

JEFFERSON COUNTY, WEST VIRGINIA
Departments 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

MEMORANDUM

TO: JEFFERSON COUNTY PLANNING COMMISSION
FROM: JENNIFER BROCKMAN, DIRECTOR OF PLANNING
DATE: FEBRUARY 04, 2011
SUBJECT: FEBRUARY 08, 2011 PLANNING COMMISSION MEETING

Please find attached the following documents for consideration at the February 8, 2011 Planning Commission meeting.

Documents provided:

- **February 8, 2011 agenda.**

1. Postponed from the January 25, 2011 meeting: Approval of minutes for the December 14, 2010 meeting.
Approval of minutes for the January 18, 2011 meeting.
Approval of minutes for the January 25, 2011 Planning Commission Workshop.

Documents provided:

- **Revised minutes for the December 14, 2010 meeting.**
- **Draft minutes for the January 18, 2011 meeting.**
- **Draft minutes for the January 25, 2011 meeting.**

2. Citizen Communications.
3. Request for postponement.
4. Presentation by Mr. Fred Blackmer regarding the resubmission of the Mannings Incorporation petition.

Documents provided:

- **Letter of request from Fred Blackmer to be on the agenda.**

5. Discussion regarding filing a petition to rezone Federal Lands.

Documents provided:

- **Previous petition filed November 2010.**
- **Proposed petition submitted by Paul Rosa.**

6. Discussion and possible scheduling of Public Hearing for Proposed Text Amendment for Section 20.203 and Definition of Major Site Plan and Minor Site Plan of the Jefferson County Subdivision Regulations.

Documents provided:

- **Memo regarding Propose Subdivision Amendment for the Minor Site Plan Process in Business or Industrial Parks.**

7. Discussion and possible scheduling of Public Hearing on Planning Commission initiated Zoning Text Amendments and Zoning Map Amendments policy.

Documents provided:

➤ **Zoning Text and Map Amendment Policy**

8. Review of Revised Land Development Fees.

Documents provided:

➤ **Memo regarding revised fee structure.**

➤ **Revised Fees.**

9. Update on US 340 Plan.

10. Update on Urban Tree Canopy Grant.

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

12. Director's Report.

Documents provided:

➤ **Director's Agenda**

➤ **Activity Reports**

13. County Commission Liaison Report.

14. 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.

15. President's Report.

16. Actionable Correspondence.

Documents provided:

➤ **Letter from Pete Kubic.**

➤ **Email regarding Mountain Water Samples.**

17. Non-Actionable Correspondence.

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
February 8, 2011

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

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2. Citizen Communications.
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4. Presentation by Mr. Fred Blackmer regarding the resubmission of the Mannings Incorporation petition.
5. Discussion regarding filing a petition to rezone Federal Lands.
6. Discussion and possible scheduling of Public Hearing for Proposed Text Amendment for Section 20.203 and Definition of Major Site Plan and Minor Site Plan of the Jefferson County Subdivision Regulations.
7. Discussion and possible scheduling of Public Hearing on Planning Commission initiated Zoning Text Amendments and Zoning Map Amendments policy.
8. Review of Revised Land Development Fees.
9. Update on US 340 Plan.
10. Update on Urban Tree Canopy Grant.
11. Reports from Legal Counsel and legal advice to PC.
12. Director's Report.
13. County Commission Liaison Report.
14. 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.
15. President's Report.
16. Actionable Correspondence.
17. Non-Actionable Correspondence.

AGENDA
JEFFERSON COUNTY PLANNING COMMISSION
FEBRUARY 8, 2011
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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. *Mr. Cochran reiterated that a time extension should be granted as a matter of right, not as a variance and that the only reason a variance application was submitted was at the request of the Planning Commission. Ms Morgan asked about the last legal deadline related to the most recent lawsuit, to which Mr. Cochran replied that June 2010, was the last chance for appeal. In light of this, there was discussion regarding why the request was delayed to 5 days before the expiration of the Community Impact Statement. There was considerable discussion between the applicant and the Planning Commission as to whether a variance is the correct procedure rather than an extension by right due to extensive legal proceedings.* 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. *Mr. Maxey voiced his support to deny the request stating that denial did not impact whether the project could be built, rather if it should occur as a time extension of the Community Impact Statement. Mr. Maxey further stated that Mr. Cochran did not prove that this extension was not contrary to the public interest because granting the application would allow stormwater design under 30 year old regulations that might not conform to the current Subdivision Regulations.* The motion 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. *Ms. Brockman explained that the denial of the variance to extend the Community Impact Statement incorporated all time requirements.*

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

Chareston. 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.

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.

JEFFERSON COUNTY PLANNING COMMISSION
POLICY NEUTRAL ZONING AMENDMENTS WORKSHOP SUMMARY
JANUARY 18, 2011

The Jefferson County Planning Commission met on Tuesday, January 18, 2011 with the following Commission members present: Tom Trumble, President; Daniel Hayes, Vice President; Gene Taylor; Kelly Baty; John Maxey and Walt Pellish. Staff members present included Jennifer Brockman, Director of Planning and Zoning; Steve Barney, Zoning Administrator; Seth Rivard, County Planner and Julie Quodala, Office Manager.

Mr. Trumble called the meeting to order at 6:04 PM.

Mr. Barney presented the draft policy neutral zoning amendments to the Planning Commission. Mr. Barney explained each amendment and the rationale for each amendment. The Planning Commission asked Ms. Brockman, Mr. Barney and Mr. Rivard questions and gave comment throughout the presentation. Ms. Brockman asked that any additional comments on the presented amendments be submitted to Mr. Barney in writing no later than Monday, January 31st in advance of Planning Commission discussion of the draft amendments on Tuesday, February 8, 2011.

The meeting adjourned at 7:11 p.m. A detailed transcript of this meeting, which was recorded by Julie Quodala, Office Manager, may be found on our website.

MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
JANUARY 25, 2011

The Jefferson County Planning Commission met on Tuesday, January 25, 2011, with the following Commission members present: Thomas Trumble, President; Morgan Etters, Secretary; Gene Taylor, John Maxey, Arnold Dailey, and Walt Pellish. Staff members present included Jennifer Brockman, Director of Planning and Zoning; Seth Rivard, Planner; and Julie Quodala, Office Manager.

Kelly Baty and Daniel Hayes were absent with notification.
Eric Smith arrived at 9:03 PM.

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

1. Postponed from the January 11, 2011 meeting:

Approval of minutes for the December 14, 2010 meeting.

Ms. Brockman explained that Staff did review the audio of the December 14, 2010 meeting and determined the minutes were accurate as written. Mr. Maxey stated that he had also reviewed the audio of the December 14, 2010 meeting and felt that two discussions were missing from the minutes:

- Mr. Maxey's comments regarding the applicant's failure to prove that the variance was not contrary to public interest and how he felt that it was contrary to public interest.
- Comments regarding that denial of the variance were not denying the right of the subdivision to be built, rather the right to use a 30 year old ordinance instead of the current regulations.

Mr. Maxey moved to table the discussion until at which time the attorney could be present. Mr. Taylor seconded the motion. Mr. Trumble asked for clarification on whether the minutes or the audio recording were the legal document and asked for legal opinion. Mr. Maxey asked if a vote on the motion to table should occur. Mr. Trumble stated that a vote was not necessary.

Approval of minutes for the January 11, 2011 meeting.

Mr. Maxey moved to approve the minutes of the January 11, 2011 meeting as written by staff. Mr. Taylor seconded the motion which carried 5 for and 1 abstention (Mr. Dailey)

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

Ms. Brockman asked for a postponement of consideration of the January 18, 2011 Planning Commission Workshop.

2. Citizens Communication: None.

3. Request for postponement: None.

4. Postponed from the January 11, 2011 meeting: Discussion and vote on the Planning Commission Meeting Schedule for 2011.

A schedule was provided to the Planning Commissioners in the agenda packets which detailed all of the dates for the regularly scheduled meetings for 2011. Mr. Pellish commented that he felt that one meeting a month should be sufficient. Mr. Maxey stated

that, since the second meeting of the month had been a necessity in the past, he would request that the second meeting date be held as a tentative date if needed. Mr. Trumble inquired on the effect on deadlines should the second meeting of the month be cancelled. Ms. Brockman explained that Staff would work with applicants on meeting dates and could use the second meeting of the month only if necessary to complete a deadline to conform to State Law. Mr. Maxey proposed to follow the schedule as presented by staff with the addition of a meeting to be tentatively scheduled for December 20, 2011 and also ask staff to, when possible and convenient for applicants, schedule applications for the first meeting of each month so that the President of the Planning Commission could cancel the second meeting of the month if possible. Mr. Pellish moved to schedule only one meeting a month with a tentatively scheduled meeting in December as Mr. Maxey suggested. Mr. Trumble clarified that the motion was to have only one meeting a month for the 2011 year. Mr. Pellish confirmed that as correct. Mr. Dailey seconded the motion for discussion purposes. Ms. Morgan offered a friendly amendment that the second meeting of the month be held as a tentative date to be decided to be cancelled or held at the first meeting of the month. Mr. Pellish accepted the friendly amendment. Mr. Maxey suggested that the public be notified any time the second meeting of the month is cancelled. Mr. Pellish stated that a notification of the schedule should be posted to allow the public to adapt to a once-a-month schedule. Mr. Trumble clarified the motion as the Planning Commission schedule is to meet once a month with the proviso that a second meeting will be held if it is required to conduct public or Commission business and that the schedule will be plain that the Planning Commission will meet once a month and that the second meeting will be noticed if it is not being held. Mr. Pellish agreed. The motion passed unanimously.

Ms. Brockman offered to provide a press release to notify the public of the new schedule.

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

Mr. Pellish moved to approve the policy as written. Mr. Maxey seconded the motion which carried unanimously.

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

Mr. Rivard presented the amended proposed Land Development Fees. He explained that all established fees were increased by 20% and that new fees were introduced for processes that previously did not have an established fee. Mr. Maxey asked for examples of certain types of fees. Mr. Pellish asked for clarification on the 20% increase and asked if the document could be condensed to make it easier for the public to read. Ms. Brockman and Mr. Rivard explained that the detail within the document made it easier for staff to quote the correct fee. Ms. Brockman stated that a Public Hearing or an informal Public Workshop could be scheduled as soon as the Planning Commission agrees on the fees that are presented. Mr. Trumble suggested that any non-profit organization with a project less than 4 acres be charged no fee at all. He also proposed that any County project would be free of charge. He recommended that fees should only be raised 10% instead of 20%. Mr. Maxey moved that staff rework the current chart (proposed fees) to indicate no more than a 10% increase in current fees, rather than 20%, and that it incorporate, by footnote, exemption that county

owned projects or non-profit projects of a staff recommended square footage. Mr. Pellish seconded the motion which carried unanimously. There was discussion regarding previously presented fee structures that showed cost recovery for the department would more than double the fees. Ms. Morgan suggested that fees be reviewed at least every one to two years to avoid high percentage increases. Mr. Trumble stated that 501 C3 statuses would need to be proved for non-profit organizations.

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

Mr. Rivard gave a report on the Blue Ridge Mountain Final Common Vision Document and Engineering Report and what the next steps were. Mr. Rivard stated that any further steps taken will continue to involve the input of the citizens committee. Mr. Maxey requested that, in response to one of the comments noted in the document, Mr. Vila be contacted to ask the status of the results of the water quality testing being done on the mountain and if he could promise to make that information available to the public on a quarterly basis. He also suggested that support be given to the County Commission to continue funding Mr. Vila's water sampling efforts in the upcoming budget discussion. Mr. Pellish voiced support of Mr. Maxey's comments. Ms. Brockman stated that she would like to have one more meeting with the Citizen's Committee to review the document and consider ideas for what steps to take next.

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

Legal representation was not present.

9. Director's Report.

- **Activity Reports.** The activity reports were provided in the agenda packets.
- **Update on SPARC Noise Agreement.** Ms. Brockman presented a report on the research done by staff regarding discussion of noise concerning the Summit Point Racetrack. She confirmed that, while noise issues were discussed by citizens and the applicant at public meetings, and the applicant verbally agreed to certain noise levels, the Planning Commission and the County Commission determined only that a greater setback related to the raceway expansion would assist in minimizing noise. She reported that any promises made by the applicant could not be upheld as they were not adopted as part of the Zoning Ordinance. Mr. Maxey asked that the report be mailed to the two citizens that commented on the noise at the racetrack at the October 26, 2010 Planning Commission meeting.
- **Summary of Minutes of the January 5, 2011 Annual Report/Work Plan/Budget Subcommittee Meeting.** Ms. Brockman presented the minutes for the Annual Report/Work Plan/Budget Subcommittee Meeting. Mr. Maxey moved that the Planning Department's budget be presented to the Planning Commission for discussion and approval prior to presentation to the County Commission. Ms. Etters seconded the motion. Mr. Trumble stated that he felt the Planning Commission should manage the work plan to in accordance with the budget set by the County Commission. Mr. Maxey requested that Mr. Trumble, as Planning Commission President, attend the County Commission meeting along with Ms. Brockman to discuss the Departments' budget.

- **Quarterly Report.** Ms. Brockman presented a quarterly report detailing the projects and daily activities of the department. She also explained the current projects that staff had been working on including the policy neutral Zoning Ordinance amendments. There was discussion regarding when to place the policy neutral amendments on the agenda and when written comments by the Planning Commissioners would be due. Ms. Brockman suggested that comments would need to be submitted by January 31, 2011 to be included in the next packet. Mr. Trumble stated that a discussion including comments from the Planning Commissioners would be held on February 8, 2011 and that another draft would be presented on February 22, 2011 in hopes that it would be the final draft to present to the public. There was discussion regarding how the document would be presented to the public.
- **Planning Commission initiated Zoning Text Amendments and Zoning Map Amendments.** Ms. Brockman asked that this item be discussed when Mr. Groh was in attendance.
- **Wild Goose Farm letter regarding application of SB 595 provisions.** This document was provided in the agenda packet.
- **Recent County Commission Action:**
 - Zoning Map Update and Zoning Map Policy approved January 6, 2011.
 - Request to Schedule Evening Meetings in 2011 approved January 13, 2011.
- **Upcoming County Commission agenda items.**
 - Wireless Telecommunications Ordinance Amendment Public Hearing
 - Public Hearing to Amend the County Zoning Map to consider Urban Growth Boundaries for Harper's Ferry and Bolivar.
- **Upcoming Planning Commission meetings.**

10. **County Commission Liaison Report.** None.

11. **Planning Commission Exchange.**

- **Report from the Health Department Meeting Liaison.** None.
- **Report from the Public Service District Meeting Liaison.** This report was provided in the agenda packet.
- **Report from the Jefferson County Development Authority Meeting Liaison.** Mr. Trumble reported that the election of officers for the Jefferson County Development Authority occurred and that Mr. Mark Dyck was elected President and Mr. Howard Mills would be the Vice-President. He stated that the Bardane Market is still struggling however; Mr. Dyck has been working on a business plan with the owners. He reported that the Development Authority had requested a copy of the Planning and Zoning fee schedule. Mr. Trumble stated he will report on the fee schedule at the Development Authority's next meeting.
- **Report from the Water Advisory Committee Meeting Liaison.** Mr. Maxey distributed the minutes from the last Water Advisory Committee meeting. Mr. Maxey stated that one of the concerns of the Water Advisory Committee was a possible drought and what effects that would have on agriculture.

12. **President's Report.**

Mr. Trumble reminded staff that there is a requirement for 2 hours of training for Planning Commissioners. He suggested that a retreat may be useful and asked that staff plan the training. Ms. Brockman outlined what topics would be included in the training.

Mr. Trumble asked if the Director's Report should be placed higher on the agenda. Ms. Brockman stated that some of the items in her report could be placed as individual items on the agenda.

Mr. Trumble proposed that individuals who come to Planning Commission meetings to speak on an agenda item sign in so that staff will be able to send follow up correspondence.

Mr. Trumble suggested that the Subdivision Regulations and the Zoning Ordinance be reviewed to research ways the cost and burden could be reduced for processing commercial applications for businesses in the county.

