Book reference
 4. Plat or sketch pursuant to Section 7.4 (b)
 5. Tract size
 6. Discussion on:
 - a. Comprehensive Plan compatibility of the proposed change.
 - b. Any change of transportation characteristics and neighborhood from when the original ordinance was adopted.

Planning Commission is required to set a public hearing on the proposed Zoning Map amendment within 60 days of the date upon which the petition is presented to the Planning Commission at a Planning Commission meeting. The petition and related fees must be submitted to the office for placement on a Planning Commission agenda at least three (3) weeks prior to the meeting date.

- ~~b) The procedure for processing a formal map amendment petition~~ initiated by the Planning Commission shall be as dictated in §8A-7-9 et seq of the West Virginia State Code, as amended.

Petitions for a map amendment initiated by the Planning Commission shall be presented to the County Commission and submitted to the County Clerk for recordation on the same date. Such petitions a map amendment shall be clearly labeled as "§8A-7-9 Petition" in the heading and contain the following information:

1. Substantiation for the request
2. Tax District, Map and Parcel number
3. Deed Book reference
4. Plat or sketch pursuant to Section 7.4 (b)
5. Tract size
6. Discussion on:
 - a. Comprehensive Plan compatibility of the proposed change.
 - b. Any change of transportation characteristics and neighborhood from when the original ordinance was adopted

Note that the County Commission is required to set a public hearing on the proposed Zoning Map amendment within 60 days of the date upon which the petition is presented to the County Commission at a County Commission meeting. The petition and related agenda request form must be submitted to the County Commission office for placement on a County Commission agenda at least one (1) week prior to the meeting date or in accordance with the agenda request procedure of the County Commission.

The Planning Commission may opt to proceed by informal written request for action to the County Commission by submitting to the County Commission by submitting the same information required above styled as a "Request for Action." rather than as a "Petition."

Section 12.4 Procedure for Initiating a Zoning Ordinance Text Amendment

- a) The procedure for processing a Zoning Ordinance text amendment initiated by any person, individual, board, commission or bureau of the County of Jefferson County shall be by a written request to the County Commission at a regular meeting. Such request shall also be submitted to the County Clerk prior to being presented to the County Commission.

Any request for a text amendment shall include the proposed text in context with the adopted Zoning Ordinance text and shall include a statement as to why such proposal is consistent with the adopted Comprehensive Plan.

The County Commission may refer such to the Planning Commission, Historical Landmarks Commission or other appropriate body for comment.

- b) The procedure for processing a formal text amendment petition initiated by the Planning Commission shall be as dictated in §8A-7-9 et seq of the West Virginia State Code, as amended.

Petitions for a text amendment initiated by the Planning Commission shall be presented to the County Commission and submitted to the County Clerk for filing on the same date. Such petitions a text amendment shall be clearly labeled as "§8A-7-9 Petition" in the heading and contain the following information:

1. Substantiation for the request;
2. Notation that said text amendment applies county-wide;
3. Discussion on why such proposal is consistent with the adopted Comprehensive Plan.

County Commission is required to set a public hearing on the proposed Zoning Text amendment within 60 days of the date upon which the petition is presented to the County Commission at a County Commission meeting. The petition and related agenda request form must be submitted to the County Commission office for placement on a County Commission agenda at least one (1) week prior to the meeting date or in accordance with the agenda request procedure of the County Commission.

The Planning Commission may opt to proceed by informal written request for action to the County Commission by submitting the same information required above styled as a "Request for Action." rather than as a "Petition."

