

AGENDA  
JEFFERSON COUNTY PLANNING COMMISSION  
July 26, 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**

1. Approval of the minutes for the July 12, 2011 meeting.
2. Citizen Communications.
3. Request for postponement.
4. Old Business
  - Report back to Planning Commission regarding Hott property processing options.
5. Declaration of Violation for Robert Schelin of the Jefferson County Improvement Location Permit Ordinance for no Improvement Location Permit for a shed on property designated as Parcel 40 on Tax Map 7 in the Shepherdstown District as found in Deed Book 826 at Page 676.
6. Discussion and possible vote on Proposed Text Amendment to Section 20.203 Minor Site Development, Section 20.204 Major Site Development, and Division 26.200 Definition of Terms, regarding the maximum square footage requirements for a Minor Site Plan in each Zoning District.
7. Discussion and possible vote on Amendments to Articles 4A and Section 2.2 of the Zoning and Land Development Ordinance and Section 20.203 of the Subdivision and Land Development Regulations, regarding Home Occupations and Cottage Industries.
8. Public Workshop regarding the Urban Tree Canopy Plans and Goals for Jefferson County.
9. Discussion of Planning Commission Bylaws.
10. Reports from Legal Counsel and legal advice to PC.
11. Director's Report.
12. County Commission Liaison Report.
13. Planning Commission Exchange.
  - Report from the Health Department Meeting Liaison.
  - Report from the Public Service District Meeting Liaison.
  - Report from the Parks and Recreation Meeting Liaison.
  - Report from the Jefferson County Development Authority Meeting Liaison.
  - Report from the Water Advisory Committee Meeting Liaison.
14. President's Report.
15. Actionable Correspondence.

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16. Non-Actionable Correspondence.

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

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  
JULY 12, 2011

The Jefferson County Planning Commission met on Tuesday, June 28, 2011, with the following Commission members present: Daniel Hayes, President; Morgan Eppers, Secretary; Gene Taylor, Kelly Baty, Ed Burns, Paul Taylor, Eric Smith, and Walt Pellish. Staff members present included Jennifer Brockman, Director of Planning and Zoning; Seth Rivard, Planner; Jonathon Saunders, County Engineer; Stephan Groh, Assistant Prosecuting Attorney; and Amy Puetz, Planning Clerk.

Mr. Arnold Dailey was absent with notification.

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

1. **Approval of the minutes for the June 28, 2011 meeting.**

Mr. G. Taylor moved to approved the June 28, 2011 Planning Commission Meeting minutes. Mr. Pellish seconded the motion which carried unanimously.

2. **Citizens Communication:** None.

3. **Request for postponement.**

Mr. Hayes announced the postponement of the Zoning Map Amendment for the Hott property from July 26, 2011 to August 9, 2011.

4. **Postponed from the June 14, 2011 Planning Commission Meeting: Concept Plan Review for Highland Farms (PC File #11-02). This property is located on Charles Town Road (Rt. 9) on the west side of Bloomery Bridge. This project consists of a residential subdivision to include a total of 27 residential lots and a residue parcel on 270.18 acres under the cluster provisions of the Zoning and Land Development Ordinance Section 5.7(d)(2) and is located in Tax District: Charles Town; Tax Map: 19 Tax Parcel: 33, 38 and 41.**

Mr. Baty recused himself due to personal involvement and left the room.

Mr. Rivard read from his staff report and stated that staff finds the application complete. He reviewed agency comments in which he stated that the WV Division of Culture and History strongly suggest that a Phase I Archeological Study be done on the property before development.

Mr. John Sekerak, Land Use Planner and Landscape Architect with Greenhorn and O'Mara representing the applicant, described the project and provided a visual presentation of the 27 lot clustered subdivision. Mr. Sekerak mentioned that the project may be completed in phases if financially necessary. He stated that since it would be unlikely to find archeological resources in the area being developed, a Phase I archeological study would be costly and unnecessary. However, Mr. Sekerak reported that the applicant would be willing to cease all development if any element of archeological value were discovered and notify the proper State Historical agencies.

Mr. Smith entered the room at 7:17 PM.

Ms. Etters expressed concern about the lack of shoulder area along the frontage of the property. Discussion ensued regarding the possibility of shoulder improvements in that area.

Mr. Sekerak described the stormwater management plans for the property.

Mr. Hayes opened the public workshop.

Ms. Barbara Fry, neighbor, inquired as to how her property may be impacted with specific regard to her access easement. Mr. Herb Jonkers, applicant, assured Ms. Fry that there were no plans to terminate that right-of-way agreement.