13. Actionable Correspondence. None.

14. Non-Actionable Correspondence. Copies of the Pre-proposal Conference letters were provided in the agenda packet.

Mr. Pellish moved to adjourn at 9:14 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.

Fred Blackmer government affairs consulting and issue resolution

191 Wild Hare Road

Harpers Ferry, WV 25425

304 725 6754

fred@fredblackmer.com

Jefferson County Planning Commission

Subject: Mannings Incorporation

Commissioners,

I am requesting to be placed on the meeting agenda of February 8, 2011. The purpose of this presentation is to make the Planning Commission and Planning Department aware that the Mannings Incorporation petition is going to be resubmitted.

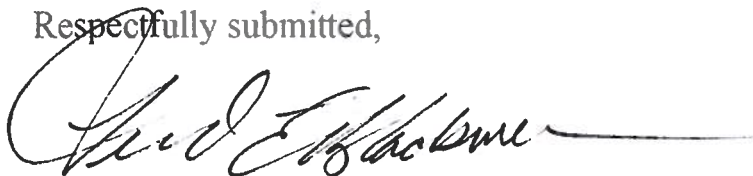
This resubmission will be made to the County Commission in the near future. It is fully expected that the planning commission will be asked to review the application for incorporation and its relative compliance with Jefferson County's Comprehensive Plan. It is also expected that the planning commission will submit a recommendation and findings after review of the application.

The time from formal submission to decision is relatively short. I am taking this opportunity to ensure the planning commission and staff have time to prepare a thoughtful and factual review. It is also important that the planning commission and staff have ample opportunity to have any questions they might have answered by the applicants or their representative (Fred Blackmer).

It is my hope that each of the planning commission members and staff review the draft documents that are available on line prior to the meeting.

www.fredblackmer.com/mannings

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Fred Blackmer", with a long horizontal flourish extending to the right.

Fred Blackmer

JSM
Jennifer S. Maghan, County Clerk
P. O. Box 208
Charles Town, WV 25414

JEFFERSON COUNTY PLANNING COMMISSION

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

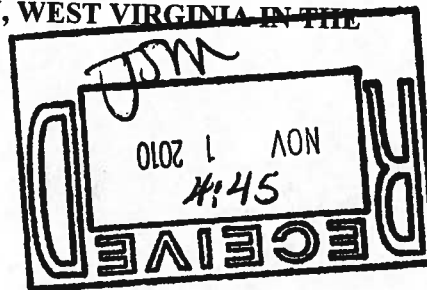
Email: planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

Fax: (304) 728-8126

**BEFORE THE COUNTY COMMISSION OF JEFFERSON COUNTY, WEST VIRGINIA, IN THE
MATTER OF:**

Rezoning of Certain Federal Lands



ORDER

On this 1st day of November, 2010 the Planning Commission of Jefferson County West Virginia hereby petitions the County Commission of Jefferson County West Virginia to rezone certain Federal lands, along US Route 340 that are currently zoned Industrial-Commercial; Residential-Growth and Residential-Light Industrial-Commercial, to Rural. These properties comprise a total of approximately 929 acres, of which 701 acres are owned by the Harper's Ferry National Park Service and 228 acres are owned by the U.S. Customs and Border Patrol. The specific parcel information with referenced tax district, map and deed book numbers are included as an attachment to this Order.

In August 2010, during a concentrated effort on Staff's part to perfect the zoning map, the Planning Commission inquired about the underlying zoning of the Federal lands on the zoning map, as they were merely designated "park land". At the August 24, 2010 Planning Commission meeting Jennifer Brockman, Director of the Department of Planning and Zoning made a presentation to the Planning Commission. During the presentation, Director Brockman stated that almost all the Federal lands located within Jefferson County are zoned Rural, with the exception of the Federal lands located along US Route 340, as they were zoned prior to becoming Federal land.

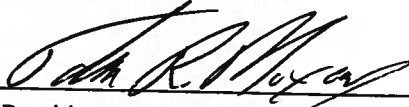
At their September 14, 2010 Planning Commission meeting, the Planning Commission voted to approve a Resolution to petition the County Commission to rezone the Federal lands along US Route 340. Additionally, the Planning Commission directed Staff to submit an Agenda Request Form on their behalf in order to retain an appointment to present their proposal to the County Commission. On September 23, 2010, after receiving the Planning Commission's presentation, offered by Planning Commission President, John Maxey, the County Commission moved to set a Public Hearing date at their September 30, 2010 meeting.

At their September 30, 2010 meeting, the County Commission tentatively scheduled the US Route 340 Federal Lands Rezoning Public Hearing for November 18, 2010 at 7:00 p.m. in the County Commission meeting room. At their regularly scheduled Planning Commission meeting on October 12, 2010, the Planning Commission received correspondence from County Commission President, Lyn Widmyer. Also, at the October 12, 2010 meeting, the Planning Commission moved that President John Maxey draft a response to County Commission President, Lyn Widmyer. Mr. Maxey's drafted response was approved at the Planning Commission meeting on October 26, 2010.

The Planning Commission believes that this rezoning is compatible with the Comprehensive Plan due to the significant changes within the area along US Route 340. As the Comprehensive Plan is currently written, there are key components within the Comprehensive Plan that support the rezoning. Additional Federal lands, along US Route 340, have been purchased since 2002. Of the 929 total acres owned by Federal agencies, 701 acres have been conserved by the Harpers Ferry National Park Service. A large portion of the remaining 228 acres, owned by the U.S Customs and Border Patrol, have been used for their own private educational facility.

It is therefore ORDERED that the Jefferson County Planning Commission petition regarding the Rezoning of Federal Lands along US Route 340 to the Jefferson County Commission be recorded and filed on this date, November 1, 2010.

Dated 11/1/2010

By 
President, Jefferson County Planning Commission

Owner	Tax District	Tax Map	Tax Parcel	Full Parcel	Deed Book	Deed Page
National Park Service	4	6	7	04000600070000	1065	710
	4	6	7.2	04000600070002	1065	710
	4	6	7.3	04000600070003	974	426
	4	7	1	04000700010000	905	328
	4	7	2	04000700020000	733	148
	4	7	3	04000700030000	1049	292
	4	7	5.2	04000700050002	488	146
	4	7	6	04000700060000	960	546
	4	7	31	04000700310000	405	30
	4	9	36	04000900360000	1016	675
	4	9	37.1	04000900370001	1065	710
	4	9	38	04000900380000	1011	49
	4	9	40	04000900400000	694	540
	4	9	68	04000900680000	968	641
	4	11	25	04001100250000	694	540
US Customs & Border Protection	4	9	12.1	04000900120001	1044	201
	4	9	13	04000900130000	957	603
	4	9	13.3	04000900130003	1037	510
	4	9	15	04000900150000	1036	158
	4	9	17	04000900170000	1033	389
	4	9	18	04000900180000	1033	389
	4	9	19	04000900190000	1037	680
	4	9	19.1	04000900190001	1036	152
	4	9	19.3	04000900190003	1033	389
	4	9	19.4	04000900190004	1056	592
	4	9	19.5	04000900190005	1037	680
	4	9	19.6	04000900190006	1056	592
	4	9	20	04000900200000	1056	592
	4	9	21	04000900210000	957	120
	4	9	39	04000900390000	1055	457
	4	9	39.2	04000900390002	1064	184
	4	9	39.3	04000900390003	1061	618
	4	9	40	04000900400000	694	540
	4	9	40.1	04000900400001	1056	592

**PETITION
TO REZONE FEDERAL LANDS
IN THE VICINITY OF
HARPERS FERRY**

Presented at 12-14-10 PC meeting by Paul Rosa. -

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 or 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...

Narrative Discussion

Proposed Rezoning of Federal Lands in the Vicinity of Harpers Ferry

Established Permanent Uses

The lands subject to the rezoning petition are titled in the name of the United States of America and are administered by two agencies: the National Park Service and United States Customs and Border Protection. A map depicting these lands is attached in Exhibit A to this narrative discussion.¹ A table of parcels included in the rezoning proposal is included in Exhibit B.² The lands in question principally lie to the west of Harpers Ferry and Bolivar between Bolivar Heights and Halltown.

The destiny of these lands is already fixed and established. Since the permanent uses are already established, the rezoning will have no effect on traffic, change in the character of the neighborhood or other effects. The rezoning is simply a paperwork exercise to conform the zoning map to permanent realities on the ground. Thus, information on those uses is provided solely for background purposes.

The National Park Service lands in question principally lie between Bolivar Heights and the parallel Schoolhouse Ridge, and also include the Murphy Farm. Schoolhouse Ridge was Stonewall Jackson's main battle line during the 1862 battle of Harpers Ferry. It parallels Bolivar Heights, located approximately 1,000 yards west, and it fronts along State Secondary Route 27 (Millville/Bakerton Roads). Its north and south sections are separated by U.S. 340. These lands will be farmed in perpetuity with field crops to provide battlefield scenery.

Harpers Ferry National Historical Park has its visitor's center on Cavalier Heights. The visitor center boasts a 1,000-car parking lot. It will be the starting point for an expanded bus transportation system that would allow visitors to reach areas of the park such as the Murphy Farm, Schoolhouse

¹ Map titled *Zoning Classifications of Selected Federal Lands: Harpers Ferry Vicinity*.

² *Table of Parcels Subject to the Petition to Rezone Federal Lands*.

Ridge and Camp Hill.³ Besides the main park in Lower Town Harpers Ferry, these buses already serve Bolivar Heights and the recently acquired Murphy Farm.

Plans are in the works to also transport visitors by bus to the various Schoolhouse Ridge Civil War Battlefield sites. With visitor parking generally limited to 10-vehicle pervious parking lots at the outlying sites, traffic and environmental issues are considered *de minimus* because of the developing transit circulation patterns.

The park's General Management Plan calls for Schoolhouse Ridge to be managed as a battlefield landscape with agricultural leases helping to maintain the 1862 appearance.⁴

The lands administered by US Customs and Border Protection comprise that agency's Advanced Training Center and Leadership Academy. The first phase includes indoor firing ranges and other training venues, classrooms and administrative buildings that are presently operational.

The remainder of the campus including lodging and dining facilities for 212 students, classroom, administrative and accessory buildings presently is under construction and is slated for completion in the fourth quarter of 2012.

CBP has arranged highway enhancements with the West Virginia Department of Highways that will include a traffic light at their main entrance, turn lane extensions and service road changes that will be in place by that time.

This attractive campus setting replaces a mix of heavy industrial, residential and commercial uses that previously occupied the CBP lands. Since the campus completely occupies the CBP lands, there are no other uses contemplated or possible. The campus was carefully designed in cooperation with the National Park Service and various preservation and environmental groups to ensure that the CBP campus was compatible with, and largely hidden from view from, the Schoolhouse Ridge Civil War battlefield. This collaborative effort has resulted in a mosaic of beneficial and complimentary land uses.

³ Harpers Ferry National Historical Park General Management Plan/Environmental Impact Statement (August 2008), p. iv.

⁴ *Id.* at p. v.

Consistency With Comprehensive Plan

The Comprehensive Plan⁵ states that proposals for functions of County government will be evaluated for consistency with the recommendations contained in the Plan. The proposed rezoning of Federal lands is compatible with the Comprehensive Plan

The Comprehensive Plan sets out a variety of goals and objectives. It also sets out an overarching vision for Jefferson County's future. The principal element of that vision that relates to this rezoning is the statement in the Plan that "the intent of this plan is not to recreate or recapture the past but to shape future growth in a manner that preserves the most important features of Jefferson County: the rural landscape, the natural beauty of the rivers, the rolling terrain and the strong sense of community."⁶

The Plan also states that "new growth must include a balance of jobs and housing and be respectful of the very qualities that are attracting new residents every year: the rural landscape, the natural beauty and the pleasing character of our towns and villages."⁷

Consistent with this vision, the Plan notes that "the biggest challenge of all is to provide an economic base that provides enough job opportunities to allow people to both live and work here."⁸

The proposed rezoning embraces and complements both vision components. With a \$50 million annual operating budget, the CBP training center will provide more than 200 jobs, many of them in the six figures. National Park Service payroll will similarly complement CBP's expenditures.

The Plan also states that farsighted and innovative planning will preserve natural amenities and enhance property values, and that it will also prevent undesirable intermingling of conflicting uses of land.⁹

The proposed rezoning accomplishes this objective by creating a mosaic of compatible land uses that establishes a transition zone between development

⁵ Jefferson County, West Virginia, Comprehensive Plan 2004.

⁶ *Id.*, at p. 8.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*, at p. 16.

and core National Park lands that also preserves the integrity of a nationally significant Civil War battlefield. The rezoning proposal reinforces the Plan goal to promote the conservation of the natural, cultural, and historical resources and the preservation of scenic beauty.¹⁰

Of the thirty (30) generalized issues of concern in the Plan¹¹, the rezoning proposal beneficially addresses three of those concerns:

- Historic Preservation¹²
- Parks, Trails and Open Space¹³
- Scenic Vistas and Spatial Character¹⁴

The rezoning proposal also supports other goals set out in the Plan:

- Promote growth and development that are both economically and environmentally sound
- Promote the conservation of the natural, cultural, and historical resources and the preservation of scenic beauty¹⁵

The rezoning proposal also speaks directly to a major concern of the Plan:

In terms of natural resources, Jefferson County suffers from an embarrassment of riches. If we are not careful, we could squander these resources for use and enjoyment of future generations.¹⁶

Unlike commercial development that can take place anywhere in Jefferson County, the essential Schoolhouse Ridge Civil War battlefield is location dependent. It is where it is and, once compromised, it can never be reestablished. Thanks to the strenuous efforts of various preservation and environmental organizations, nearly 90% of the Schoolhouse Ridge Civil War battlefield has been acquired and will remain intact in perpetuity.

The rezoning proposal eliminates the mix of illogical zoning classifications on these lands and replaces them with a Rural District zoning classification.

¹⁰ *Id.*, at p. 19.

¹¹ *Id.*, at p. 16.

¹² Issue Number 19, *id.*, at p. 16.

¹³ Issue Number 20, *id.*, at p. 16.

¹⁴ Issue Number 21, *id.*, at p. 16.

¹⁵ Statement of Goals, p. 19.

¹⁶ Natural Resources, p. 48.

This not only harmonizes land uses on the Federal lands and reflects their actual perpetual character, but it eliminates potential for poor land use decisions on adjacent lands by reflecting reality on the ground.

With respect to historic preservation, the Comprehensive Plan recognizes that Jefferson County is an area rich in historical and archeological interest. In fact, it says that this landscape has arguably been referred to as the most historic rural county in America.¹⁷

It specifically recognizes that the National Park Service lands subject to the rezoning proposal are “one of the major areas of military maneuver and the site of the John Brown Insurrection and that the County’s place at one of the crossroads of the Civil War forever links it to many of the important events that occurred during our Nation’s greatest test of endurance.”¹⁸

The Comprehensive Plan directly raises concern about preserving the Nation’s and Jefferson County’s patrimony. The Plan notes that “regardless of the success of the past, as an increasing number of tracts are developed for residential, commercial or industrial uses, existing unprotected historic resources become endangered, and that existing processes should be evaluated for their ability to address this growing issue.”¹⁹

The rezoning proposal directly addresses this concern by enhancing permanent protection for these nationally significant cultural and historic resources. In fact, the Plan states that the County should explore amendments and policies such as that proposed here to encourage preservation of historic resources.²⁰

As previously mentioned, the rezoning proposal enhances the economic development component of the Comprehensive Plan. The Plan notes that history, culture and scenic beauty combine to make Jefferson County an attractive area for travel and tourism.²¹ It notes that the US 340 corridor from the Shenandoah River to the Federal lands subject to the rezoning petition is the vantage point “from which one views the panorama of the rest of the

¹⁷ Comprehensive Plan, at p. 55.

¹⁸ *Id.*

¹⁹ *Id.*, at p. 56.

²⁰ *Id.*

²¹ *Id.*, at p. 66.

County from Alstadt's Hill" and that "it serves as the gateway to West Virginia."²²

All of the attributes discussed above clearly and convincingly demonstrate that the rezoning proposal not only is entirely consistent with the Comprehensive Plan, but that it achieves and reinforces many of the Plan's goals and objectives, and that it directly addresses concerns and issues raised in the Plan. There are no known or ascertainable countervailing arguments against a finding of consistency with the Comprehensive Plan.