DRAFT

JEFFERSON COUNTY, WEST VIRGINIA
Department of Planning

116 East Washington Street, 2nd Floor
P.O. Box 338
Charles Town, West Virginia 25414

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

Email: planningdepartment@jeffersoncountywv.org

January 3, 2011

Mr. Christopher Schultz
Wild Goose Farm, LLC
767 E Washington Street
Charles Town, West Virginia 25414

Dear Mr. Schultz,

Thank you for meeting with us last week and updating us on the status of the development known as Wild Goose Farm. As we discussed, on March 11, 2010, a change to WV Code Chapter 8A, Article 4 occurred through the passage of Senate Bill No. 595. The changes to Chapter 8A read as follows:

“§8A-4-2. Contents of subdivision and land development ordinance

c) All requirements, for the vesting of property rights contained in an ordinance enacted pursuant to this section that require the performance of any action within a certain time period for any subdivision or land development plan or plat valid under West Virginia law and outstanding as of January 1, 2010, shall be extended until July 1, 2012, or longer as agreed to by the municipality, county commission or planning commission. The provisions of this subsection also apply to any requirement that a use authorized pursuant to a special exception, special use permit, conditional use permit or other agreement or zoning action be terminated or ended by a certain date or within a certain number of years.”

“§8A-5-12. Vested property right.

(f) Any subdivision or land development plan or plat, whether recorded or not yet recorded, valid under West Virginia law and outstanding as of January 1, 2010, shall remain valid until July 1, 2012, or such later date provided for by the terms of the planning commission or county commission's local ordinance or for a longer period as agreed to by the planning commission or county commission. Any other plan or permit associated with the subdivision or land development plan or plat shall also be extended for the same time period. *Provided, That* the land development plan or plat has received at least preliminary approval by the planning commission or county commission by March 1, 2010.”

After reviewing the Jefferson County Ordinances and files, I have determined, based upon previous action taken by the Jefferson County Planning Commission regarding developments

that had already received the first review of their Preliminary Plat, that this provision does apply to your project known as Wild Goose Farm (PC file# 08-18). Your Preliminary Plat is considered "approved with conditions" as noted on the first review comments. Please note that the Final Plat Public Hearing for Wild Goose Farm must take place by July 1, 2012.

If you have any questions, please feel free to contact the Departments of Planning and Zoning at the (304) 728-3228 or e-mail us at planningdepartment@jeffersoncountywv.org.

Sincerely,

Jennifer M. Brockman, AICP
Director, Planning and Zoning

cc: Paul Raco
Peter Chakmakian

Amy Puetz

From: Jennifer Brockman [jbrockman@jeffersoncountywv.org]
Sent: Wednesday, January 05, 2011 2:33 PM
To: 'Amy Puetz'
Subject: FW: Notes from 1/4/10 JCPSD Meeting

For the 1/11/11 pc pkt

Jennie Brockman, Director
Jefferson County Department of Planning and Zoning
Office (304) 728-3228

From: Daniel_Hayes@URSCorp.com [mailto:Daniel_Hayes@URSCorp.com]
Sent: Wednesday, January 05, 2011 1:32 PM
To: Jennifer Brockman
Cc: Susanne Lawton
Subject: Notes from 1/4/10 JCPSD Meeting

Jennie

Please have this inserted into the 1/13/10 Planning Commission package.

--- As soon as the JCPSD has 80% of our easements and PSC approval of a "Certificate of Need and Convenience", they will advertise for bids for the Flowing Springs Wastewater Treatment Plant (FSWWTP). After about 10 days there will be a mandatory prebid meeting with all the contractors who wish to bid, where the District will go over the plans and entire project, answer questions and talk about any issues that they may bring up. Bids will be due 30 days (about) after advertised and will be opened at the district office. They hope to have everything in place by the end of January.

--- JCPSD board is concerned about the lack of assistance for early compliers in the draft version of Sen. Snyder's Chesapeake Bay Funding Legislation. As currently constituted, this legislation would provide no assistance to the utilities that are moving forward with construction; to include the PSD, Charles Town and Shepherdstown. They will be drafting a letter to Sen Snyder, the County Commission and the Development Authority with their concerns. They have authorized PSD counsel James Kelsh to lobby for the legislation with appropriate revisions.

--- BCPSSD currently serves Paynes Ford Acres, Priestfield and Quail Ridge in Jefferson County. It was suggested the PC review the implications to county planning objectives and the upcoming Comprehensive Plan considering that BCPSSD and BCPSWD may provide mainline extensions into Jefferson County when they have infrastructure in the immediate vicinity.