Ms. Nance Briscoe, representing the Eastern Panhandle Organization of Home Owners Associations, detailed several questions:

- What is the intended use for the residue and when will it be handed over to the Home Owners Association (HOA)? Will the County and Developer guarantee in writing that this residue parcel remains a residue parcel in perpetuity and is not subject to further development if and when zoning laws change?
  - Mr. Hayes explained currently there would be no more development rights on this property however; a guarantee could not be granted that future changes in the zoning or subdivision regulations would prevent a further development.
- Is it premature to approve a concept plan without prior approval of the Health Department?
  - Ms. Brockman explained that Health Department permits would be necessary with the review of the preliminary plat.
- Will the developer work with the Board of Education to ensure that the roads meet the design specifications required by the bus department?
  - Ms. Brockman explained that it was not within the Planning Commission's authority to impose that condition although the developer could be advised to contact the Board of Education.
- Will this development be considered a limited expense community?
  - Mr. Hayes clarified that the Planning Commission could not impose conditions related to the HOA.
- Will the developer be working with Comcast to pre-install cable or fiber? If so, will the plans for those facilities be approved by the appropriate state and local authorities regarding archeological preservation?
  - Mr. Hayes stated that the developer would be asked if Comcast would be contacted. He also explained that, if any archeological preservation conditions would be imposed, it would be for the entire site and not just related to dry utilities.
- Are there karst and/or limestone in the area to be developed? If there is karst and/or sinkholes discovered, will potential homebuyers be notified in advance of the purchase?
  - Mr. Hayes stated that the applicant would be requested to respond to those questions.

Ms. Susan Rissler-Sheely spoke in support of the project.

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

Ms. Susan Rissler-Sheely discussed an archeological study done in 2005 and stated that she feels any historical items would be found closer to the river which is the area that is not being disturbed.

Mr. John Sekerak reported that he had not observed any Karst on the site.

Mr. Herb Jonkers, manager of Highland Farms, LLC, stated that the only sinkholes that are evident on the property are in the lower area which is not being developed. Mr. Jonkers stated that potential homebuyers would be notified of known sinkholes. He reported that he would be working with dry utility providers as that is a requirement. Mr. Jonkers stated that the development would be geared, in price and amenities, toward adults and does not feel that buses will be an issue for the community.

Mr. Pellish moved to approve the concept plan. Mr. Burns seconded the motion.

Mr. P. Taylor moved to amend the motion to require the applicant, upon discovering any items of archeological significance during excavation, to cease work and to inform the State Historic Preservation Office of said findings for investigation. Ms. Etters seconded the motion which carried unanimously.

Ms. Etters moved to further amend the motion to require the shoulders immediately along the frontage of the property to be widened 8 feet unless the Department of Highways specifically denies that widening in writing. Mr. G. Taylor seconded the motion which carried 6 for and 1 opposed (Mr. Hayes).

Mr. Hayes called the question of the main motion which carried unanimously.

Mr. Baty entered the room.

- 5. Concept Plan Review for Middleway Volunteer Fire Company (PC File #S11-06). This property is located east of the Leetown Road and Cedar Hollow intersection. This project consists of a 5,025 sq. ft. fire station with office and a 4 bay garage in phase I and in phase II, a 3,975 sq. ft. addition consisting of a multipurpose room and 2 additional bays on 5 acres located in Tax District: Middleway; Tax Map: 24 Tax Parcel: 2.**

Mr. Rivard read from his staff report emphasizing that only phase I was being reviewed and that phase II would be submitted separately. He reported that staff found the concept plan to be complete and recommended that the project use the minor process once the single family restriction is lifted through the public workshop and approval of the concept plan.

Mr. Matt Cesna, Professional Land Surveyor of Frederick, Seibert and Associates, described the project. He reported that the stormwater management would be handled through a stormwater management pond on the site. Mr. Cesna stated that the access road would be widened to 24 feet using gravel to accommodate the traffic for the fire hall.

There was discussion regarding whether or not the road should use pavement instead of gravel.

Mr. Mike Mood, with Middleway Fire Company, stated he prefers no paving due to the additional cost. He stated that the fire hall will only average approximately 15 calls per month. Mr. Mood stated that both phases were being requested to be reviewed as it was decided to not break the project into phases.

Mr. Baty questioned the applicant as to the reason that no signs were posted. Mr. Mood maintained that the sign was posted across from Mike's Trailer Court as directed by staff.

Mr. Baty asked how chemicals used for or washed off of the vehicles would be managed to protect the creek beds. Mr. Mood stated that he believed a grease trap would be used to prevent contamination of the creek beds.

Mr. Hayes opened the public hearing. There was no comment. Mr. Burns moved to close the public hearing. Mr. G. Taylor seconded the motion which carried unanimously.

Mr. Baty moved to recommend that a condition be made that issues regarding handling and disposal of hazardous materials be resolved in accordance with federal, state, and local codes and regulations and that approval from these agencies be received. Ms. Etters seconded the motion which carried 7 for and 1 opposed (Mr. Hayes).