Rural Zoning District Compatibility

It is a fundamental legal proposition that Federal lands are not subject to local zoning. However, virtually all of the uses on the Federal lands subject to the rezoning petition are principal permitted uses in the Rural District set out in the Zoning Ordinance.²³

As set out below, the National Park Service and US Customs and Border Protection lands subject to this rezoning proposal implicate six uses permitted as principal uses in the Rural District:

Section 5.7 Rural District

(a) Principal Permitted Uses²⁴

1. Agriculture as defined in Article 2²⁵ ...
2. Churches and private or public elementary, middle or secondary schools *and specialized or accredited educational and training facilities for adults in a campus setting, including classroom buildings, dormitories, cafeterias, gymnasiums (whose use is limited to the students, participants and instructors at said school or training facility), and administrative buildings.*

²² *Id.*, at p. 72.

²³ Jefferson County Zoning and Land Development Ordinance (effective December 3, 2009).

²⁴ *Id.*, at p. 55, *et seq.*

²⁵ The definition of "Agricultural Use" in Section 2.2(12) of the Zoning Ordinance includes "the production of field crops." This is the primary current and future use of the National Park Service lands included in the rezoning request, where contract farmers produce field crops as part of the battlefield scenery.

14. Public utilities uses, specified in Section 4.7 incident to any principal permitted uses.
15. Accessory buildings and uses customarily incident to any principal permitted uses.
18. Publicly owned facilities.
20. Wireless telecommunication facilities pursuant to Article 4B.

As noted previously, all of the proposed uses on the Federal lands subject to this proposal already exist, or are presently under construction with a completion date no later than the end of 2012. Thus, there are no changes contemplated on the ground and, for that reason these uses are a *fait accompli* and there will be no future changes in use.

Transportation & Character of the Neighborhood

According to the West Virginia Department of Transportation, the 2008 average daily trip count just west of the intersection of Route 340 and Route 27 (Millville/Bakerton Roads) shows approximately 29,400 daily trips on Route 340.²⁶

The Hagerstown Eastern Panhandle Planning Organization (HEPMPO) has a draft Long Range Multimodal Transportation Plan in progress. The draft indicates that US 340 between Harpers Ferry and Charles Town is considered a “deficient” highway based on the Level of Service (LOS) under the “Existing Plus Committed” analysis evaluating the road under 2035 conditions. It also states that US 340 in Harpers Ferry is “one of the most significant areas of both existing and projected future traffic congestion.”²⁷

The precise impacts of National Park Service and US Customs and Border Protection uses was not specifically set out in those studies. However, as previously noted, it may be anticipated that traffic impacts from NPS uses are expected to be minimal because the park will concentrate individual vehicles at the Cavalier Heights visitor center, and then bus visitors to

²⁶ April 29, 2010 memorandum from Director of Planning & Zoning Director Jennifer Brockman to County Commission Members, paragraph 2, p. 1.

²⁷ *Id.*, at pp. 1-2.

locations such as Schoolhouse Ridge interpretive sites. Parking lots at interpretive locations will be limited to approximately 10 cars.

As previously stated, US Customs and Border Protection already has worked out a traffic management plan with associated improvements with the West Virginia Department of Highways. These include a traffic light at the main entrance to its campus, turn lane extensions, and service road changes.

Even though the proposed rezoning will have *no* effect on traffic, a traffic study for the highway segment in the vicinity of the Route 340 Bakerton/Millville Roads (Route 27) intersection that was commissioned by the National Parks Conservation Association (NPCA)²⁸ is provided as background information in Exhibit C.

That being said, it should be recognized that the uses by NPS and CBP are already established and are independent of the proposed rezoning of lands administered by those agencies. The proposed rezoning will have *no* effect on uses of those lands. The rezoning is simply an acknowledgement and recognition of those changes, and an effort to harmonize zoning classifications to make them consistent with the uses that have been permanently established for these Federal lands. Simply put, the rezoning is a paper work exercise that has no effect on the uses of these lands.

As previously stated, the rezoning is consistent with the Comprehensive Plan. However, if the amendment were found to be 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. If unanticipated changes did occur, those changes must be found to have “substantially altered” the basic characteristics of the area.²⁹

By the Planning Commission’s unanimous vote to forward their recommendation supporting rezoning of the Federal lands to the County Commission, they have affirmatively found that the proposed rezoning is consistent with the Comprehensive Plan and that changes in uses on the

²⁸ *Review of Traffic Impact Study* by Smart Mobility, Inc. dated June 5, 2007

²⁹ *Id.*, paragraph 4, p. 2.

Federal lands in the preservation direction justify the clarification and rationalization of zoning classifications to recognize this new reality.

As can be seen from the attached map³⁰, since the 2004 Comprehensive Plan was adopted nearly 90% of the lands of interest to the National Park Service have been acquired with the assistance of private nonprofit preservation and environmental organizations. Thus a permanent *de facto* and substantial rezoning has occurred on the ground. Rather than supporting an increased intensity of use, all of these changes have been in the preservation direction. Thus, the requested rezoning is appropriate, in the public interest and consistent with the Comprehensive Plan.

Plat or Sketch Plan

The Zoning Ordinance states that a petition for a map amendment must contain a plat or sketch plan.³¹ However, in this case it appears that no plat or sketch plan is required for the reason that no development is contemplated in association with the proposed rezoning and all established uses are principal permitted uses within the Rural zoning district.

The requirement for a plat or sketch plan references Section 7.4(b) of the Zoning Ordinance.³² However, Article 7 states that the procedures contained therein are to review *development*.³³ Also that section goes on to say that references to plat or sketch plan requirements are for persons proposing *to develop land that is not a principal permitted use in the district where it is located*.³⁴

Since no development is contemplated in association with the Petition to Rezone Federal Lands, there is nothing to sketch or plat. Thus this requirement is inapplicable to this rezoning proposal.

³⁰ Map titled *Growth of Harpers Ferry NHP Since 2004*.

³¹ Zoning Ordinance Article 12, Section 12.3(b)(4).

³² *Id.*

³³ *Id.*, Section 7.1.

³⁴ *Id.*, Section 7.4(a)

Notice to Landowners

West Virginia Code requires that notice of an amendment to the zoning ordinance by the governing body be given “by certified mail to the landowner(s) whose property is directly involved in the proposed amendment to the zoning ordinance.”³⁵

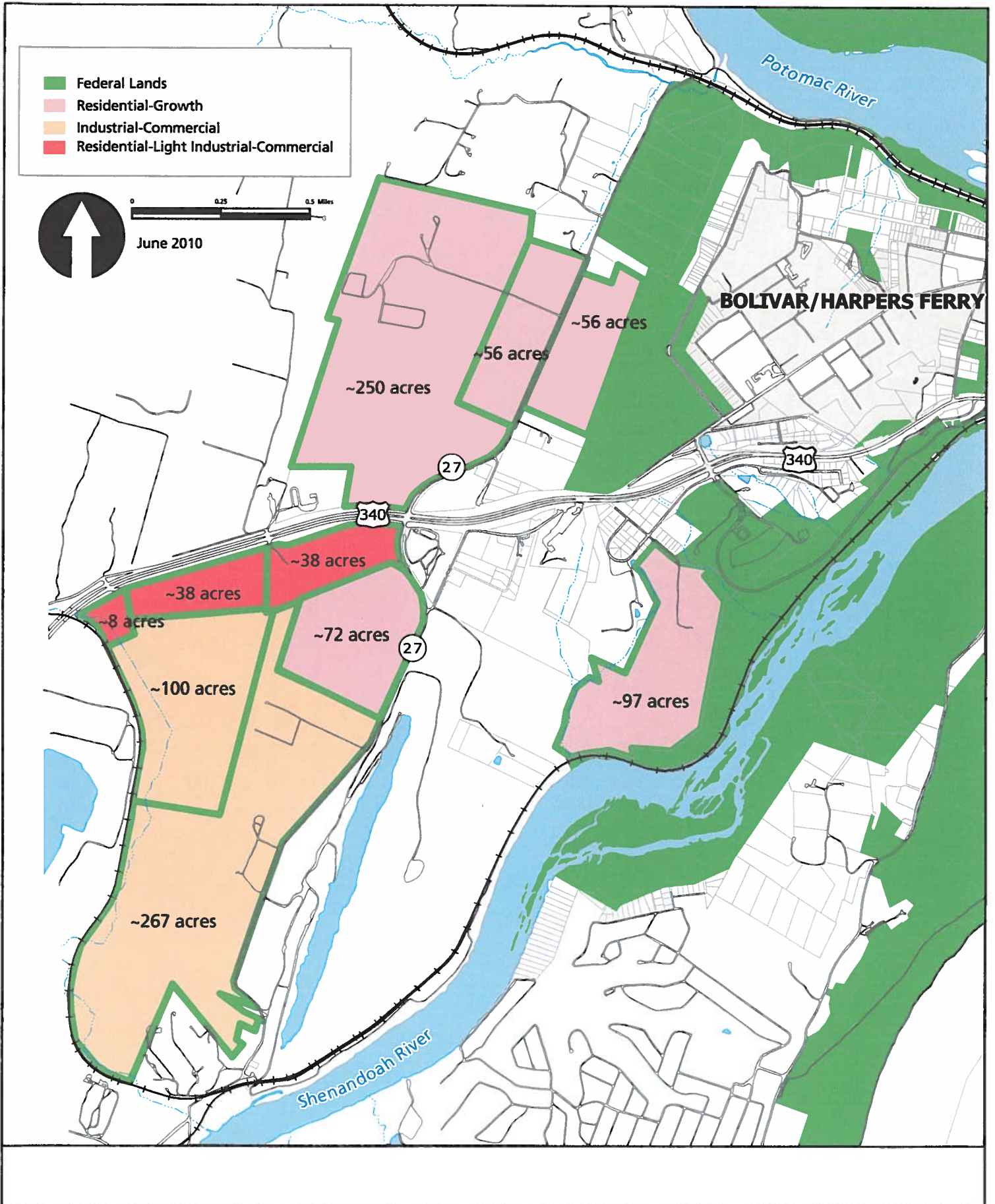
All of the parcels directly involved in the rezoning proposal are titled in the name of the United States of America. These Federal lands are administered by two agencies: the National Park Service and US Customs and Border Protection. Neither agency objects to the rezoning proposal, but certified letters informing them of the Petition to Rezone Federal Lands are being mailed, and the letters and return receipts are included in Exhibit D.

³⁵ West Virginia Code , Section 8a-7-8(1).

EXHIBIT A

MAPS

Zoning Classifications of Selected Federal Lands Harpers Ferry Vicinity



Growth of Harpers Ferry NHP Since 2004

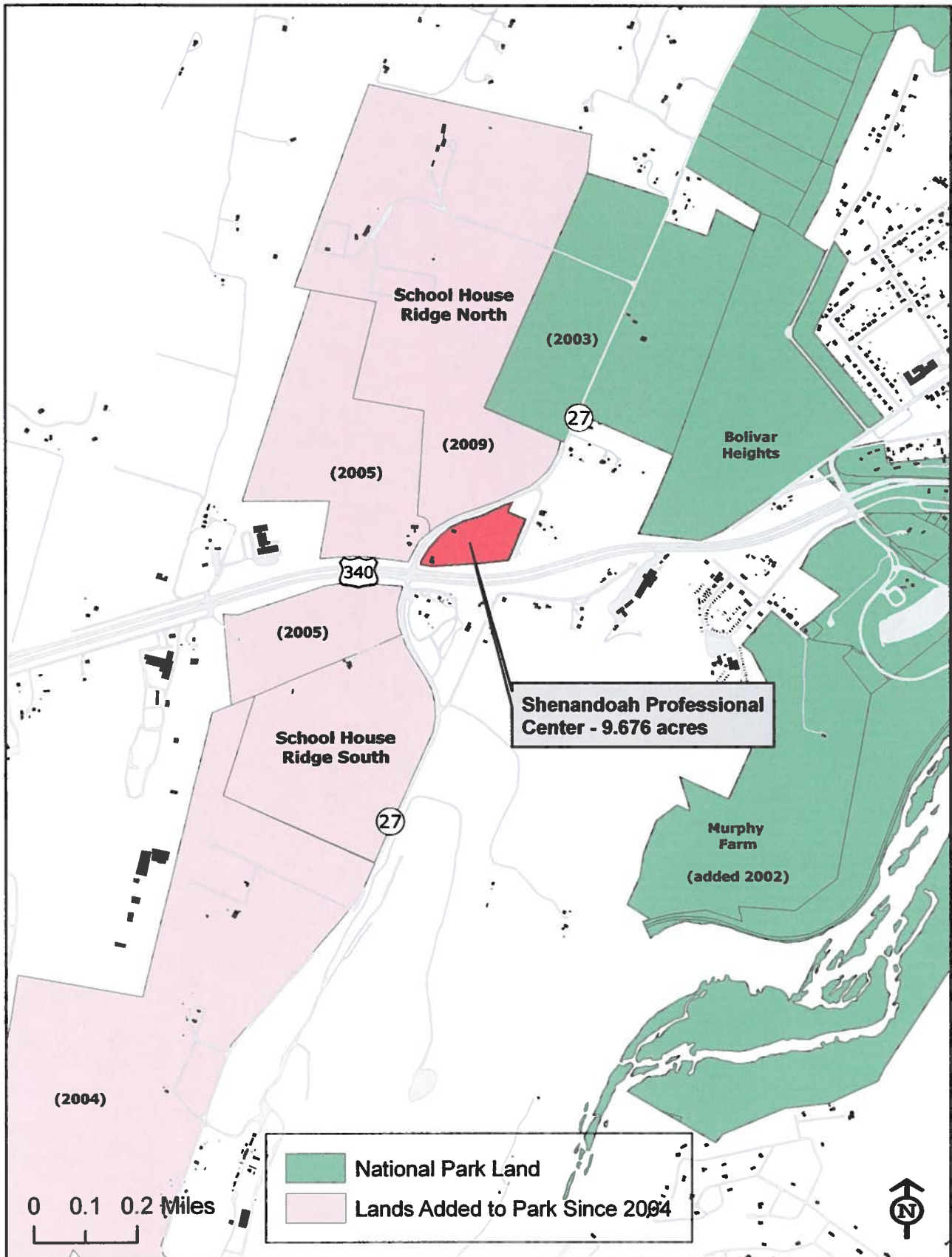


EXHIBIT B

TABLE OF PARCELS

**Table of Parcels
Subject to the
Petition to Rezone Federal Lands**

(All parcels are in Tax District 4—Harpers Ferry District)

<u>Map & Parcel Number</u>	<u>Deed Book Reference</u>	<u>Tract Size (Acres)</u>
9 12.1	1044 201	2.36
9 13.3	1037 510	13.30
9 15.0	1036 158	1.33
9 19.1	1036 152	0.96
9 19.0	1036 152	1.14
9 19.5	1037 680	2.29
9 19.3	1033 389	3.26
9 17.0	1033 389	2.91
9 18.0	1033 389	0.25
9 19.4	1056 592	5.27
9 19.6	1056 592	2.42
9 20.0	1056 592	5.28
9 21.0	0957 120	7.00
9 13.0	0957 603	38.01
9 40.1	1056 592	15.00
9 40.0	0694 540	271.82
9 37.1	1065 710	57.88
9 38.0	1011 049	37.31
9 39.0	1055 457	1.90
9 39.2	1064 184	57.61
9 39.3	1061 618	12.00
9 68.0	0968 641	30.85
9 36.0	1016 675	72.25
8 01.0	0968 641	6.19
8 02.0	0439 149	76.94
7 01.0	0905 328	40.00
7 02.0	0733 148	16.07
6 07.3	0974 426	56.00
6 08.1	0424 485	62.57
6 07.0	1065 710	66.81
6 07.2	1065 710	51.09
7 03.0	1049 292	56.00
7 31.0	0405 030	34.00
11 25.0	0694 540	55.63

EXHIBIT C
TRAFFIC STUDY

207-02



Memorandum

To: National Parks Conservation Association
From: Norman L. Marshall and Lucinda E. Gibson, P.E.
Subject: Review of Traffic Impact Study
Date: June 5, 2007

Summary

We have reviewed the "Old Standard LLC Quarry Traffic Impact Study", prepared by Greenhorne & O'Mara Consulting Engineers for Old Standard LLC, revised January 16, 2007. This memo documents significant errors and omissions in the traffic impact study. Most seriously, the study focuses all of its attention on the four-lane section of US 340 and its capacity to handle larger traffic volumes, and ignores the impacts of the proposed project on the two-lane section of US 340 immediately to the east. As demonstrated below, this section of roadway would reach a failing level-of-service F using the traffic volumes in the traffic impact study. Furthermore, the future traffic numbers used in the study are too low, so the true impacts are even greater.