--- JCPSD received their first notification from the PC under the new Concept Plan requirements, Paynes Ford Acres. They are pleased to be given such notifications, but would also suggest the PC require an approval letter from the affected utility prior to Site Plan/Preliminary Plat approval.

Daniel B. Hayes, PE
Principal Civil Engineer

URS Corporation
Gaithersburg MD
Phone (301) 721-2225

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Charles Town, West Virginia 25414

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Fax: (304) 728-8126

October 15, 2010

PRE-PROPOSAL CONFERENCE MEMORANDUM

MEETING DATE: Wednesday, October 13, 2010 @ 2:00 p.m.

OWNER/CONTACT NAME: Tim Snyder
Address: 4623 Bakerton Road; Harpers Ferry, West Virginia 25425
Phone Number: (304) 876-3175

Physical Address: Same

PROPOSED PROJECT: RESIDENTIAL MINOR SUBDIVISION

ZONING DISTRICT: DISTRICT: 04 HARPERS FERRY / MAP: 2 / PARCEL: 4
RURAL

INDIVIDUAL PARCELS: Lot #1: 3-4 acres; Residue Lot: 1-2 acres
TOTAL PARCEL SIZE: 5.16 ACRES

MEETING DESCRIPTION:

- Need to declare density as required in the Rural District:
A total of three lot subdivision rights (two lots and a Residue) currently exist. Execution of the proposal, as requested, will reduce available subdivision rights from three to one remaining entitlement, which is retained on the Residue lot.
- The meeting attendees included Zoning Administrator, Steve Barney; County Planner, Seth Rivard; County Engineer, Jonathan Saunders; Owner/Applicant, Tim Snyder.
- Overview: The proposed project consists of creating a one-lot Minor Subdivision and remaining Residue
- Tentative site capacity calculations.
- Potential environmental constraints and mitigation measures as required by Zoning Ordinance, Art. 4.
- Anticipated Time-Frame and Deadlines.
- Additional relevant information to be considered: None.
- FEES: Upon submission, all applicable Site Plan and Building Permit fees, as required by the Engineering Department.
- Application Fee: **Currently under review and may be subject to change.**
- Payment(s): **None Received**

COMMENTS:

A 50' access easement is required. Access for the proposed two lots must be shared or a Planning Commission Waiver will be required for two separate entrances. The plat must show the new septic field and well and a percolation test must be completed before plat approval.

FINDING:

The Minor Subdivision concept plan appears to satisfy the Subdivision and Land Development Regulation requirements.

EFFECT OF FINDING:

The Applicant may proceed with the engineering of the proposed Minor Subdivision. Upon receipt of the required material, the Department of Planning and Zoning will process said Minor Subdivision within the time line requisites stated in the Subdivision Regulations.

Sincerely,

Seth Rivard
County Planner

SR / clc
cc: Engineering and Building Permit Department

Jefferson County, West Virginia
Department of Planning & Zoning
116 East Washington Street; 2nd Floor
P.O. Box 338
Charles Town, West Virginia 25414

Email: planningdepartment@jeffersoncountywv.org

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

November 4, 2010

PRE-PROPOSAL CONFERENCE MEMORANDUM

MEETING DATE: Wednesday, August 18, 2010 @ 11:00 a.m.

Company Name: Camp Joe's Hands jurmeme9@aol.com
Applicant Name: Ruth Insley

Property Owner: John and Ruth Insley

Mailing / Physical Address: 8293 Leetown Road
Kearneysville, West Virginia 25430
Phone Number: (304) 998-2304

PROPOSED PROJECT: NON-RESIDENTIAL MINOR SITE DEVELOPMENT

DISTRICT/MAP/PARCEL: MIDDLEWAY TAX DISTRICT / MAP 19 / PARCEL 6.1 & 6.2 / 12.59 ACRES

ZONING MAP DISTRICT: RURAL

MEETING DESCRIPTION:

- The meeting attendees included Director of Planning & Zoning, Jennifer Brockman; County Planner, Seth Rivard; Zoning Administrator, Steve Barney; County Engineer, Jonathan Saunders; County Building Inspector, Mike Monaghan; Bill Zaleski, County Health Department; Todd Secatello, Shenandoah Builders and Excavating; Dirk Stansbury, P.E.; and Owners John and Ruth Insley.
- Overview: The proposed project consists of creating a non-profit camp for children with physical disabilities to include a primary structure with sleeping quarters, showers, restrooms, cooking space and a dining room. An existing stable on site would also be utilized to provide horseback riding for the children as an accessory use. The camp would be staffed by volunteers who reside in dorm areas. A small existing house would serve as a residential structure for the Owner's son. A second building would be used as a picnic area. Year-round use is anticipated.
- Anticipated Time-Frame and Deadlines.
- Additional relevant information to consider includes
- FEES: Upon submission, all applicable Site Plan and Building Permit fees, as required by the Engineering Department.
- Payment(s): **None Received**

COMMENTS:

Staff has determined the following:

1. Land Use

If the camp were to be established as non-profit organization pursuant to Section 501(c) of the United States Internal Revenue Code, the proposed use would be consistent with the “Group Residential Facility” land use category as defined in the Jefferson County Zoning Ordinance. “Group Residential Facility” is a permitted land use in the Rural zoning district, and is defined as “A dwelling owned or leased by a governmental or non-profit organization and used to house a group of persons not necessarily related by blood. The parent agency or institution has the administrative, supervisory and service responsibility for the group home.”

2. Major vs. Minor Site Plan

Section 20.203 defines the parameters for a Minor Site Plan, including: “Building(s), both new and additions to existing, where all structures located on the parcel total less than 5,000 square feet gross floor area (GFA) on any site.” Staff has determined that it is not the intent of the Subdivision and Land Development Regulations to include the square footage of existing agricultural structures for which no Jefferson County building inspection is required, and that were existing as of the date of the adoption of the amended Subdivision and Land Development Regulations. However, the square footage of the existing single-family home on the property will count towards the 5,000 square feet, unless the home is located on a separate lot via a minor subdivision. This subdivision would need to be completed prior to approval of the Site Plan.

3. Subdivision

The existing single-family home proposed for occupancy by the owners’ son is eligible for a parent-to-child subdivision. Shared access and reconfiguration of the existing driveway may be required. A Pre-Proposal Conference would be necessary to identify other requirements.

4. Rural Site Plan Standards

As a permitted principal use in the Rural District, the proposed development would be eligible for use of the Rural site plan standards in the Subdivision and Land Development Regulations, which provide more flexible standards for paving and stormwater management. However, all other applicable site plan standards (including accessible parking) must be met per Sec. 20.203D.

5. Buffers, Setbacks, and Parking

As a commercial use on a lot with area of greater than 1.5 acres abutting residential uses, the required greenspace buffers for front, side, and rear (per Sections 4.11 and 4.16) are 50’ (if unscreened) or 15’ (if screened). Per Section 5.6(d) and Section 4.6(b), a 75’ setback from residential uses is required.

The Zoning Ordinance does not establish parking requirements for a Group Residential use. Per Section 11.1(b) of the Zoning Ordinance, staff will establish a parking requirement based on the circumstances of the proposed land use, such as number of beds and number of employees.

Alternative materials for parking/driveway can be approved by the Engineering Department based on submittal of manufacturers’ specs.

6. Construction of Pavilion Prior to Site Plan

During the meeting, the Applicant asked if construction on a pavilion could begin prior to a full site plan. The pavilion could be constructed without a site plan if it is a residential accessory structure. However, once constructed, the pavilion would count towards the 5,000 square foot limit for a minor site plan.

Additionally, if the structure may be used later as part of a non-residential land use, the structure should be built to commercial building code standards. Contact Mike Monaghan in the Engineering Department at 304-725-2998 for more information.

7. Health Department Requirements

If a kitchen is provided for the proposed land use, it must meet the standards of a commercial kitchen. However, the Applicant may want to consider use of a catering service to circumvent the need for a commercial kitchen.