Mr. Baty moved to recommend that the county requirements be followed regarding the upgrade of the access easement. The motion failed for a lack of a second.

Mr. Smith moved to approve the concept plan with the above mentioned condition. Mr. Pellish seconded the motion which carried unanimously.

**6. Public Hearing for Proposed Text Amendment for Sections of Article 24 of the Jefferson County Subdivision and Land Development Regulations (Aug. 19, 2010) regarding timeframes and noticing requirements for processing procedures.**

Mr. Rivard reviewed the amendments stating that the purpose of these amendments were to shorten the timeframes of the process.

Mr. Hayes opened the public hearing.

Mr. Jason Gerhardt, of William H. Gordon, Associates, distributed comments regarding the amendments. Mr. Gerhardt made several suggestions:

- He discusses eliminating the public hearing for preliminary plat stage of the subdivision process and allowing that part of the process to be a staff review and approval.

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- He commented that a complete traffic study should not be necessary at the concept plan stage as stated in Sections 24.106.B.5.e and 24.106.F and also in Sections 24.116.B.6 and 24.116.F.
  - Mr. Rivard clarified that only identifying the necessity of a traffic study occurs at the concept plan stage
- Mr. Gerhardt discussed stating that the public hearing/public workshop would be held within the 45 day review period in Sections 24.106.J and 24.116.J.
- He stated that “Where applicable” should be added to the beginning of the first sentence in Section 29.109.B.6 Transportation Impact Study.
- Regarding Section 24.109.D.2, Mr. Gerhardt commented that any staff suggested modifications to layouts should be presented at the concept plan stage prior to completing design of the project
- Mr. Gerhardt stated that Sections 24.110 and 24.111 regarding preliminary plats should be handled at a staff level.
- Regarding Section 24.501.A Improvements Requiring Surety, Mr. Gerhardt stated that he feels that the current regulations make bonding difficult for small businesses. He reported that he would review his ideas with the Jefferson County Engineering Department.

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

Mr. Burns moves that staff prepare a report analyzing Mr. Gerhardt’s suggestions to discuss at the next meeting. Mr. P. Taylor seconded the motion which failed 1 for (Mr. Burns) and 7 against.

Mr. G. Taylor moved to amend 24.106.F and 24.116.F to “*The review shall indicate whether a traffic impact study will be required based on analysis required in 24.106.B.5.e*”. Mr. Smith seconded the motion which carried 7 for and 1 against (Mr. Burns).

Mr. Pellish moved to replace the first sentence of both Sections 24.106.J and 24.116.J with, “*At the time of submission, the concept plan shall be placed on the 1<sup>st</sup> regularly scheduled Planning Commission meeting after the 45 day review period for the public workshop.*” Mr. Baty seconded the motion which carried unanimously.

Mr. Smith moved to amend 24.109.B.6 Transportation Impact Study to read, “*Where applicable, analysis, commentary, drawings, or other material specifically addressing conditions in the concept direction.*” Mr. Pellish seconded the motion which carried unanimously.

Mr. Burns moved to amend 24.109.D.2 second sentence to read, “*In reviewing the submitted application, the Department shall determine whether ~~modifications in the layout would improve the plan~~ the concept plan direction was fulfilled.*” Mr. Smith seconded the motion which carried unanimously.

Mr. Hayes directed staff to meet with Mr. Gerhardt regarding potential surety amendments. Mr. Smith moved to approve the amendments with the above approved revisions. Mr. Burns seconded the motion which carried unanimously.

Mr. Hayes called for a break at 9:10 PM. Ms. Etters left the meeting at 9:12 PM. The meeting resumed at 9:15 PM.

**7. Public Hearing for Proposed Zoning Text Amendment to Article 12 of the Jefferson County Zoning and Land Development Ordinance regarding the process of amending the zoning map and/or text.**

Ms. Brockman reviewed the amendments.

Mr. Hayes opened the public hearing. Mr. Jason Gerhardt, of William H. Gordon Associates, distributed written comments regarding the amendments. He suggested revising:

- In Section 12.1.b, removing the portion of the suggested amendment that reads, “as well as consideration as to whether a Conditional Use Permit (CUP) or other process may be a more appropriate process.” He stated that staff is always free to suggest alternative processes for the applicant and that this part of the amendment would be unnecessary.
- In Section 12.2.c.1.ii, Mr. Gerhardt stated he believed that the sentence should begin “The subject property” and not “Any property.”
- In Section 12.4.a, in the third paragraph, Mr. Gerhardt commented that the last sentence of “The Planning Commission would likely hold a hearing regarding the request as well in order to make an informed recommendation to the County Commission” did not give clear direction as to whether the hearing was required or not and should be amended.