Significant Impacts Identified in Traffic Impact Study

The traffic impact study (Table 4, p. 12) estimates that the proposed development will result in 16,227 new trips, with 2,171 new trips in the morning peak hour, and 2,093 new trips in the afternoon peak hour. The traffic impact study documents that proposed development would result in great increases in Route 340 traffic volumes during the peak hours.

Overall, at full buildout this development is expected to add approximately 6,500 VPD [vehicles per day] to US 340 east of Route 27 and approximately 4,550 VPD west of Route 230. Route 230 will experience an increase of approximately 1,620 VPD and Route 9 south of Route 27 will increase approximately 2,430 VPD. (traffic study, p. 12)

US 340 traffic volume estimates taken from the traffic impact study are graphed in Figures 1 and 2. These figures compare the counted 2006 traffic volumes, estimated 2011 traffic volumes with other planned projects and background traffic growth, and 3) 2011 with the Old Standard project.

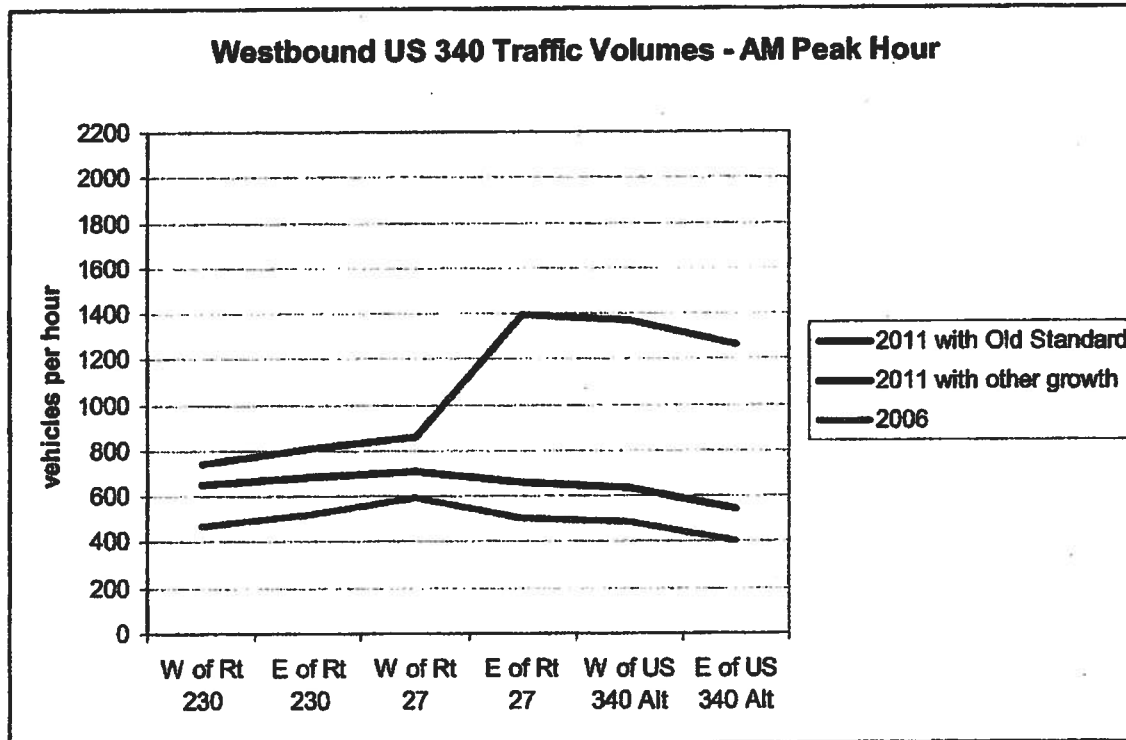
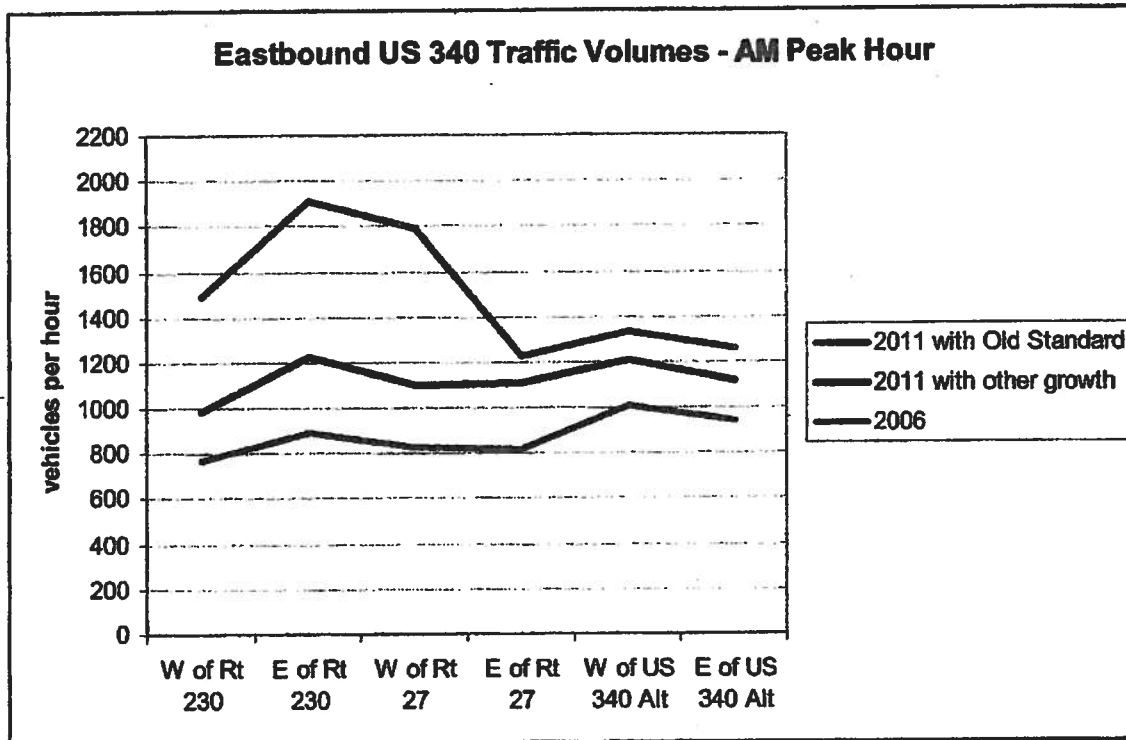
The traffic impact study assumes that a traffic signal will be installed at the US 340/Route 230 intersection as part of the Sheridan Subdivision. The Old Standard project would require installation of traffic signals at the US 340/Route 27 intersection and at the northernmost project access with Route 27. Analysis in the traffic impact study also indicates that a signal will be warranted at the Route 9/Route 27 intersection (p. 15). The traffic impact study describes US 340 as "a major four lane regional highway" and notes in error that the "posted speed limit in the vicinity of the site is 65 m.p.h." (p. 1). The speed limit west from the light at Bolivar Heights is 60 m.p.h., and from Bolivar Heights east is 45 m.p.h. A 60 m.p.h. speed limit is unsafe for a strip of highway with closely spaced signals and large turning movement volumes at the signalized intersections. The proposed development will significantly change the character of US 340 in this area.

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JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

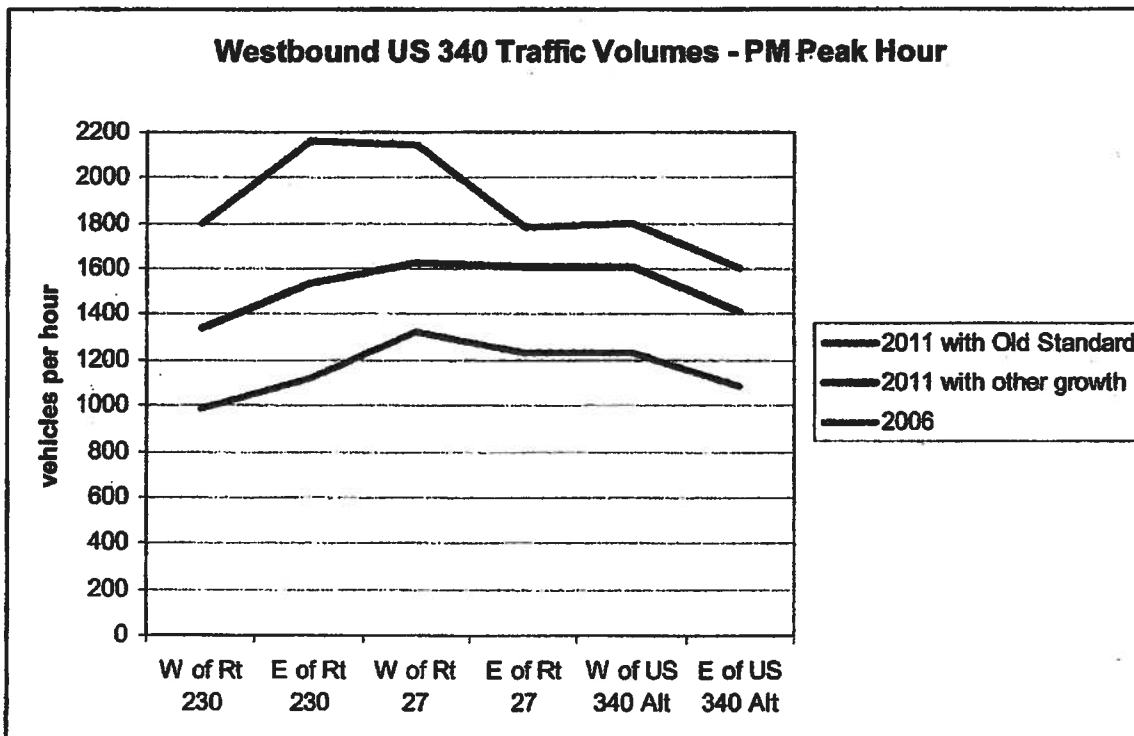
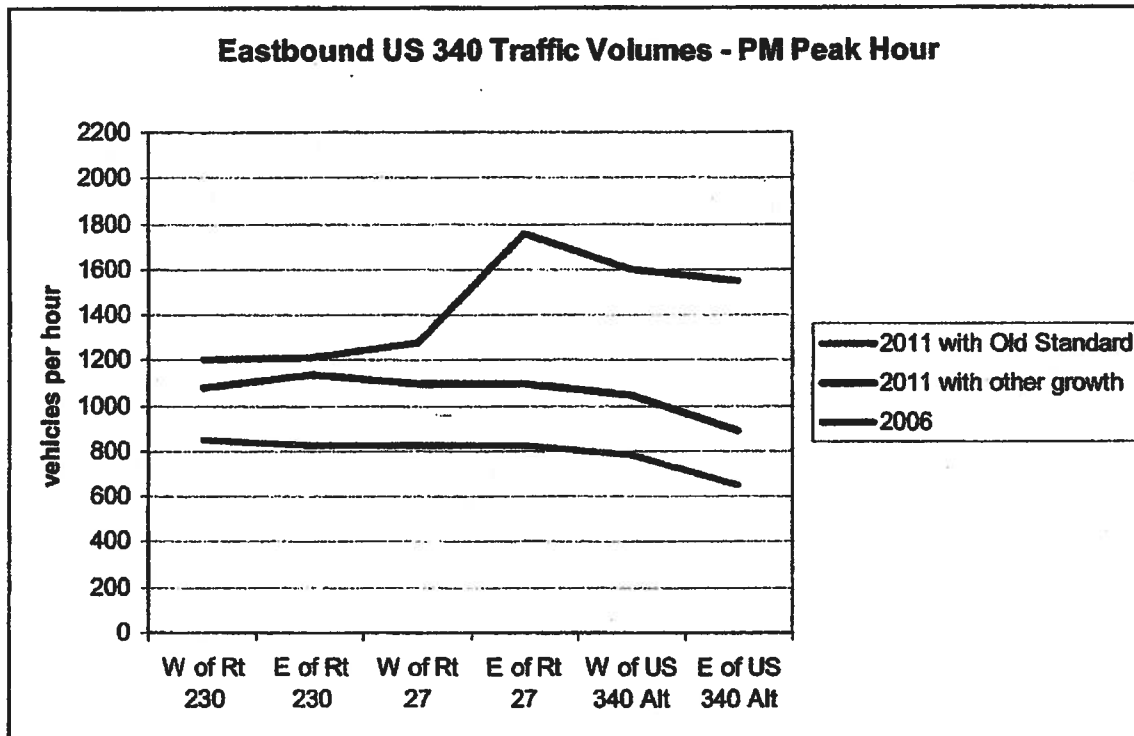
Figure 1: Morning Peak Hour Traffic Volumes from Old Standard Traffic Impact Study



Notes:

Traffic volumes taken directly from "Old Quarry Traffic Impact Study", Greenhorne & O'Mara Consulting Engineers, January 16, 2007, Figures 3, 6 and 9. 340 Alt is at Bolivar Heights stoplight.)

Figure 2: Afternoon Peak Hour Traffic Volumes from Old Standard Traffic Impact Study



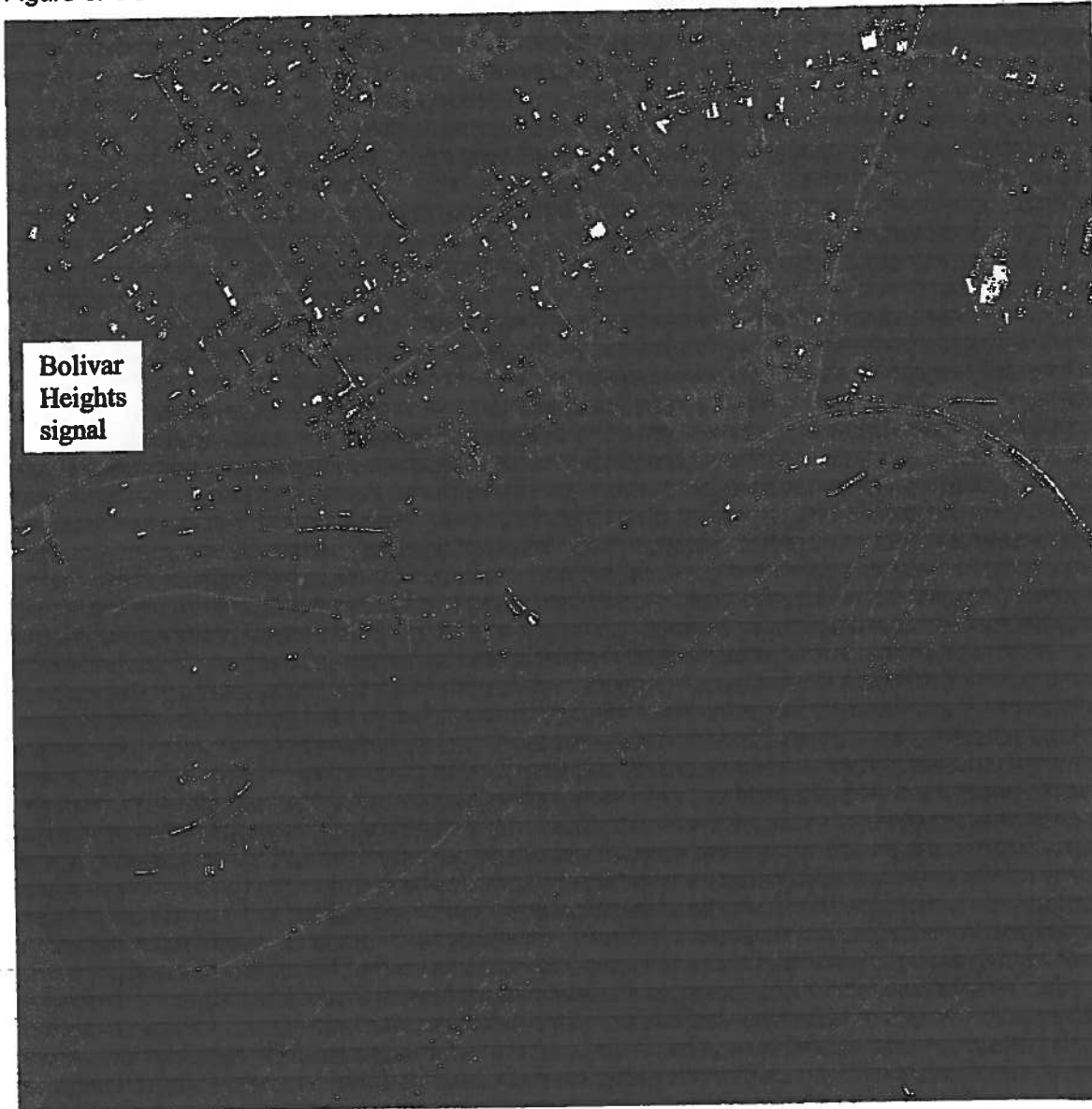
Notes:

Traffic volumes taken directly from "Old Quarry Traffic Impact Study", Greenhorne & O'Mara Consulting Engineers, January 16, 2007, Figures 3, 6 and 9. 340 Alt is at Bolivar Heights stoplight.)