The Jefferson County Health Department (Bill Zaleski, 304-728-8415) must review well and septic placement.

8. State Requirements

The Applicant is advised to contact the following West Virginia agencies:

- Department of Health and Human Resources, regarding any state requirements for the proposed camp.
- Bureau for Public Health, regarding drinking water requirements
- Department of Highways, regarding any changes in access.

FINDING:

Per Section 4.10 of the Zoning Ordinance, the ILP Ordinance, and current Subdivision Regulations, the proposed plan concept will require Site Plan submission, and may comply with the processing conditions for Rural Site Development.

EFFECT OF FINDING:

The processing of a Site Plan is required. Building permits must also be obtained, prior to the start of construction, and appropriate approvals from all Local, State and Federal Agencies, are necessary for the issuance of a Zoning Certificate. Contact the Jefferson County Addressing Department for additional processing information.

Sincerely,

Steve Barney
Zoning Administrator

Jefferson County, West Virginia
Department of Planning & Zoning
116 East Washington Street; 2nd Floor
P.O. Box 338
Charles Town, West Virginia 25414

Email: planningdepartment@jeffersoncountywv.org

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

November 4, 2010

PRE-PROPOSAL CONFERENCE MEMORANDUM

MEETING DATE: Wednesday, October 27, 2010 at 11:00 a.m.

CONTACT NAME: Peter Lorenzen phlor@aol.com
Address: P.O. Box 316; Summit Point, West Virginia 25446
Phone Number: (304) 728-6093

Property Owner: Winston Threadgill
Physical Address: Mannings, West Virginia

PROPOSED PROJECT: RESIDENTIAL MINOR SUBDIVISION

ZONING DISTRICT: DISTRICT: CHARLES TOWN – 02 / TAX MAP: 21 / PARCEL: 38
RURAL

INDIVIDUAL PARCELS:
TOTAL PARCEL SIZE: 12 (+/-) Acres

MEETING DESCRIPTION:

- Need to declare density as required in the Rural District.
- The meeting attendees included Zoning Administrator, Steve Barney; County Planner, Seth Rivard; County Engineer, Jonathan Saunders; GIS Specialist, Todd Fagan; Surveyor, Peter Lorenzen; and Owner, Winston Threadgill.
- Overview: The proposed project consists of creating a two lot Minor Subdivision and remaining Residue.
- Tentative site capacity calculations.
- Potential environmental constraints and mitigation measures as required by Zoning Ordinance, Art. 4.
- Anticipated Time-Frame and Deadlines.
- Additional relevant information to be considered (includes file numbers, dates/previous proposals, etc.).
- FEES: Upon submission, all applicable Site Plan and Building Permit fees, as required by the Engineering Department.
- Application Fee: **Currently under review and may be subject to change.**
- Payment(s): **None Received**

COMMENTS:

Per Section Sec. 20.201 of the Subdivision and Land Development Regulations, a minor subdivision of 5 lots or fewer shall have vehicular access to a road right-of-way via a 50' access easement which extends from the subdivided lots to the existing road right-of-way and the access easement serves no more than five lots. The proposed access easement appears to comply with this requirement. Trail of Tears currently serves three lots, and the proposed lots will constitute the 4th and 5th lots served by this road.

As noted during the meeting, the addition of two lots on the access easement will result in the re-routing of a portion of Trail of Tears. The GIS/Addressing office proposes that the portion of this road serving the Bowman property be reclassified as a driveway, and that the new segment of access easement serving the two proposed new lots be classified as a segment of Trail of Tears. The address numbers of three properties will need to be changed.

The Subdivision and Land Development Regulations, Appendix A, Section 1.4, require that a density calculation and notation be placed on the plat. The development rights for this property will be exhausted following the proposed subdivision, because the residue lot is less than 15 acres in area.

The Applicant should contact the Jefferson County Health Department for well and septic system requirements.

A new WVDOH entrance permit will be required. Including the time needed to seek WVDOH approval, staff estimates that the subdivision process could be completed within 6 months.

FINDING:

The Minor Subdivision Concept Plan appears to meet the eligibility criteria for a Minor Subdivision.