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

Mr. Baty moved to accept the amendments to Article 12 as written by staff. Mr. Baty withdrew his motion to allow for revisions to the amendments.

Discussion ensued regarding the need for the Article 12 amendments.

Mr. Baty moved to accept the amendments with the following revisions:

- a) In Section 12.1.b, remove the “as well as consideration as to whether a Conditional Use Permit (CUP) or other process may be a more appropriate process”;
- b) In Section 12.2.c.1.ii, to change “Any property” to “*The properties which are the subject of the proposed zoning map amendment*”;
- c) In Section 12.4.a, paragraph 3, to remove the last sentence, “~~The Planning Commission would likely hold a hearing regarding the request as well in order to make an informed recommendation to the County Commission~~”.

Mr. Burns seconded the motion which carried 6 for and 1 against (Mr. Pellish)

**8. Discussion of Planning Commission Bylaws.**

Mr. Hayes discussed his recommendations for amending the Planning Commission bylaws regarding number of meetings per month, attendance, and training of commissioners.

Discussion ensued on appropriate measures for determining excessive absences and penalties.

Mr. Pellish suggested that the topic of allowing Planning Commissioners to vote via phone should be addressed. Mr. Hayes requested that an amendment to allow phone voting be prepared to discuss.

Mr. Hayes postponed further discussion until the July 26 Planning Commission meeting and directed staff to consolidate comments within proposed amendments to the bylaws.

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

Mr. Groh gave a brief update regarding the Alstadt's Corner case. He stated that discussion of Far Away Farms litigation would require an executive session to be held at the end of the meeting.

**10. Director's Report.**

Ms. Brockman presented an invitation from the American Public University to a Sustainability Summit.

Ms. Brockman stated that a public hearing would need to be held regarding the Draft Urban Tree Canopy Plan. Mr. Hayes scheduled the public hearing for the July 26 Planning Commission meeting.

**11. County Commission Liaison Report.** None.

**12. Planning Commission Exchange.** None.

**13. President's Report.**

Mr. Hayes commented on the importance of reviewing the packets thoroughly in the interest of time saved during the meetings.

**14. Actionable Correspondence.** None.

**15. Non-Actionable Correspondence.** None.

Mr. Smith moved to enter Executive Session to discuss pending litigation. Mr. Burns seconded the motion which carried unanimously. Executive Session began at 10:30 PM. Regular Session resumed at 11:12 PM.

Mr. Hayes directed Mr. Groh to provide follow-up documentation regarding topics discussed in the Executive Session.

Mr. Hayes adjourned the meeting at 11:15 PM. An audio recording and a video recording of the meeting may be found on our website. These minutes were prepared by Amy Puetz, Planning Clerk.

**JEFFERSON COUNTY, WEST VIRGINIA**

**Department of Engineering**  
116 East Washington Street, 2<sup>nd</sup> Floor  
P.O. Box 716  
Charles Town, West Virginia 25414

**Phone: 304-728-3257**  
**Fax: 304-728-3923**

**Email: [engineering@jeffersoncountywv.org](mailto:engineering@jeffersoncountywv.org)**

March 16, 2011

*MAY 10, 2011*  
*P.C. Agenda*

**VIOLATION NOTICE – DIRECTIVE TO CEASE & DESIST**  
**CERTIFIED MAIL – 7008 1830 0003 3623 6938**

Robert J Schelin  
16200 Audubon Lane  
Bowie, MD 20716

Dear Mr. Schelin:

Pursuant to Article 4, Section 4.2 of the Jefferson County Improvement Location Permit Ordinance this cease and desist notice is being sent to you as the responsible party for no Improvement Location Permit for the shed on your property which is designated as Parcel 40, Tax Map 7 of the Shepherdstown District. You are being cited as the responsible party since you are the owner of record as found in Deed Book 826 at Page 676.

Please be advised that failure to obtain an Improvement Location Permit prior to the **May 10, 2011**, meeting of the Jefferson County Planning Commission shall be cause for them to declare you, as the responsible party, and the subject property, buildings and/or structures in violation of the Jefferson County Improvement Location Permit Ordinance. Upon such declaration the Planning Commission shall instruct the Ordinance Compliance Officer to request the assistance of the County Prosecuting Attorney and:

- (A) Seek an injunction in the Circuit Court of Jefferson County to restrain the responsible person from continuing the violation cited or seek an injunction requiring removal of structures or land uses from the property involved;

OR

- (B) Obtain a warrant for the arrest of the person responsible for the violation and seek conviction in the Magistrate Court of Jefferson County; or both a) and b).

The penalty for any person who violates any provision of this Ordinance shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than \$100.00 or more than \$300.00. Each day during which any violation of this Ordinance continues shall constitute a separate offense.