Significant Impacts Not Disclosed in Traffic Impact Study

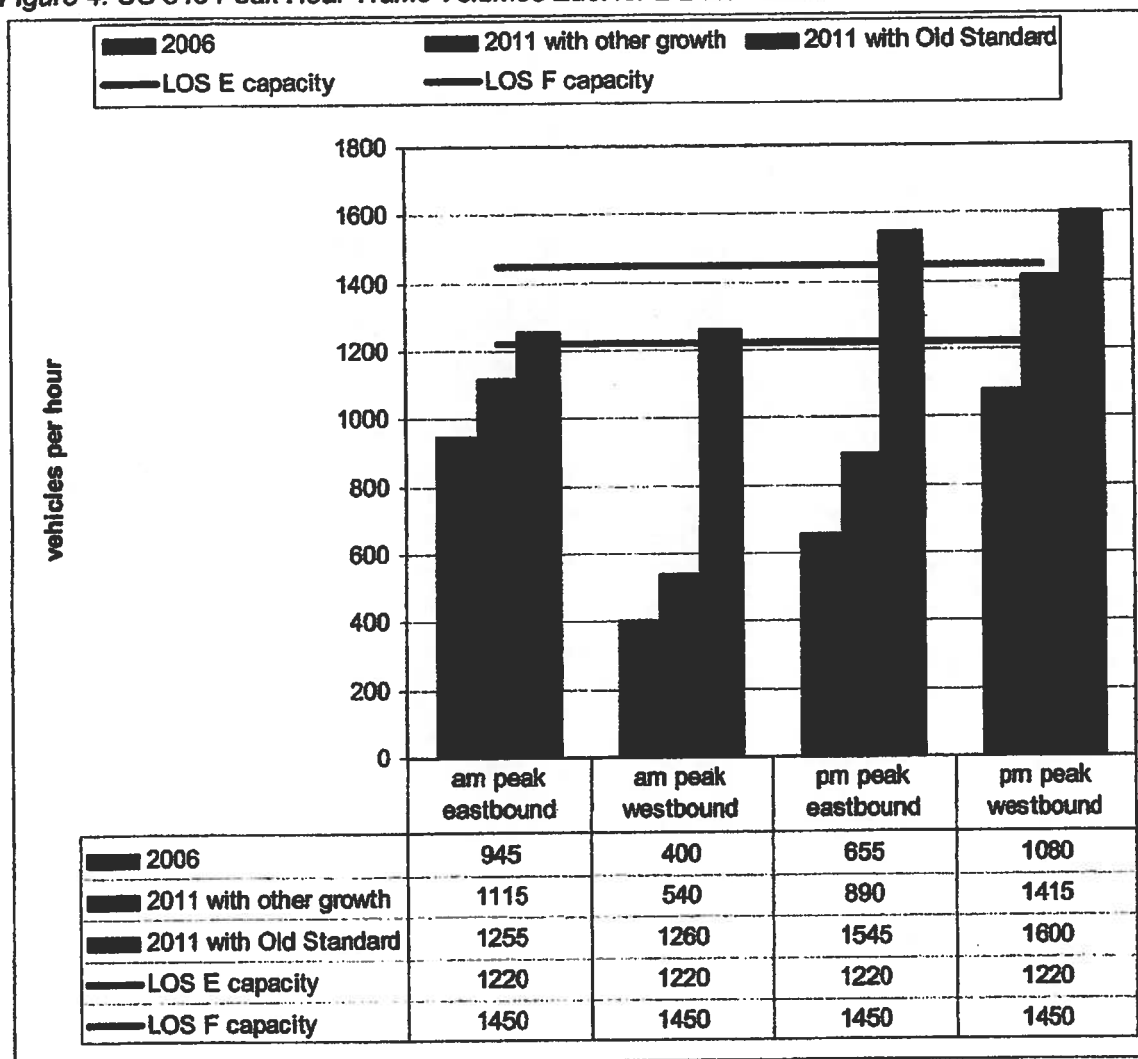
The traffic impact study focuses on the four-lane section of US 340. The four-lane section begins just to the east of the signalized intersection of US 340 with US 340 Alt at Bolivar Heights. To the east, US 340 is a two-lane roadway including a bridge over the Shenandoah River reconstructed in 2000.

Figure 3: US 340 Four-Lane and Two-Lane Sections Including Bridge Over Shenandoah River



By focusing on providing adequate levels of service where it is relatively easy to do it – on the four-lane section, and ignoring the effect of increased traffic volumes on the two-lane section, the traffic study dramatically understates the impact of traffic generated by the proposed development on area traffic. We have taken the numbers from the traffic impact study and entered them into Highway Capacity Software (the same program used in the traffic impact study) and determined that the traffic volumes exceed the maximum number of vehicles that could pass through that section in an hour. This represents a failing level-of-service “F”. At level-of-service F, traffic is stop-and-go and the queues of backed up traffic will grow longer over time, not just on some weekdays but on all weekdays.

Figure 4: US 340 Peak Hour Traffic Volumes East for 2-Lane Section



Notes:

At the threshold of level-of-service E, cars are following another car in front of them at least 80 percent of time at speeds less than or equal to 40 m.p.h. At level-of-service F, cars are following another car in front of them 100 percent of time, generally in stop-and-go traffic. The higher that traffic volumes are above level-of-service F capacity, the farther the traffic backs up and the longer it will take to clear.

This is a fatal flaw with the proposed development. The traffic network is only as strong as the weakest link. Because of the over-capacity level-of-service F conditions described above, the traffic volumes shown in the traffic study will not even reach the intersections analyzed in the traffic impact study. Many of the cars will be stuck in Virginia.

Furthermore, Figure 4 understates the magnitude of the problem due to other problems with the traffic impact statement, including:

- apparently omitting counted trucks from the analysis,
- relying on summer Friday counts, in contrast to standard industry protocols because so doing likely underestimates average conditions,
- basing the traffic study on traffic generated by two large buildings (one of 858,000 square feet and the other (the flex space) of 520,000 square feet plus warehouse and hotel space, instead of the proposed approximately 16 separate smaller office buildings, and
- ignoring uncertainty in future trip generation and background traffic.

Problems with Traffic Counts/"Existing Conditions" Analysis

It appears that existing truck traffic¹ was incorrectly omitted from both the Existing Conditions analyses and all future analyses. Appendix A includes traffic count printouts for counts done by Sabra, Wang & Associates Inc. For most of the intersections Appendix A includes two sets of count information, with each set numbered pages 1-6. The traffic impact study uses the first set, labeled, cryptically "Unshifted." The second set (not used in the traffic impact study) is labeled "Unshifted - TRUCKS." Without looking at the numbers, one might conclude that this second set includes truck counts only. However, the numbers in the second set are somewhat higher than the first set, and the magnitude of the difference is consistent with adding trucks. Therefore, it appears that the first set includes cars only, and that the second set (including trucks) should have been used in the level-of-service analyses. For example, at the US 340 /US 340 Alt intersection, the eastbound approach volume used in the traffic impact study was 1009 vehicles between 7 a.m. and 8 a.m. When trucks are included, the total approach volume is 1077. This implies that 6.3 percent of the vehicles are trucks, which appears to be reasonable. For the westbound approach, the numbers with and without trucks are 395 and 458, respectively. This implies 13.8 percent trucks, which is also reasonable. The truck traffic volumes are similar in both directions, but the passenger traffic volume is much higher in the eastbound direction.

There is another problem with ignoring trucks in the analyses in LOS analysis. Highway capacity analysis is done on the basis of "passenger car equivalents" where each truck consumes more roadway capacity than each car. If trucks were not considered in entering the volumes in the Highway Capacity Software worksheets, it is unlikely that the percentage trucks were entered. This would mean either that the level-of-service analyses assumed that there were no trucks, or that there were a nominal default number of trucks. Neither of these would be correct, and the level-of-service analyses would overestimate the levels of service.

There also are problems with the estimates of existing car traffic, which are based on traffic counts for Friday, August 4, 2006. The West Virginia Department of Transportation specifies that counts be done on Fridays, but this is contrary to national practice. For example, the Institute of Transportation Engineers' (ITE) book *Transportation Impact Analyses for Site Development (2006)* specifies;

¹ When trucks counts are done, the rules used generally exclude pickup trucks. A common rule is to count trucks with more than four tires.

... peak period (site and street peaks) turning movement counts (in good weather, usually excluding Mondays and Fridays, when school is in session; otherwise, summer counts are acceptable, but may need to be “seasonally” adjusted); (p. 19)

The rationale for excluding Mondays and especially, Fridays, is that traffic patterns may be significantly different from the other weekdays. This is especially true in the summer, when taking three-day weekends is common. This problem is aggravated because early August is likely to be the peak vacation time of the entire year. Many regular commuters likely did not commute on August 4, 2006, and many who did commute that day may have shifted their travel times. For the intersection of US 340/US 340 Alt (the most important intersection in this critique), the peak 15 minutes counted in the morning was the first 15 minutes (7:00 -7:15 a.m.) This suggests that a significant number of commuters may have shifted their commute earlier, and that the peak hour may not have been counted at all. There also is an anomaly in the afternoon count at this location, where the 5:00 – 5:15 p.m. 15-minute period had the lowest traffic observed between 4 p.m. and 6 p.m. It seems likely that August 4, 2006 was an atypical traffic day, and that observed traffic volumes were likely lower than average, particularly during the morning peak hour.

The ITE excerpt quoted above also mentioned the possibility of seasonal adjustments. Traffic volumes vary by time of year and day of week. Design is typically done for the “design hour” – most commonly the thirtieth highest hour of the year.² The design hour concept is based on balancing the need to provide adequate levels of service for most days against the cost that might be necessary to provide adequate levels of service during peak traffic flows. The traffic impact study does not discuss traffic variation or attempt to estimate design hour traffic volumes.

Traffic count contracts done for public agencies interested in average traffic volumes often specify that counts be done only when school is in session and only on Mondays, Tuesdays, Wednesdays and Thursdays. The summer months and all Fridays are considered unrepresentative of average conditions.

It is likely that the morning commuting traffic volume was unusually low on August 4, 2006 due to some workers taking vacation and others taking long weekends. It is also likely that the summer commutes may occur earlier in the day than during the majority of the year. For the US 340/US 340 Alt intersection, the peak 15-minute period between 7 a.m. and 9 a.m. (the period counted) was between 7:00 and 7:15 a.m. Therefore, we cannot even know for sure whether the peak hour really was between 7:00 and 8:00 a.m. as assumed. It may have been earlier on that day. Similarly, the afternoon peak 15 minutes observed between 4 p.m. and 6 p.m. was the first hour – 4:00 – 5:00 p.m. Not only do these August 4, 2006 counts not represent design hour conditions, they are likely to represent a below-average condition.

The traffic counts/Existing Conditions analysis is the base for all of the other analyses. If the analyzed traffic volumes are too low due to omitting trucks and not considering an appropriate design period, all of the other analyzed volumes also are too low, and the future levels of service are overestimated.

Trip Generation Error

The trip generation equations are estimated from traffic counts across the U.S. The land use category generating most of the daily trips estimated in the traffic impact study is labeled “General Office Building” in the Institute of Transportation Engineers’ *Trip Generation*. The traffic impact study treats the office space as two very large, standalone office buildings – one of 858,000 square feet and the

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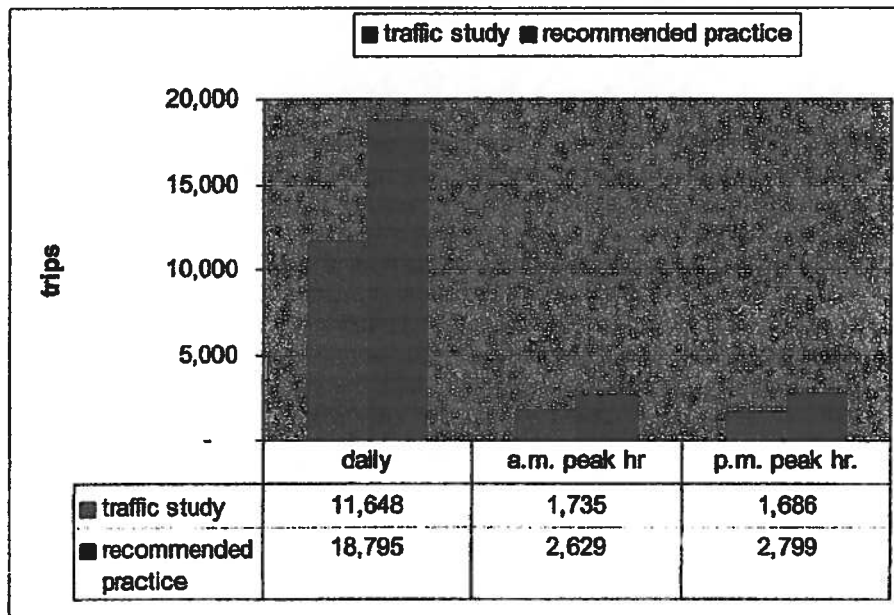
other (the flex space) of 520,000 square feet. Very few of the counts in the Trip Generation data set exceed 858,000 square feet. In general, the few large office buildings in the data set have lower trip rates, on average, than the smaller office buildings. This results in a fitted equation where large buildings are estimated to produce less traffic than the same space in smaller buildings.

The preliminary plans accompanying the traffic impact study imply that the plans are for a number of individual buildings rather than two large office buildings. The guidance in Trip Generation is:

When the buildings are interrelated by shared parking facilities or the ability to easily walk between buildings) or house one tenant, it is suggested that the total area or employment of all the buildings be used for calculating the trip generation. When the individual buildings are isolated and not related to one another, it is suggested that the trip generation be calculated for each building separately and then summed.³

No evidence has been put forward that the buildings would house a single tenant or share facilities. Therefore, trip generation should have been estimated for separate buildings and added together. The plan indicates that about 16 office buildings may be constructed. Adding the office space (845,000 sq. ft.) and flex space (520,000 sq. ft.) gives a total of 1,365,000 square feet; dividing this total by 16 results in 85,313. ft. per building. Figure 5 summarizes trip generation for 16 separate 85,313 square foot buildings versus the trip generation numbers in the traffic impact study. By using two large buildings instead of the 16 smaller buildings currently proposed to model the traffic impacts, the traffic impact study shows lower impacts because a number of smaller buildings is estimated to generate more traffic than the same amount of commercial/office space contained in one or two large buildings.”

Figure 5: Recalculated Trip Generation for Office Use Following Recommended Practice in Trip Generation



³ Institute of Transportation Engineers. Trip Generation, 6th Edition, p. 1043, 1997.