EFFECT OF FINDING:

The Applicant may proceed with the engineering of the proposed Minor Subdivision. Upon receipt of the required material, the Department of Planning and Zoning will process said Minor Subdivision within the time line requisites stated in the Subdivision Regulations.

Sincerely,

Steve Barney
Zoning Administrator

Jefferson County, West Virginia
Department of Planning & Zoning
116 East Washington Street; 2nd Floor
P.O. Box 338
Charles Town, West Virginia 25414

Email:planningdepartment@jeffersoncountywv.org

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

October 28, 2010

PRE-PROPOSAL CONFERENCE MEMORANDUM

MEETING DATE: Wednesday, September 22, 2010 @ 10:00 am

OWNER/CONTACT: Herb Jonkers
Address: P.O. Box 341; Millwood, Virginia 22646
Phone Number:

Project Name: HIGHLAND FARM, LLC

Physical Address: Charles Town Road (Rte. 9) / West side of the Bloomery Bridge

PROPOSED PROJECT: MAJOR RESIDENTIAL SUBDIVISION

DISTRICT/MAP/PARCEL: TAX DISTRICT: CHARLES TOWN 02 / MAP:19 / PARCELS: 33, 38, 39 & 41
ZONING DISTRICT: RURAL

INDIVIDUAL PARCELS: Twenty-Seven (27) Lots and Residue
TOTAL PARCEL SIZE: 270.18 Acres

MEETING DESCRIPTION:

- Need to declare density as required in the Rural District.
The proposed Cluster Development consisting of twenty-seven (27) lots and remaining Residue on 270.18 acres is permitted, but all rights are extinguished with said development.
- The meeting attendees included Director, Jennifer Brockman; Zoning Administrator, Steve Barney; County Planner, Seth Rivard; County Engineer, Jonathan Saunders; John Sekerak, Consultant with Greenhorne & O'Mara; and Property Owner, Herb Jonkers.
- Overview: The proposed project consists of a creating a Major Residential Subdivision consisting of Twenty-Seven (27) Lots and a Residue.
- Tentative site capacity calculations.
- Provided Applications.
- Potential environmental constraints and mitigation measures as required by Zoning Ordinance, Art. 4.
- Anticipated Time-Frame and Deadlines.
- Additional relevant information to be considered: Zoning File #Z02-02.
- FEES: To be determined at each applicable stage of the Major Subdivision process.
- Application Fee: **Currently under review and may be subject to change.**
- Payment(s): **None Received**

COMMENT:

- Variance from maximum three-acre lot sizes for parcels 19 and 21, per Section 5.7d(2)(7).
- Cul-de-sac length appears to meet Subdivision Regulation requirements.
- Any traffic improvements would be in accordance with Appendix B, Division 2.0 or as required by West Virginia Department Of Highways (WVDOH).

FINDING:

The subdivision is required to follow the review and approval process established in the amended Subdivision Regulations adopted by the County Commission on August 19, 2010. The Subdivision Regulations can be found in the “Ordinances & Regulations” section of the Planning Department website, <http://www.jeffersoncountywv.org/planning-and-zoning.html>. The initial required submittal for a Major Subdivision is the Concept Plan. Concept Plan requirements and process are outlined in Sec. 24.106-109 and Appendix A, Plan & Plat Standards.

As discussed in the meeting, there are two paths by which the applicant can advance. First, if the applicant chooses, he can begin by following the cluster process detailed in the Zoning Ordinance and subsequently follow the procedures as delineated in the Subdivision Regulations. Both processes could track concurrently. Second, the applicant could choose to combine the processes enumerated in the Zoning Ordinance and Subdivision Regulations into one step.

The first path would result in a certain amount of overlap in the process. Specifically, the Zoning Ordinance process for a Cluster Plan includes a Concept Plan, and the Subdivision Regulations also require a Concept Plan for a major subdivision. While the Concept Plans in both documents are similar, there are a few differences.