If you have any questions, Please contact me at 304-728-3257. The office is open Monday through Friday from 9:00 a.m. to 5:00 p.m.

Sincerely,



D. Mason Carter  
Ordinance Compliance Officer

Cc: James Casimiro, Assistant Prosecuting Attorney

**JEFFERSON COUNTY, WEST VIRGINIA**  
**Departments of Planning & Zoning**  
116 East Washington Street, 2<sup>nd</sup> Floor  
P.O. Box 338  
Charles Town, West Virginia 25414

**Email:** [planningdepartment@jeffersoncountywv.org](mailto:planningdepartment@jeffersoncountywv.org)

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

MEMORANDUM

**TO:** Jefferson County Planning Commission  
**FROM:** Seth Rivard, County Planner  
**DATE:** May 4, 2011 (amended July 21, 2011)  
**SUBJECT:** Proposed Subdivision Amendment for the Determination of a Minor or Major Site Plan

On June 28, 2011, the Planning Commission held a public hearing on the concepts in this memo and the proposed text amendment. This memo and the attached proposed amendments have been modified to incorporate issues raised during that hearing. Attached are the minutes of the June 28, 2011 meeting outlining the discussion of this proposed amendment. No specific recommendations were provided by the Planning Commission at that meeting.

While using the recently amended Subdivision Regulations, it became apparent to Staff that there are components of the Regulations that could use further review and potential amendments. Staff believes that the determination of a minor versus major site plan is one section of the Regulations that warrants further review and an amendment.

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, an increase in the square footage that prompts the requirement for a major site plan process. In the process of reviewing projects and potential site plans, Staff has become aware of the restrictiveness of determining that all projects that are 5,000 square feet or more be classified as major site plan. One of the limits of this dividing point is that it is a one size fits all approach and does not recognize the differences in uses within the zoning districts. Activities and structures in the Rural district are inclined to be smaller in nature than those located in the Industrial-Commercial district. This proposed amendment is to increase the square footage for the determination of a major site plan, based on the zoning district in which the proposed project will be located.

There have been a number of cases in which applicants attempt to stay at or under 5,000 square feet, by either downsizing buildings to fit the requirements or by intending to return later for an addition to add the needed extra square feet. It is an issue; as an applicant is not allowed to do multiple minor site plans in order to avoid the major process. Staff's intent is to provide an increase in the square footage, yet balance the need for public input and awareness. While any number could be considered arbitrary, staff feels the proposal balances the aspects of arbitration versus the increase in size, thereby eliminating any possible detriment to the public.

Another related issue is that a significant amount of staff resources are being expended on projects that should be a minor, but the square footages requires it to be a major. For example, in any district that allows for commercial or industrial uses, most members of the public would realize that buildings constructed in those districts would generally well exceed 5,000 square feet. It is on those grounds that this proposed amendment is founded.

Shown below are the sections from the Subdivision and Land Development Regulations with the proposed text amendments to address the previously stated issues shown in blue. Staff has revised the following amendments based on input received at the June 28, 2011 Planning Commission meeting.

### **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 **totaling no more than:** ~~total less than 5,000 square feet gross floor area (GFA) on any site;~~

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

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

(3) Existing buildings with gross floor area exceeding the maximum square footage allowed in 20.203(1) are allowed a one-time expansion of no more than 10% of existing GFA in all zoning districts; or ~~Addition(s) to existing development of less than ten percent of existing GFA or additions less than 10,000 square feet GFA, whichever is less; or~~

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

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

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

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

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

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

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

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

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

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. Existing buildings with gross floor area exceeding the maximum square footage allowed in 20.203(1) are allowed a one-time expansion of no more than 10% of existing GFA in all zoning districts; or ~~Addition(s) to existing development of less than ten percent of existing GFA or additions less than 10,000 square feet GFA, whichever is less; or~~

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

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

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

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

A. 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;~~ **totaling no more than:**

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

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

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

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

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

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

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

- A. A new public or private street or dedication to public use of an existing street;
- B. Building(s), both new and additions to existing, where all structures located on the parcel are equal to or total more than: ~~5,000 square feet or more of GFA on any site;~~
  - 7,500 square feet gross floor area (GFA) on any site in the Village and Residential Growth Districts.
  - 15,000 square feet gross floor area (GFA) on any site in the Rural/Agriculture and Residential/Light Industrial/ Commercial Districts.
  - 30,000 square feet gross floor area (GFA) on any site in the Industrial/Commercial District.
  - except building(s), both new and additions to existing, regardless of size, when located in a business and/or industrial park on a lot within an approved major subdivision with master planned roads and stormwater;
- C. Existing buildings with gross floor area exceeding the maximum square footage allowed in 20.203(1) that have previously been granted a one-time expansion of no more than 10% of existing GFA in all zoning districts as a minor site plan as delineated in Section 20.203; or ~~Addition(s) to existing development of ten percent or more of existing GFA or with additions of 10,000 square feet or more of GFA;~~
- D. Apartment or multi-family development of ten or more dwelling units; or
- E. A heavy industrial use.