As shown in Figure 5, the recommended practice of calculating trip generation for separate office buildings results in 7,100 more daily trips, 900 more morning peak hour trips, and 1,100 more afternoon peak hour trips than assumed in the traffic impact study. However, even this is not the worst case scenario. The methodology in *Trip Generation* gives average trip generation rates, and there is considerable variation around this mean. In general, it can be expected that actual trip generation will exceed the calculated rates 50 percent of the time and be lower than the calculated rates 50 percent of the time. Therefore, the actual rates could be significantly higher even than the rates shown in Figure 5.

The numbers above address only the office and flex space components of the proposed development, and need to be added together with trip generation for the hotel, restaurant and warehouse uses. The grand totals, using the trip generation estimates in the traffic study for the other uses, are:

- daily 23,374 trips,
- morning peak hour 3,064 trips, and
- afternoon peak hour 3,218 trips

Future Conditions if the Old Standard Project is Built

As documented above, the traffic impact study is seriously flawed because it:

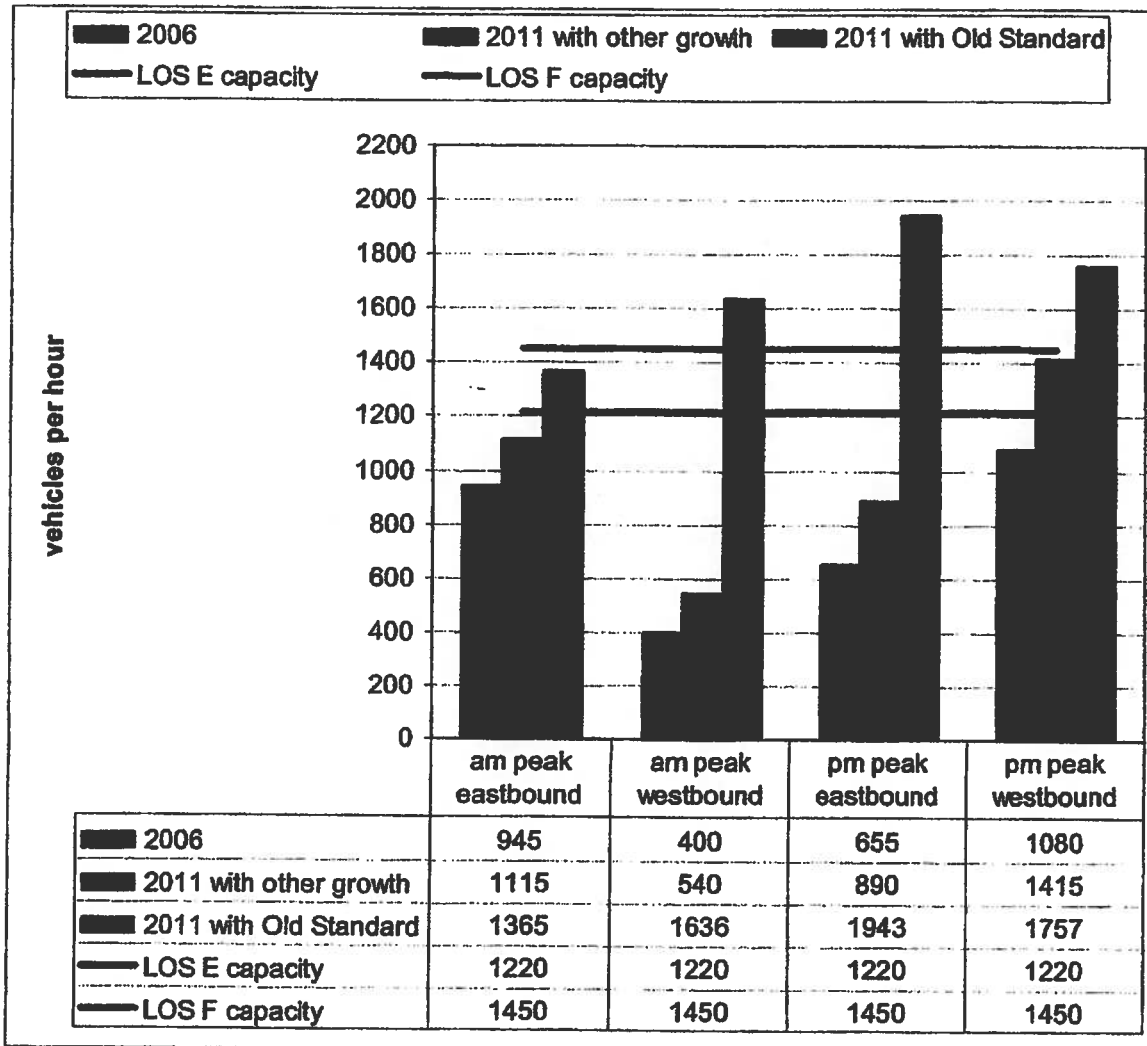
- appears to omit counted trucks from the analyses,
- bases the analyses on uncharacteristically low traffic counts,
- models traffic from two large buildings rather than the 16 proposed, and
- underestimates office trip generation by failing to follow recommended procedures.

Most seriously, the study focuses all of its attention on the four-lane Section of US 340 and its capacity to handle larger traffic volumes, and ignores the impacts of the proposed project on the two-lane section of US 340 immediately to the east. As discussed above, this section of roadway would reach a failing level-of-service F, even using the traffic volumes in the traffic impact study. Figure 6 below shows the impacts on the two-lane section of US 340 with corrections for the omitted trucks and the underestimated office trip generation. (No adjustment has been made for the likely underestimation of existing traffic volumes; correcting for this likely error would make the results even worse, particularly for the morning peak hour.)

In Figure 6, the traffic volumes with Old Standard (red) total to over twice today's traffic volumes (green) in both the morning and afternoon peak hours. Traffic volumes are shown as significantly in excess of level-of-service F capacity in both directions in the afternoon peak hour, and in the westbound direction during the morning peak hour. The morning peak eastbound volume shown also is very close to level-of-service F capacity, and would likely be shown to exceed it if base traffic had been counted on a more typical commuting day than on a Friday in August. The increases are particularly great in the reverse commute direction (i.e. from Virginia in the morning and returning to Virginia in the afternoon). This reflects the traffic impact study assumption that 40 percent of the workers will be coming from east of Harpers Ferry.

Traffic volumes analyzed in the traffic study are too low due to the four factors described above. Therefore, the level-of-service analyses in the traffic impact study are invalid. However, it is not useful to redo the analyses because the corrected traffic volumes cannot reach the analyzed intersections in the four-lane section because the traffic volumes are too high to pass through the two-lane section of US 340. Unless it is assumed that the roadway and bridge will be widened, it is invalid to assume such high traffic volumes on the four-lane section.

Figure 6: US 340 Peak Hour Traffic Volumes for 2-Lane Section (with omitted trucks and corrected Office trip generation)



Notes: At the threshold of level-of-service E, cars are following another car in front of them at least 80 percent of time at speeds less than or equal to 40 m.p.h. At level-of-service F, cars are following another car in front of them 100 percent of time, generally in stop-and-go traffic. The higher traffic volumes are above level-of-service F capacity, the farther the traffic backs up and the longer it will take to clear.

Errata sheet for
Smart Mobility, Inc
Analysis for NPCA of
The Old Standard LLC Quarry Traffic Impact Study
June 2007

Page 7

Footnote # 2 text is missing. Should read:

A Policy on Geometric Design of Highways and Streets, American Association of State Highway and Transportation Officials (AASHTO), 5th edition, 2004, p.59.

Resume

NORMAN L. MARSHALL, Principal

nmarshall@smartmobility.com

EDUCATION:

Master of Science in Engineering Sciences, Dartmouth College, Hanover, NH, 1982
Bachelor of Science in Mathematics, Worcester Polytechnic Institute, Worcester, MA, 1977

PROFESSIONAL EXPERIENCE:

Norm Marshall helped found Smart Mobility, Inc. in 2001. Prior to this, he was at Resource Systems Group, Inc. for 14 years where he developed a national practice in travel demand modeling. He specializes in analyzing the relationships between the built environment and travel behavior, and doing planning that coordinates multi-modal transportation with land use and community needs.

Regional Land Use/Transportation Scenario Planning

Chicago Metropolis Plan and Chicago Metropolis Freight Plan (6-county region)— developed alternative transportation scenarios, made enhancements in the regional travel demand model, and used the enhanced model to evaluate alternative scenarios including development of alternative regional transit concepts. Developed multi-class assignment model and used it to analyze freight alternatives including congestion pricing and other peak shifting strategies. Chicago Metropolis 2020 was awarded the Daniel Burnham Award for regional planning in 2004 by the American Planning Association, based in part on this work.

Envision Central Texas Vision (5-county region)—implemented many enhancements in regional model including multiple time periods, feedback from congestion to trip distribution and mode choice, new life style trip production rates, auto availability model sensitive to urban design variables, non-motorized trip model sensitive to urban design variables, and mode choice model sensitive to urban design variables and with higher values of time (more accurate for "choice" riders). Analyzed set land use/transportation scenarios including developing transit concepts to match the different land use scenarios.

Mid-Ohio Regional Planning Commission Regional Growth Strategy (7-county Columbus region)— developed alternative future land use scenarios and calculated performance measures for use in a large public regional visioning project.

Baltimore Vision 2030—working with the Baltimore Metropolitan Council and the Baltimore Regional Partnership, increased regional travel demand model's sensitivity to land use and transportation infrastructure. Enhanced model was used to test alternative land use and transportation scenarios including different levels of public transit.

Burlington (Vermont) Transportation Plan – Leading team developing Transportation Plan focused on supporting increased population and employment without increases in traffic by focusing investments and policies on transit, walking, biking and Transportation Demand Management.

Transit Planning

Regional Transportation Authority (Chicago) and Chicago Metropolis 2020 – evaluating alternative 2020 and 2030 system-wide transit scenarios including deterioration and enhance/expand under alternative land use and energy pricing assumptions in support of initiatives for increased public funding.

Capital Metropolitan Transportation Authority (Austin, TX) Transit Vision – analyzed the regional effects of implementing the transit vision in concert with an aggressive transit-oriented development plan developed by Calthorpe Associates. Transit vision includes commuter rail and BRT.

Bus Rapid Transit for Northern Virginia HOT Lanes (Breakthrough Technologies, Inc and Environmental Defense.) – analyzed alternative Bus Rapid Transit (BRT) strategies for proposed privately-developing High Occupancy Toll lanes on I-95 and I-495 (Capital Beltway) including different service alternatives (point-to-point services, trunk lines intersecting connecting routes at in-line stations, and hybrid).

Central Ohio Transportation Authority (Columbus) – analyzed the regional effects of implementing a rail vision plan on transit-oriented development potential and possible regional benefits that would result.

Essex (VT) Commuter Rail Environmental Assessment (Vermont Agency of Transportation and Chittenden County Metropolitan Planning Organization)—estimated transit ridership for commuter rail and enhanced bus scenarios, as well as traffic volumes.

Georgia Intercity Rail Plan (Georgia DOT)—developed statewide travel demand model for the Georgia Department of Transportation including auto, air, bus and rail modes. Work included estimating travel demand and mode split models, and building the Departments ARC/INFO database for a model running with a GIS user interface.

Roadway Corridor Planning

State Routes 5 & 92 Scoping Phase (NYSDOT)—evaluated TSM, TDM, transit and highway widening alternatives for the New York State Department of Transportation using local and national data, and a linkage between a regional network model and a detailed subarea CORSIM model.

Twin Cities Minnesota Area and Corridor Studies (MinnDOT)—improved regional demand model to better match observed traffic volumes, particularly in suburban growth areas. Applied enhanced model in a series of subarea and corridor studies.

Developing Regional Transportation Model

Pease Area Transportation and Air Quality Planning (New Hampshire DOT)—developed an integrated land use allocation, transportation, and air quality model for a three-county New Hampshire and Maine seacoast region that covers two New Hampshire MPOs, the Seacoast MPO and the Salem-Plaistow MPO.

Syracuse Intermodal Model (Syracuse Metropolitan Transportation Council)—developed custom trip generation, trip distribution, and mode split models for the Syracuse Metropolitan Transportation

Council. All of the new models were developed on a person-trip basis, with the trip distribution model and mode split models based on one estimated logit model formulation.

Portland Area Comprehensive Travel Study (Portland Area Comprehensive Transportation Study)—Travel Demand Model Upgrade—enhanced the Portland Maine regional model (TRIPS software). Estimated person-based trip generation and distribution, and a mode split model including drive alone, shared ride, bus, and walk/bike modes.

Chittenden County ISTE A Planning (Chittenden County Metropolitan Planning Organization)—developed a land use allocation model and a set of performance measures for Chittenden County (Burlington) Vermont for use in transportation planning studies required by the Intermodal Surface Transportation Efficiency Act (ISTEA).

Research

Obesity and the Built Environment (National Institutes of Health and Robert Wood Johnston Foundation) – Working with the Dartmouth Medical School to study the influence of local land use on middle school students in Vermont and New Hampshire, with a focus on physical activity and obesity.

The Future of Transportation Modeling (New Jersey DOT)—Member of Advisory Board on project for State of New Jersey researching trends and directions, and making recommendations for future practice.

Trip Generation Characteristics of Multi-Use Development (Florida DOT)—estimated internal vehicle trips, internal pedestrian trips, and trip-making characteristics of residents at large multi-use developments in Fort Lauderdale, Florida.

Improved Transportation Models for the Future—assisted Sandia National Laboratories in developing a prototype model of the future linking ARC/INFO to the EMME/2 Albuquerque model and adding a land use allocation model and auto ownership model including alternative vehicle types.

Critiques

C-470 (Denver region) – Reviewed express toll lane proposal for Douglas County, Colorado and prepared reports on operations, safety, finances, and alternatives.

Intercounty Connector (Maryland) – Reviewed proposed toll road and modeled alternatives with different combinations of roadway capacity, transit capacity (both on and off Intercounty Connector) and pricing.

Foothills South Toll Road (Orange County, CA) – Reviewed modeling of proposed toll road.

I-93 Widening (New Hampshire) – Reviewed Environment Impact Statement and modeling, with a particular focus on induced travel and secondary impacts, and also a detailed look at transit potential in the corridor.

Stillwater Bridge – Participated in 4-person expert panel assembled by Minnesota DOT to review modeling of proposed replacement bridge in Stillwater, with special attention to land use, induced travel, pricing, and transit use.

Ohio River Bridges Projects– Reviewed Environmental Impact Statement for proposed new freeway bridge east of Louisville Kentucky for River Fields, a local land trust and historic preservation not-for-profit organization.

Indiana I-69 – Reviewed model analyses from Indiana statewide travel demand model of proposed new Interstate highway for coalition, including the Environmental Law and Policy Center of the Midwest.

Washington, DC region – Reviewed modeling of Potomac River bridge crossings.

Phoenix, Arizona – Reviewed conformity analyses and long-term transportation plan under contract to Tempe, a municipality in the Phoenix region.

Atlanta, Georgia – Critiqued conformity analyses and long-term transportation plan for an environmental coalition.

Daniel Island (Charleston, South Carolina) – Reviewed Draft Environmental Impact Statement for large proposed Port expansion (the “Global Gateway”) for an environmental coalition.

Houston, Texas– Analyzed conformity analyses and long-term transportation plan for an environmental coalition.

PUBLICATIONS AND PRESENTATIONS (partial list)

Sketch Transit Modeling Based on 2000 Census Data with Brian Grady. Presented at the Annual Meeting of the Transportation Research Board, Washington DC, January 2006, and *Transportation Research Record*, No. 1986, “Transit Management, Maintenance, Technology and Planning”, p. 182-189, 2006.

Travel Demand Modeling for Regional Visioning and Scenario Analysis with Brian Grady. Presented at the Annual Meeting of the Transportation Research Board, Washington DC, January 2005, and *Transportation Research Record*, No. 1921, “Travel Demand 2005”, p. 55-63, 2006.

Chicago Metropolis 2020: the Business Community Develops an Integrated Land Use/Transportation Plan with Brian Grady, Frank Beal and John Fregonese, presented at the Transportation Research Board’s Conference on Planning Applications, Baton Rouge LA, April 2003.