The second path, the combined process, would advance a submission to the Concept Plan detailed in the amended 2008 Subdivision Regulation. In this situation the applicant could meet all requirements outlined in both the Zoning Ordinance and Subdivision Regulations by doing one Concept Plan that meets the requirements of both documents. This path would result in less redundancy. In order to follow this latter option, the applicant would need to waive the 30 days described in 5.7.d(2) d of the Zoning Ordinance which states “The Department of Planning, Zoning, and Engineering Staff will review the cluster plan, prepare a report and submit it to the Planning Commission within thirty (30) days of original submittal.” The waiver is needed in order to combine the processes.

EFFECT OF FINDING:

The Applicant may proceed with the submittal of a Concept Plan for a Major Subdivision. Upon receipt of the required material, the Department of Planning and Zoning will process said Concept Plan within the time line requisites stated in the Subdivision Regulations.

Sincerely,

Seth Rivard
County Planner

Jefferson County, West Virginia
Department of Planning & Zoning
116 East Washington Street; 2nd Floor
P.O. Box 338
Charles Town, West Virginia 25414

Email:planningdepartment@jeffersoncountywv.org

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

November 22, 2010

PRE-PROPOSAL CONFERENCE MEMORANDUM

MEETING DATE: October 20, 2010 at 10:00 a.m.

CONTACT NAME: Randy Litwin / Lavelle & Associates, Inc.
Address: 5732 Industry Lane; Frederick, Maryland 21704
Phone Number: 301-695-9722

Property Owner: Jimmy Azat / JimmyAzat52@yahoo.com
Company Name: JMAZ, LLC
Mailing Address: 3154 Flint Hill Road; Adamstown, Maryland 21710
Phone Number: 301-275-3526

Physical Address: 65 Patrick Henry Way; Charles Town, West Virginia

Proposed Project: NON-RESIDENTIAL MINOR SITE DEVELOPMENT
RE: TWIN RIVERS GALLERY

Zoning District: TAX DISTRICT: CHARLES TOWN 02 /TAX MAP: 8 /PARCEL: 29.5
INDUSTRIAL- COMMERCIAL

Parcel Size: 4.13 Acres

MEETING DESCRIPTION:

- The meeting attendees included Zoning Administrator, Steve Barney; County Planner, Seth Rivard; County Engineer, Jonathan Saunders; and Consultant, Randy Litwin, with Lavelle & Associates, Inc.
- Overview: The proposed project consists of establishing a Retail Use in the former 84 Lumber building. Existing entrance and parking areas will be utilized; additional parking, as required, will be provided in lumber yard section.
- Potential environmental constraints and mitigation measures as required by Zoning Ordinance.
- Anticipated Time-Frame and Deadlines.
- Addressing Department expressed input on how facility would be addressed.
- Possible building in rear in future.
- May need Variance for number of parking spaces provided vs. required.
- Rear Setback concern for proposed future structure.
- Additional landscaping.
- Updated Storm Water Management may be required.
- FEES: Upon submission, all applicable Site Plan and Building Permit fees, as required by the Engineering Department.
- Payment(s): **None Received**

FINDING:

Per Section 4.10 of the Zoning Ordinance, the ILP Ordinance, and current Subdivision Regulations, the proposed plan concept will require a Full Site Plan submission, and may comply with the processing conditions for Minor Site Development.

EFFECT OF FINDING:

The processing of a Site Plan is required. Building Permits must also be obtained, prior to the start of construction, and appropriate approvals from all Local, State and Federal Agencies, are necessary for the issuance of a Zoning Certificate. Contact the Jefferson County Addressing Department for additional processing information.

Sincerely,

Seth Rivard
County Planner

SR/clc
cc: Engineering and Building Permit Department

Randy Litwin, Lavelle & Associates, Inc.
5732 Industry Lane; Frederick, Maryland 21704

Jefferson County, West Virginia
Department of Planning & Zoning
116 East Washington Street; 2nd Floor
P.O. Box 338
Charles Town, West Virginia 25414

Email: planningdepartment@jeffersoncountywv.org

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

December 02, 2010

PRE-PROPOSAL CONFERENCE MEMORANDUM

MEETING DATE: Wednesday; November 24, 2010 at 10:00 a.m.