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

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

- A. A new public or private street or dedication to public use of an existing street;
- B. Building(s), both new and additions to existing, where all structures located on the parcel are equal to or total more than: ~~5,000 square feet or more of GFA on any site;~~
  - 7,500 square feet gross floor area (GFA) on any site in the Village and Residential Growth Districts.
  - 15,000 square feet gross floor area (GFA) on any site in the Rural/Agriculture and Residential/Light Industrial/ Commercial Districts.
  - 30,000 square feet gross floor area (GFA) on any site in the Industrial/Commercial District.
  - except building(s), both new and additions to existing, regardless of size, when located in a business and/or industrial park on a lot within an approved major subdivision with master planned roads and stormwater;
- C. Existing buildings with gross floor area exceeding the maximum square footage allowed in 20.203(1) that have previously been granted a one-time expansion of no more than 10% of existing GFA in all zoning districts as a minor site plan as delineated in Section 20.203; or ~~Addition(s) to existing development of ten percent or more of existing GFA or with additions of 10,000 square feet or more of GFA;~~
- D. Apartment or multi-family development of ten or more dwelling units; or
- E. A heavy industrial use.

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

Mr. Mike Hicks, Engineer for the project, stated that the Department of Highways (DOH) had not provided a letter, however he reported he would forward an email from the DOH to staff stating that no traffic study was needed. Mr. Hicks explained that the property was equipped with well and septic that would not be adequate for the expansion. However, the church would be able to connect to a small pump station within Colonial Hills in order to expand.

Mr. Hayes opened the public workshop. Mr. Dirk Stansbury, Engineer, spoke in support of the project.

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

Mr. Burns moved to use the staff recommended motion (attached) with the condition that the site plan for the development shall not be approved until water/wastewater service is resolved and the Department of Highways permit is provided. Ms. Etters seconded the motion which carried unanimously.

**8. Public Hearing for Proposed Text Amendment to Section 20.203 Minor Site Development, Section 20.204 Major Site Development, and Division 26.200 Definition of Terms, regarding the maximum square footage requirements for a Minor Site Plan in each Zoning District.**

Mr. Barney reviewed the amendments. Mr. Hayes opened the public hearing.

Mr. David Hartley, representing the Eastern Panhandle Home Builders Association, voiced support of the amendments and suggested further amending Section 20.203.1 to state:

- *7,500 square feet gross floor area (GFA) on any site in the Village District.*
- *10,000 square feet gross floor area (GFA) on any site in the Rural District.*
- *7,500 square feet gross floor area (GFA) on any site in the Residential Growth District.*
- *20,000 square feet gross floor area (GFA) on any site in the Residential/Light Industrial/Commercial District.*
- *50,000 square feet gross floor area (GFA) on any site in the Industrial/Commercial District.*

He also suggested that Section 20.203.4 be further amended to state *apartment or multi-family development of 12 or less dwelling units*. He commented on his support of streamlining the process of a concept plan and discussed the idea of reinstating a staff review meeting.

Mr. Dirk Stansbury, of D A Stansbury Engineering, voiced support of the amendments and suggested that in Section 20.203.3 that buildings existing prior to 1988 be exempt from restrictions and that any existing square footage for those buildings should not be factored.

Mr. Matt Knott, owner of River Riders, stated that the Major Site Plan process is very similar to the Conditional Use Permit process and that it seems like asking for permission to do what

has already been permitted. He reported that the cost difference between a minor and major site plan is significant. He commented that the Residential/Light Industrial/Commercial district be allowed the same square footage as the Industrial/Commercial district and suggested that the wording be changed to whichever is *greater* instead of whichever is *lesser*.

Mr. John Thomas, with Jefferson Asphalt Products, stated that the length of time that it takes to process a Concept Plan is too long. He concurred with Mr. Knott that the language should be changed to state whichever is *greater* instead of whichever is *lesser*.

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

Ms. Brockman presented written comments from Jason Gerhardt, Senior Project Engineer for William H. Gordon Associates, Inc.

Mr. Smith suggested allowing up to 20,000 square feet for all districts except to allow up to 40,000 square feet in the Industrial/Commercial district with the caveat that there is a public process outlined for the Village, Residential Growth, and Residential/Light Industrial/Commercial districts.

Mr. Hayes appointed a subcommittee of Mr. Dailey, Mr. Pellish and Mr. Burns to meet at a date uncertain to edit amendments considering public comment.

Mr. Burns moved to postpone discussion until July 26, 2011. Mr. Pellish seconded the motion which carried unanimously.