Chicago Metropolis 2020: the Business Community Develops an Integrated Land Use/Transportation Plan with Lucinda Gibson, P.E., Frank Beal and John Fregonese, presented at the Institute of Transportation Engineers Technical Conference on Transportation’s Role in Successful Communities, Fort Lauderdale FL, March 2003.

Evidence of Induced Travel with Bill Cowart, presented in association with the Ninth Session of the Commission on Sustainable Development, United Nations, New York City, April 2001.

Induced Demand at the Metropolitan Level – Regulatory Disputes in Conformity Determinations and Environmental Impact Statement Approvals, Transportation Research Forum, Annapolis MD, November 2000.

Evidence of Induced Demand in the Texas Transportation Institute's Urban Roadway Congestion Study Data Set, Transportation Research Board Annual Meeting, Washington DC: January 2000.

Subarea Modeling with a Regional Model and CORSIM" with K. Kaliski, presented at Seventh National Transportation Research Board Conference on the Application of Transportation Planning Methods, Boston MA, May 1999.

New Distribution and Mode Choice Models for Chicago with K. Ballard, Transportation Research Board Annual Meeting, Washington DC: January 1998.

"Land Use Allocation Modeling in Uni-Centric and Multi-Centric Regions" with S. Lawe, Transportation Research Board Annual Meeting, Washington DC: January 1996.

Multimodal Statewide Travel Demand Modeling Within a GIS with S. Lawe, Transportation Research Board Annual Meeting, Washington DC: January 1996.

Linking a GIS and a Statewide Transportation Planning Model, with L. Barbour and Judith LaFavor, Urban and Regional Information Systems Association (URISA) Annual Conference, San Antonio, TX, July 1995.

Land Use, Transportation, and Air Quality Models Linked With ARC/INFO. with C. Hanley, C. Blewitt, and M. Lewis, Urban and Regional Information Systems Association (URISA) Annual Conference, San Antonio, TX, July 1995.

Forecasting Land Use Changes for Transportation Alternative with S. Lawe, Fifth National Conference on the Application of Transportation Planning Methods, Seattle WA, April 1995.

Forecasting Land Use Changes for Transportation Alternatives, with S. Lawe, Fifth National Conference on the Application of Transportation Planning Methods (Transportation Research Board), Seattle WA, April 1995.

Integrated Transportation, Land Use, and Air Quality Modeling Environment with C. Hanley and M. Lewis Fifth National Conference on the Application of Transportation Planning Methods (Transportation Research Board), Seattle WA, April 1995.

MEMBERSHIPS/AFFILIATIONS

Member, Institute of Transportation Engineers
Individual Affiliate, Transportation Research Board
Member, American Planning Association
Member, Congress for the New Urbanism
Technical Advisory Committee Member and past Board Member, Vital Communities (VT/NH)

Resume

LUCINDA GIBSON, PE, Principal

lgibson@smartmobility.com

EDUCATION

- Master of Science in Engineering Sciences, Dartmouth College, Hanover, NH, 1988
- Bachelor of Science in Civil Engineering, University of Vermont, Burlington, VT, 1983

SELECTED PROFESSIONAL EXPERIENCE:

Ms. Gibson helped found Smart Mobility, Inc. in 2001 and is its Vice President. Prior to this, she was employed for 7 years at the Two Rivers-Ottawaquechee Regional Commission as a Senior Transportation Planner, and for the previous 6 years at Resource Systems Group, Inc. Her current work at Smart Mobility focuses on context sensitive and multi-modal traffic engineering, preparing alternative transportation solutions for conventional roadway projects, and preparing comprehensive, multimodal community transportation plans. This work includes bicycle and pedestrian planning and design, scenic byway corridor planning, and moving beyond conventional traffic engineering by addressing traffic congestion through improving transportation networks, consideration of land use and development patterns, and broadening the range of options in terms of both routes and modes.

Representative Project Experience

Two Lane Plan for PA Route 41—Prepared conceptual plan alternative to a Four lane limited access widening proposed by Pennsylvania DOT for PA Route 41 through Chester County, PA. Used RODEL for roundabout analysis and design, and VISSIM for developing corridor-wide measures and informational display. Sub-contracted with Barry Crown of Rodel Software, and Faber Maunsell, UK Distributors of VISSIM. Plan is currently under review by PennDOT for consideration as an alternative.

Halfmoon, NY Transportation Analysis and Plan—As part of a project team with Behan Planning Associates to develop an innovative plan for hamlet and mixed use center development in a rapidly growing suburb outside Albany, NY. Plan elements included improves street connectivity within proposed growth areas, pedestrian oriented designs and in the hamlet and mixed use areas, and illustrating access management concepts for the main highway corridors.

Transportation Plan for Montpelier, Vermont—Comprehensive, multimodal transportation plan for the City of Montpelier, Vermont to be integrated into their updated municipal plan. Planning process included public visioning workshop, a review of all modes of transportation, travel demand management and parking options, and options to increase street connectivity. In collaboration with ORW, Landscape Architects.

Chicago Metropolis 2020 Plan for Growth and Transportation—Contributed to this APA Burnham Award-winning project to explore alternative scenarios for growth and transportation investment and management for the Chicago Region. Developed alternative transportation investment strategies and budgets, and prepared modeling input files to analyze these scenarios with an advanced regional TransCAD model.

Dresden School Transportation Committee—Conducted study on the Feasibility of Queue Jump Lane for the Ledyard Bridge Approach in Norwich, Vermont. Reviewed options and obstacles for establishing a bus-only during morning peak hours for buses, with the goal of reducing bus travel time

and encouraging school bus and public transit use between Norwich, Vermont and Hanover, New Hampshire.

Barnard Villages Traffic and Growth Management Plan—Developed a plan for Barnard, Vermont's two village areas, including intersection safety, pedestrian circulation, traffic calming, establishing village identity, re-designing lakefront parking on Silver Lake, and exploring opportunities for infill development.

Prairie Crossing Boulevard Plan, Grayslake, Illinois—Developed context sensitive integrated transportation and land use alternative plan for an abandoned Tollway right-of-way through a new urbanist development in Grayslake, Illinois. Integrated traffic and transportation design into community street network and land use patterns. Plan features landscaped boulevards, roundabouts, and improved street connectivity in the area.

Monadnock Traffic Calming Foundation—Developed conceptual traffic calming plan and design criteria for a NHDOT traffic calming project on Route 101 through the center of Dublin, New Hampshire.

NEPA Document Reviews—Reviewed and prepared comments on several EIS and EA documents for community groups and other stakeholders for a variety of projects, including the I-93 Salem to Manchester, NH Widening; the Ohio River Bridges in Louisville, Kentucky; US 202 Section 100 in Chester County, PA.

PROFESSIONAL CERTIFICATIONS AND MEMBERSHIPS

- Professional Engineer - P.E., Vermont Board of Professional Engineering, License # 6133
- Member, Institute of Transportation Engineers (ITE)
- Member, Congress for the New Urbanism, Transportation Planning Committee
- Member, Board of Directors, CNU New England Chapter of CNU
- Member, ITE/CNU Design Standards Task Force

PUBLICATIONS

Context Sensitive Design Approach for the Route 41 Corridor, Gibson, Lucinda E., and Dee Durham. Presented at the Historic Roads National Conference in Portland, OR. Described multi-faceted approach including research, public involvement and education, used to develop a context sensitive plan for improvements to PA Route 41, an NHS route through scenic rural landscapes and Amish farms. April, 2004.

Chicago Metropolis 2020: The Business Community Develops an Integrated Land Use/Transportation Plan, Gibson, Lucinda E., Frank Beal, John Fregonese, Norman Marshall. Presented at the ITE 2003 Technical Conference, *Transportation's Role in Successful Communities* Presented in Fort Lauderdale, FL, 2003.

Functional Classification for Multimodal Planning, Strate, Harry E., Elizabeth Humstone, Susan McMahon, Lucy Gibson and Bruce D. Bender, Transportation Research Record #1606, Transportation Planning, Programming, and Land Use, National Academy Press, Washington DC, 1997.

SPEAKING ENGAGEMENTS (Partial List)

Smarter Alternatives to Highway Projects. Presented at the American Planning Association annual meeting in San Antonio, TX, April, 2006.

Context Sensitive Traffic Engineering for Historic Road Corridors. Presented at the biannual Historic Roads Conference, Portland, Oregon, April, 2004.

Emerging Transportation Planning Techniques for Smart Growth Planning. Presented at the Smart Growth Network annual conference in Burlington, VT, September, 2003.

Success Stories and How-To's, Vermont Bicycle and Pedestrian Coalition Annual Meeting, Randolph, VT, April, 2002.

Transportation Concepts for Smart Growth Planning, Chicago Metropolis 2020 Steering Committee, Chicago, IL, January 2002.

How Engineers Think, Vermont Historic Preservation Annual Conference, Manchester, VT, June, 1999.

EXHIBIT D

**NOTICE TO
DIRECTLY INVOLVED
LANDOWNERS**

November 29, 2010

**CERTIFIED—RETURN
RECEIPT REQUESTED**

Superintendent Rebecca Harriet
Harpers Ferry National Historical Park
Post Office Box 65
Harpers Ferry, WV 25425

Dear Superintendent Harriett:

I am writing to inform you that the Jefferson County Planning Commission is considering a petition to rezone certain Federal lands in the vicinity of Harpers Ferry. These lands are titled in the name of the United States of America and are administered by two agencies: the National Park Service and U.S. Customs & Border Protection. The rezoning petition is available for review at the offices of the Jefferson County Department of Planning & Zoning, or on that agency's website (jeffersoncountywv.org).

Presently these lands are zoned Industrial-Commercial, Residential Growth and Residential-Light Industrial-Commercial. The Federal lands are proposed to be rezoned as Rural.

The Planning Commission expects to vote at its November 14, 2010 meeting on forwarding the petition for rezoning to the County Commission. If it does so, the County Commission is required to set a public hearing on the matter within 60 days. Your agency is invited to submit comments either in writing or in person, and to note any objection you may have to the proposed rezoning.

You may contact Department of Planning & Zoning staff at (304) 728-3228 should you have any questions.

Sincerely,

John Maxey, President
Jefferson County Planning Commission

November 29, 2010

**CERTIFIED—RETURN
RECEIPT REQUESTED**

Director James W. Cobb
Advanced Training Center
U.S. Customs & Border Protection
440 Koonce Road
Harpers Ferry, WV 25425

Dear Director Cobb:

I am writing to inform you that the Jefferson County Planning Commission is considering a petition to rezone certain Federal lands in the vicinity of Harpers Ferry. These lands are titled in the name of the United States of America and are administered by two agencies: the National Park Service and U.S. Customs & Border Protection. The rezoning petition is available for review at the offices of the Jefferson County Department of Planning & Zoning, or on that agency's website (jeffersoncountywv.org).

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You may contact Department of Planning & Zoning staff at (304) 728-3228 should you have any questions.

Sincerely,

John Maxey, President
Jefferson County Planning Commission

JEFFERSON COUNTY, WEST VIRGINIA
Departments 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

MEMORANDUM

TO: Jefferson County Planning Commission
FROM: Seth Rivard, County Planner
DATE: February 2, 2011
SUBJECT: Proposed Subdivision Amendment for the Minor Site Plan Process in Business or Industrial Parks

As staff have used the recently amended Subdivision Regulations, it became apparent that there are components of the regulations that could use further review and potential amendments. One pressing concern is the process procedures for a site plan in an existing business or industrial park.

Currently, any site plan greater than 5,000 square feet is processed as a major site plan, which requires multiple additional steps in the process and two public hearings as compared to the minor process.

Staff is proposing, in instances where a business and/or industrial park has previously processed as a major subdivision with master planned roads and stormwater, site plans proposed within that subdivision shall be processed as a minor regardless of the size of the structure. The reasons for this proposal are:

1. Master planned roads and stormwater provisions have already been established.
2. In circumstances where a business or industrial park has processed as a major subdivision, the community is aware that such a development will occur in that location. Requiring each site plan to follow the major process is redundant to the original notice that occurred during the creation of the business and/or industrial park.
3. The redundant public hearing is counter to the economic development goals intended when the parks were created.

Shown below are the sections from the Subdivision and Land Development Regulations with the proposed text amendments shown in red.

Sec. 20.203 Minor Site Development

Minor Site Developments are those proposals that do not require the development of new infrastructure or the extension of existing off-tract infrastructure and where there is no subdivision into separate lots. If the development requires easements for drainage or other purposes, private roads, or parking, and access to public roads is involved that serve one or more land uses, it is a site development. Minor site development proposes one or more of the following: (1) Building(s), both new and additions to existing, where all structures located on the parcel total less than 5,000 square feet gross floor area (GFA) on any site; (2) **Building(s), both new and additions to existing, regardless of size, when located in a business and/or industrial park on a lot within an approved major subdivision with master planned roads and stormwater;** ~~(2)~~ (3) Addition(s) to existing development of less than ten percent of existing GFA or additions less than 10,000 square feet GFA, whichever is less; or ~~(3)~~ (4) apartment or multi-family development of eight or less dwelling units.

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

A. Building(s), both new and additions to existing, where all structures located on the parcel total less than 5,000 square feet Gross Floor Area (GFA) on any site.

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

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

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

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

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

A. Building(s), both new and additions to existing, where all structures located on the parcel total less than 5,000 square feet Gross Floor Area (GFA) on any site.

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

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

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

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

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

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

B. Building(s), both new and additions to existing, where all structures located on the parcel total 5,000 square feet or more of GFA on any site;

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

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

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

F. ~~E~~. A heavy industrial use.

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

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

B. Building(s), both new and additions to existing, where all structures located on the parcel total 5,000 square feet or more of GFA on any site;

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

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

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

F. ~~E~~. A heavy industrial use.

Additionally, this proposed amendment would apply to existing and future business and/or industrial parks. The parks currently established within Jefferson County known to be affected by this amendment are: Burr/Bardane Industrial Park, SPARC Training Center, Sunnyside Park and Jefferson Crossing.

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
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 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 & 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: February 8, 2011
RE: 2011 Land Development Fee Proposal

Recommendation:

Attached is the updated 2001 Land Development Fee Schedule reflecting a 10% increase in fees as requested by the Planning Commission at the January 25, 2011 meeting.

Staff recommends that the Planning Commission move forward with 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.

The revisions to the fees have been under discussion for over two years and it has become a burden to staff to continuously develop revisions to this fee schedule, in addition to ongoing assignments. A policy decision needs to be made as to whether this is the correct time to be increasing any fees. Staff respectfully requests that, at a minimum, fees be added for the major and minor site plan for which no fees are currently charged. For all other fees, if the County Commission determines that these fees should not be increased at this time, staff recommends that it be revisited no sooner than FY 13.

Additionally, 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 recommended, 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.

History of Fee Revisions:

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.

In January 2011, staff presented 2011 Land Development Fee proposal in the format requested by the Planning Commission generally reflecting a 20% increase in fees. Development review categories for which no fee currently exists were noted. In some cases, staff recommended a fee and in some cases these were left it at zero for the Commission's consideration. Additional details to the breakdown were presented in January. At that time the Planning Commission made a motion to have staff rework the current proposed fees to indicate no more than a 10% increase in current fees, rather than 20%, and that it incorporate, by footnote, exemption that County owned projects or non-profit projects of a staff recommended square footage. Attached is the version of fees that reflects this direction.