OWNER / CONTACT NAME: Peter Weinbrecht PWEINBREC@GMAIL.COM
Mailing Address: 20679 Cutwater Place; Sterling, Virginia 20165
Phone Number: (703) 885-5423

Physical Address: Lake Side Drive – Shannondale West Virginia 25442

PROPOSED PROJECT: RESIDENTIAL MINOR SUBDIVISION

DISTRICT: KABLETOWN 06 / TAX MAP: 6 / PARCEL: 9

ZONING DISTRICT: RURAL

INDIVIDUAL PARCELS: Lot #1: approx. 1/3 acre. Remaining Residue Lot: approx. 64 2/3 acres.

TOTAL PARCEL SIZE: 65 Acres

MEETING DESCRIPTION:

- Need to declare density as required in the Rural District.
- The meeting attendees included Zoning Administrator, Steve Barney; County Planner, Seth Rivard; County Engineer, Jonathan Saunders; and Applicant, Peter Weinbrecht.
- Overview: The proposed project consists of creating a one lot Minor Subdivision and remaining Residue, and merging the new lot with an adjacent, existing lot.
- Tentative site capacity calculations.
- Potential environmental constraints and mitigation measures as required by Zoning Ordinance, Art. 4.
- Anticipated Time-Frame and Deadlines.
- Additional relevant information to be considered: Applicant is purchasing Lots #25 & #26.
- FEES: Upon submission, all applicable Site Plan and Building Permit fees, as required by the Engineering Department.
- Application Fee: **Currently under review and may be subject to change.**
- Payment(s): **None Received**

COMMENTS:

1. Due Diligence

Prior to purchase of the property, and subject to the advice of a real estate attorney, the Applicant may want to confirm several factors related to this property, including the following:

- that the deed for the lake property grants no public access to the lake, crossing the subject tract;

- that a successful percolation test is conducted and a septic reserve area for the property is approved by the Health Department; and
- that sufficient buildable area (exclusive of setbacks, buffers, etc) is available for development of a single-family home.

2. Subdivision Rights for Lake Property

The creation of a new lot from the lake property will extinguish one subdivision right from this property; however, it should be noted that the Zoning Ordinance establishes a minimum lot size of 40,000 square feet. Accordingly, a new lot with an area of less than this size cannot be subdivided unless the Board of Zoning Appeals approves a Variance for a reduced lot area.

3. Process

Staff recommends that the transfer of property be accomplished by a lot line adjustment / merger plat to add area from the lake property to lot 26.

4. Buffers and Setbacks

The property includes what is believed to be an ephemeral stream, requiring a 50' buffer per Section 22.504B of the Subdivision and Land Development Regulations. The lake property and any wetland areas would require a buffer as well. A 40' front setback will apply to the new lot and to any property included in the merger plat.

5. Lot Size

At the meeting, it was noted that lots 25 and 26 have an area of approximately ¼ acre, while the portion of the lake property proposed to be subdivided is approximately 1/3 acre in size. The combined acreage would be less than the 40,000 square feet of lot area required in Section 5.7(b) of the Zoning Ordinance. However, Section 9.3 provides that “a dwelling may be erected on any lot or parcel of record, despite the fact that the lot or parcel does not meet the minimum area requirements”, if the lot lawfully created in compliance with the applicable subdivision regulations in effect at the time of its creation. Also, Section 20.106 of the Subdivision and Land Development Regulations states, “boundary adjustments between non-conforming lots shall be exempt from the minimum lot size criteria unless the lot from which the land is taken is rendered unbuildable”.

FINDING:

The Concept Plan appears to satisfy the Subdivision and Land Development Regulation requirements for a Lot Boundary Adjustment.

EFFECT OF FINDING:

The Applicant may proceed with the engineering of the proposed Lot Boundary Adjustment. Upon receipt of the required material, the Department of Planning and Zoning will process said Minor Subdivision within the time line requisites stated in the Subdivision Regulations.

Sincerely,

Steve Barney
Zoning Administrator