Mr. Hayes called for a break at 9:11 PM. Mr. Hayes called the meeting to order at 9:17 PM.

**9. Public Hearing for Amendments to Articles 4A and Section 2.2 of the Zoning and Land Development Ordinance and Section 20.203 of the Subdivision and Land Development Regulations, regarding Home Occupations and Cottage Industries.**

Mr. Barney reviewed the amendments.

Mr. Hayes opened the public hearing. Ms. Barbara Feldman, home business owner, discussed issues with obtaining a Department of Highway Entrance Permit and also commented that the allowed number of cars should be increased and be more flexible.

Ms. Jennifer Syron, of the Eastern Panhandle Organization of Home Owner Associations (EPOHOA), distributed a booklet regarding the summary and position of the EPOHOA regarding home businesses and cottage industries. She gave a presentation regarding the changes to the amendments which were outlined within the documents. She reported that pressure was being placed on the HOAs and requested that the County require written approval from the HOA of the subdivision and provide public notice instead of restricting home businesses in subdivisions altogether.

Ms. Nancy Briscoe, Home Business owner, reiterated Ms. Syron's comments.

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

Email: [planningdepartment@jeffersoncountywv.org](mailto:planningdepartment@jeffersoncountywv.org)  
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**MEMO**

**TO:** Planning Commission Members  
**FROM:** Steve Barney, Zoning Administrator  
**DATE:** July 26, 2011  
**RE:** Draft Amendments – Article 4A (Home Occupation / Cottage Industry)

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On June 28<sup>th</sup>, the Planning Commission conducted a public hearing on the Cottage Industry / Home Occupation draft amendments to Article 4A of the Zoning and Land Development Ordinance (with incidental amendments to Sections 2.2 and 10.3, and to Section 20.203 of the Subdivision and Land Development Regulations).

At the June 28<sup>th</sup> meeting, the Planning Commission asked staff to prepare a list of the public comments received during the public hearing. This list is included in the packet for this meeting, in matrix format. For each change requested at the public hearing, the matrix contains the relevant language in the draft ordinance, as well as the staff recommendation regarding the requested change.

Should the Planning Commission take action at the July 26 meeting to recommend the draft ordinance to the County Commission for adoption, a motion sheet for this action is included in the packet. The Planning Commission may amend the motion to incorporate any recommended changes to the draft ordinance.

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

**A Motion Recommending Approval of  
Amendments to Article 4A and Sections 2.2 and 10.3 of the Zoning Ordinance and  
Section 20.203 of the Subdivision and Land Development Regulations  
July 26, 2011**

**Whereas**, The Jefferson County Planning and Zoning Department initiated amendments to the Zoning and Land Development Ordinance and the Subdivision and Land Development Regulations regarding Home Occupation and Cottage Industry requirements; and

**Whereas**, the Department conducted a stakeholder meeting to receive input on Home Occupations and Cottage Industries on March 1, 2011;

**Whereas**, The Planning Commission conducted a meeting to review the draft ordinance amendments on May 24, 2011; and

**Whereas**, The Planning Commission conducted a public hearing on the draft ordinance amendments on June 28, 2011; and

**Whereas**, The Planning Commission conducted a meeting to review comments received at the public hearing on July 26, 2011;

**Now therefore be it moved**, that the Jefferson County Planning Commission recommends that the County Commission approve the draft amendments to Article 4A and Sections 2.2 and 10.3 of the Zoning Ordinance and Section 20.203 of the Subdivision and Land Development Regulations, with the following changes:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.

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

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

---

Daniel Hayes, Commission President

**Draft Home Occupation / Cottage Industry Zoning Ordinance Amendments  
Comments Received at June 28, 2011 County Commission Meeting**