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

Minor Residential Subdivision ≤ 5 Lots	Final Plat	Review for Recording
Base Fee Per Plat	\$220	\$0
Plus Per Lot Fee	\$220	\$0

Merger Deed Plat	Final Plat	Review for Recording
Base Fee Per Plat	\$110	\$0
Plus Per Lot Fee	\$110	\$0

Minor Non-Residential Subdivision ≤ 5 Lots; 4 + Residue Lot maximum; and only in existing approved Commercial/Industrial Park	Final Plat	Review for Recording
Base Fee Per Plat	\$330	\$0
Plus Per Lot Fee	\$550	\$0

Major Residential Subdivision > 5 Lots	Concept Plan	Preliminary Plat (each phase)	Final Plat (each phase)	Review for Recording
Base Fee Per Plat	1-50 Lots \$275	\$180	\$100	\$50
Plus Per Lot Fee	50+ Lots \$1,100	\$275	\$135	\$30

Major Non-Residential Subdivision > 5 Lots	Concept Plan	Preliminary Plat (each phase)	Final Plat (each phase)	Review for Recording
Base Fee Per Plat	1-50 Lots \$275	\$180	\$100	\$50
Plus Per Lot Fee	50+ Lots \$1,100	\$275	\$185	\$90

Mobile Home Park Subdivision	Concept Plan	Site Plan, Bonding & Milestone Inspections (Re-inspection Fees Apply)
Base Fee Per Park	\$135	\$135
Plus Per Gross Project Acre		\$110
Per Mobile Home Pad		\$220
Per Principal Building		\$110

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

Campground Site Plan	Concept Plan	Site Plan, Bonding & Milestone Inspections (Re-inspection Fees Apply)
Base Fee Per Project	\$135	\$135
Plus Per Gross Project Acre		\$110
Per Campsite		\$55
Per Principal Building		\$110

Townhome, Condominium, Apartment & Motel/Hotel Site Plan	Concept Plan	Site Plan, Bonding & Milestone Inspections (Re-inspection Fees Apply)
Base Fee Per Plat	\$135	\$135
Plus Per Gross Project Acre		\$110
Per Principal Building		\$220
Per Unit		\$110

Cell Tower Site Plan	Site Plan, Bonding & Milestone Inspections (Re-inspection Fees Apply)
Base Fee Per Plan	\$1100

Minor/Limited Site Plan*	Site Plan, Bonding & Milestone Inspections (Re-inspection Fees Apply)
Base Fee Per Plan	\$1200
♦Any non-profit organization proposing a structure 20,000 sq. ft. or less, shall be exempt from noted fee. (Organizations shall provide proof of 501.C.3 status) All county owned property shall be exempt.	

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

Minor/Full Site Plan* Sites < 5,000 sq. ft. on undeveloped site or < than 10% of existing buildings or 10,000 sq. ft. or less; whichever is less	Site Plan, Bonding & Milestone Inspections (Re-inspection Fees Apply)
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.
♦Any non-profit organization proposing a structure 20,000 sq. ft. or less, shall be exempt from noted fee. (Organizations shall provide proof of 501.C.3 status) All county owned property shall be exempt.	

Major/Full Site Plan* Sites > 5,000 sq. ft. on undeveloped site or > than 10% of existing buildings or 10,000 sq. ft. or less; whichever is less	Concept Plan	Site Plan, Bonding & Milestone Inspections (Re-inspection Fees Apply)
Base Fee Per Plan		\$3600
Plus fee for area > 5,000 sq. ft. of impervious area plus disturbed area.	\$600	\$0.04 per sq. ft. of impervious + disturbed area over 5,000 sq. ft.
♦Any non-profit organization proposing a structure 20,000 sq. ft. or less, shall be exempt from noted fee. (Organizations shall provide proof of 501.C.3 status) All county owned property shall be exempt.		

Redline Revision	Preliminary Plat	Site Plan
Minor Revision Base Fee Per Plan (up to 3 different revisions on one submission)	\$165	\$165
Major Revision Base Fee Per Plan (up to 3 different revisions on one submission)	\$250	\$250

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

<u>Zoning Items</u>	<u>Fee</u>
Zoning Ordinance Text Amendment Application	\$1100
Zoning Ordinance Map Amendment Application (Rezoning)	\$1100 + \$55 per acre
Conditional Use Permit (CUP) Application without LESA	\$275 + \$55 per acre
Conditional Use Permit (CUP) Application with LESA	\$275 + \$55 per acre 50% returned if the project fails LESA 0% returned if the project fails LESA & loses an appeal to BZA
Modification of existing CUP requiring Board/Commission Approval	\$275 + \$25 per acre
Appeal of CUP once issued by Board/Commission	\$275 per appeal filed
Zoning Variance Application	\$110 per section varied
Multiple Use Variances	\$220
Zoning Variance Application (construction/use has commenced prior to BZA approval)	\$165
Administrative Appeal Application (each issue appealed constitutes a separate appeal)	\$110/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	\$110
Subdivision Ordinance Waiver Request	\$110
Minor Final Plat or Site Plan Amendment	\$165
Clerical/Scrivener Error	\$50

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

<u>Engineering Items</u>	<u>Fee</u>
Inspection Fee – Land Development Site Inspection	\$55
Re-inspection – Land Development failed inspections	\$55
Construction Bond – Time Extension Request (by staff)	\$330
Construction Bond – Surety Renewal	<i>\$300</i>
Construction Bond – Tolling of Time	<i>\$300</i>
Floodplain Ordinance – Floodplain Delineations	\$11
Floodplain Ordinance – 100 Yr. Flood Elevation Determination	\$11
Floodplain Ordinance – Review of LOMA, LOMR or LOMR-F requests	<i>\$0</i>
<u>Miscellaneous Items</u>	<u>Fee</u>
Aerial Photograph	\$16
Comprehensive Plan	\$13
Zoning Map (small – 11 x 17)	\$5
Zoning Map (medium – 24 x 36)	<i>\$10</i>
Zoning Map (large – 36 x 54)	\$22
CD (copy of meetings, electronic copy of files, etc.)	\$10
Zoning Ordinance	\$28
Subdivision Regulations	\$28
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
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

Director's Report
February 8, 2011
Planning Commission Meeting

- 1) Activity Report (attached)
- 2) Update on Annual Report/Work Plan/Budget Subcommittee
- 3) Upcoming CC agenda items:
 - a) Second Quarterly Report on FY 2011 Work Plan sent to County Commission as packet agenda item – not for presentation
 - b) Wireless Telecommunications Ordinance Amendment Public Hearing
RESCHEDULED (2/24/11, 7 pm)
 - c) Public Hearing to Amend the County Zoning Map to consider Urban Growth Boundaries for Harper's Ferry and Bolivar RESCHEDULED (2/17/11, 7 pm)
- 4) Upcoming PC meetings:
 - a) February 22, 2011
 - Concept Plan for Payne's Ford Station
 - Finalization of Policy Neutral Zoning Ordinance Amendments for Public Hearing
 - b) March 2011
 - c) 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 CALENDAR

MONDAY, JANUARY 24, 2011

10:30 am STEVE & SETH – MEETING WITH TOM BAYUZYK, CAM TABB & MARK BUTCHER
RE: BARDANE YEAR-ROUND MARKET
2:00 pm STEVE & SETH – MEETING WITH JASON (WHGA)
RE: SUB REGS

TUESDAY, JANUARY 25, 2011

10:00 am – NOON JENNIE & JULIE – LABOR CLASSIFICATION & BUDGET MEETING
3:00 pm – 4:30 pm JENNIE, STEVE, SETH & JULIE - URBAN TREE CANOPY MEETING
7:00 pm JENNIE, SETH, STEVE & JULIE – PLANNING COMMISSION MEETING

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

WEDNESDAY, JANUARY 26, 2011

12:00 pm – 1:30 pm JENNIE – LUNCH WITH TIM BOYDE AND TOM TRUMBLE
1:30 pm – 3:00 pm STAFF MEETING
4:00 pm INCLEMENT WEATHER – OFFICES CLOSED EARLY

THURSDAY, JANUARY 27, 2011

11:00 am INCLEMENT WEATHER – OFFICES DELAYED OPENING
11:00 am COUNTY COMMISSION MEETING

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

FRIDAY, JANUARY 28, 2011

10:00 am – 11:00 am JENNIE & JULIE – FOLLOW-UP “IT” MEETING WITH TOM TRUMBLE & MARK SCHIAVONE
12:30 pm JENNIE, STEVE & SETH – WEEKLY “IRF” UPDATE MEETING

Christine Chalmers

To: PLANNING COMMISSION
Subject: RE: WEEKLY CALENDAR

MONDAY, JANUARY 31, 2011

8:00 am – 9:30 am JENNIE – MEETING WITH TOM TRUMBLE
1:30 pm STEVE & MASON – SITE VISIT TO BLACK BEAR TRAIL
2:30 pm JENNIE – MEETING WITH STEVE GROH

TUESDAY, FEBRUARY 01, 2011

10:00 am – 11:30 am STAFF MEETING
2:00 pm – 3:15 pm JENNIE & STEVE – WEEKLY ZONING MEETING
3:30 pm – 4:30pm JENNIE & SETH – WEEKLY PLANNING MEETING

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

WEDNESDAY, FEBRUARY 02, 2011

8:00 am – 9:30 am JENNIE – MONTHLY DEPARTMENT HEAD MEETING WITH TIM BOYDE
10:00 am JENNIE, STEVE, SETH & JONATHAN – SITE PLAN PPC /
RE: SUMMIT POINT TACTICAL TRAINING CENTER
1:30 pm – 3:30 pm SETH – MEETING WITH JEREMY MORRIS AT WHITE CHURCH IN MIDDLEWAY
RE: HISTORIC LANDMARKS COMMISSION/FARMLAND PROTECTION BOARD

THURSDAY, FEBRUARY 03, 2011

9:00 am - COUNTY COMMISSION MEETING
1:00 pm – 2:00 pm JULIE – WEBINAR REGARDING SALARY ISSUES
2:00 pm JENNIE, SETH & JULIE –CONFERENCE CALL MEETING WITH PATRICK KIRBY
3:00 pm JENNIE – TREE PLANTING MEETING

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

FRIDAY, FEBRUARY 04, 2011

9:30 am – 10:30 am JENNIE, STEVE & SETH – WEEKLY “IRF” UPDATE MEETING
10:30 am JULIE – MEETING IN HARPERS FERRY / RE: 340 CORRIDOR

Kubic Construction, Inc.
241 Edmond Road
Kearneysville, WV 25430
Office (304)728-4384 Fax (304)728-3924
kubicconstr@aol.com

RECEIVED
JAN 24 2011
JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

January 21, 2011

To: Jefferson County Planning Commission

From: Pete Kubic- President, Kubic Construction, Inc.

Please detail and clarify the site plan process for proposed new business development in the Burr Industrial Park. Please recommend changes to the existing subdivision ordinance as they relate to these general items.

1. Is new development in the Industrial Park limited to 5000 sq. feet, and if so, how does that mesh with the fact the park was designed to 70% maximum impervious area on each lot.
2. Can a client submit for example a 20,000 sq. foot building in the park and receive fast track approvals with staff review only? Or does public meeting/comments have to take place?
3. If the answer is no to question #2 for fast track review, can a variance or waiver be requested for the park or for any project in the county?
4. Can staff make an immediate request to elevate the building review threshold to, lets say, 30,000 sq. foot or greater? This adjustment will help spur economic development within the county. Please note: as the economy becomes stronger, if this sq. foot limitation is not lifted then development will shift to Charles Town and Ranson where permits can generally be obtained within 1-2 months.

Bonding

1. It also seems to me that we should look at just requiring potential owners with bonding just the minimum critical improvements for proposed projects. I understand sediment and erosion control, and improvements in the right of ways are a must, but onsite gravel, paving, etc., should be the owner's responsibility not the county's.
2. Bonding reduction paperwork should be returned to its quick fast track review. One week, not the two week hassle that currently exists.

Flexibility

1. The formal Planning Commission should give planning staff the ability to make simple determinations and clarifications. For example: The STaSIS project sidewalk waiver required notification. A special meeting was called affecting about 12-16 people to resolve. The outcome was for the owner to provide for a future 10' sidewalk/trail easement. This option was discussed between a qualified outside consult and staff agreed upon and implemented. It took two weeks delay to arrive at the same outcome. Seems to me a waste of everyone's time. I would suggest a directive from the planning commission be in place giving staff, both planning and engineering, the latitude and flexibility. To resolve and interpret these items. I think you will be surprised that 50% of planning commission agenda items could be eliminated.

Thank you,
Pete Kubic

Amy Puetz

From: Jennifer Brockman [jbrockman@jeffersoncountywv.org]
Sent: Thursday, January 27, 2011 11:21 PM
To: apuetz@jeffersoncountywv.org
Subject: Fw: Mountain Water Samples

remind me to put this in the PC packet -- maybe under Dir Report - let's discuss

Jennifer M. Brockman, AICP
Director, Planning and Zoning
Jefferson County
116 E. Washington St
Charles Town, WV 25414
304-728-3228

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

From: "Roger Ethier" <engnerswobord@hotmail.com>
Sent 1/27/2011 8:57:49 PM
To: jbrockman@jeffersoncountywv.org, "peter vila" <pvila@shepherd.edu>, "lyn widmeyer" <lynwidmyer@gmail.com>, "john maxey" <maxey@radlib.com>, "bill zaleski" <bill.h.zaleski@wv.gov>, "mark shields" <mark.shields@fda.hhs.gov>, "willis nowell" <willis_nowell@shannondale.org>
Subject: RE: Mountain Water Samples

For Jennifer..You are correct..Health Dept immed set up a room into which WAC has placed some documents although there are many more to add inc a comprehensive file system....and it is a repository for the data that you are talking about; including the collected data from streams from both the Valley and Mountain... although I don't remember a requirement for a MOU but I have no objection to a MOU. I share your concerns about lack of data available from the streams but it is a relatively short time since collection started, only 10 months and Dr Vila has supplied a number of reports and briefs to us but up until very recently he insisted (and I agree with him) that the data should not be used with any confidence. This is the situation: WAC has contracted with Shepherd U to do the sampling, analysis and data reports. 1. Since April 2010 monthly samples have been collected (and I have participated in a number) for both water quality and water quantity from 6 Valley streams and at least two Mountain streams. Two samples are taken from each stream, one at the nearest spring to the headwater of the streams, and the 2nd at the mouth where it enters either the Shenandoah or the Potomac. This data is quite comprehensive including the water level, water flows and the data the TMDL requires, that is, nitrates and phosphorus content plus more. 2. In addition, weekly samples are taken at a single point from four streams on the Mountain to analyze for ecoli only. (This was the info I believed you received). It has been now 10 months since valley streams began to be sampled and I believe about 6 months for the mountain streams. Until now a number of factors including the summer drought when water levels were very low, and the fact that too few months have been sampled has prevented Dr. Vila to yet have any confidence in validity of the data. Also in the Fall the analyzing equipment at Shepherd U failed and had to be shipped back to the manufacturer for repair. However my discussions with him last week at the Craftworks Watershed Meeting revealed that he has been working very hard crunching numbers and analyzing the data, and within 2 or 3 weeks he will provide a complete report in which he has some confidence. I have also asked for a briefing from him ASAP after the report is provided and I will insure you and staff are invited.. WAC will continue to monitor the contract closely..Thanks..Roger Ethier, WAC Chair

From: jbrockman@jeffersoncountywv.org
To: engnerswobord@hotmail.com
CC: Bill.H.Zaleski@wv.gov; Maxey@radlib.com; tboyde@jeffersoncountywv.org;
rgoodwin@jeffersoncountywv.org; pvila@shepherd.edu; srivard@jeffersoncountywv.org;
ttrumble@frontiernet.net
Subject: Mountain Water Samples
Date: Thu, 27 Jan 2011 17:44:02 -0500

Roger

Last year when the Water Advisory Committee went to the County Commission to request funding for water sampling on the Mountain (for which Planning and Zoning paid for the first third of the sampling), there was a discussion about setting up a public repository for the data collected at the Jefferson County Health Department. I believe that there was some discussion about the data being released quarterly and housed in Health Department files. At that time, you had offered to draft a Memorandum of Understanding (MOU) between the WAC and/or County Commission, the Health Department and Shepherd University regarding this data storage and public access to it.

Could you please advise me as to the status of this MOU; if the data is being deposited at the Health Department; and if there was also some requirement for an analysis and report related to the data? Dr. Vila did an interim report for use by the Blue Ridge Mountain Visioning project early last Fall but I believe a final report was expected.

Any information you could give me on this issues would be greatly appreciated.

Respectfully,

Jennie

Jennifer M. Brockman, AICP, Director

Jefferson County Department of Planning and Zoning

116 East Washington Street

Charles Town, WV 25414

Office: (304) 728-3228

Fax: (304) 728-8126