#	Topic	Section	Current Language in Draft Ordinance	Request	Comment	Staff Recommendation
1	WVDOH Highway Entrance Permit	4A.5(i)(2)	[Sketch] plan submittal shall include the following elements: (2) Highway entrance permit for the residential use	Eliminate requirement for submittal.	This section of the ordinance is intended to address whether or not an existing (or proposed) access to a state road was permitted by the WVDOH.  However, Staff's understanding is that the WVDOH does not have different requirements for small, home-based businesses with little traffic generation, and large commercial enterprises.	Retain existing language, but apply literally – i.e. the entrance permit should be for the <u>residential</u> use, which is the predominant use of the property.  (Please note that most properties will already have such an entrance permit on file with the subdivision plat that created the lot.)
2	Vehicle Trips per Day	4A.5(e)	No more than twelve (12) business-related vehicle visits per day and nor more than sixty (60) visits per week at the premises, including delivery vehicles, but excluding employee commuting, shall be permitted.	Retain weekly cap, but allow flexibility in application of daily trips. For example, allow 15 trips on a given day, provided that number of weekly trips does not exceed a total of 60.	While the ordinance should include a daily limit, it may be appropriate to allow Home Occupation and Cottage Industry operators some flexibility in distributing vehicle trips throughout the week.	Revise Cottage Industry limit to 15 trips per day and Home Occupation Level 2 limit to 5 trips per day, but clarify that the weekly limit may not be exceeded.
3	HOA approval of Cottage Industry / Home Occupation applications	4A.6	4A.46 Private Covenants Running with the Land  Jefferson County shall not enforce or become involved in the enforcement of deed restrictions, covenants, easements, or any other private agreement, and, in the review of development proposals, the County will apply only its regulations to evaluate the proposal. All such restrictions shall be enforced by the parties to the restriction. It is the responsibility of an applicant for a proposed Cottage Industry or Home Occupation to research any private agreements relating to the subject property, contact the Homeowners' Association, or seek the advice of a surveyor, engineer or attorney.	The County should require written approval from each HOA board prior to County review of an application for a Home Occupation or Cottage Industry.	Per Jefferson County legal counsel, the County cannot make HOA approval a precondition of County approval.	No change recommended.

**Draft Home Occupation / Cottage Industry Zoning Ordinance Amendments  
Comments Received at June 28, 2011 County Commission Meeting**

#	Topic	Section	Current Language in Draft Ordinance	Request	Comment	Staff Recommendation
4	Public notice and neighbors' ability to appeal	N/A	N/A	Public notification of a Home Occupation or Cottage Industry application should be posted on the subject property for 30 days prior to approval so that interested neighbors have time to appeal.	<p>A 30-day posting requirement seems overly burdensome for home-based businesses, especially Home Occupations.</p> <p>It is unclear how such an appeal process would function. Currently, the Board of Zoning Appeals is the venue for an appeal of the issuance of a Zoning Certificate; however, such an appeal must be based on whether or not the land use meets the requirements of the Zoning Ordinance (i.e. not on external factors such as HOA covenants).</p>	<p>No change recommended.</p> <p>If the Planning Commission does choose to include such a signage requirement in the draft ordinance, staff recommends that the requirement apply only to Cottage Industries, and that the posting be limited to 14 days.</p>
5	Site Plan applicability for Cottage Industries (with accessory structures)	4A.5(j)	Additionally, site plans pursuant to the Subdivision and Land Development Regulations are required if the combined gross floor area of a new building, an addition, and/or an existing accessory structure as described in (1) – (4) below, to be used as a Cottage Industry, exceeds 1,500 square feet but is less than 3,000 square feet . . .	1,500 square foot minimum before triggering a site plan is not large enough and should be increased to 3,000 or 5,000 square feet.	<p>To clarify, the 1,500 square feet minimum applies only to:</p> <ul style="list-style-type: none"> <li>• New accessory structures, or</li> <li>• An addition to an existing home or accessory structure, when to be used as part of a Cottage Industry; or</li> <li>• Existing accessory structures to be converted to use as a Cottage Industry, if built in last 5 years; or</li> <li>• An existing structure or addition built without a required permit after December 20, 1975.</li> </ul> <p>It should also be noted that any other non-residential development (other than a Cottage Industry) requires a site plan for 250 square feet of construction. The proposed ordinance offers significant latitude to Cottage Industries.</p>	No change recommended.

**Draft Home Occupation / Cottage Industry Zoning Ordinance Amendments  
Comments Received at June 28, 2011 County Commission Meeting**

#	Topic	Section	Current Language in Draft Ordinance	Request	Comment	Staff Recommendation
6	Annual or twice-yearly special events	4A.3(e) 4A.4(e) 4A.5(e)	<p>Section 4A.2 Exempt Activities</p> <p>The following land uses do not constitute a Home Occupation or Cottage Industry, and do not require a Zoning Certificate:</p> <p>The participation of an individual location in an event conducted annually or twice yearly with multiple locations, such as a home and garden tour or an art studio tour.</p>	A seasonal open house clause should be included in the traffic requirements to allow more traffic during an open house event (such as an art studio tour).	Staff believes the existing language in the ordinance addresses this concern; however, if the Planning Commission seeks to clarify the ordinance, staff recommends a single amendment to Section 4A.2 rather than multiple amendments to 4A.3, 4A.4, and 4A.5.	<p>No change recommended.</p> <p>However, if the Planning Commission does choose to include this change, Staff recommends changing the wording of Section 4A.2(3) [renumbering needed] to:</p> <p>The participation of an individual location in an event conducted annually or twice yearly with multiple locations, such as a home and garden tour or an art studio tour. <a href="#">Such an event need not comply with the vehicular trip limits established by this Article.</a></p>
7	Outdoor storage	4A.1(g)	<p>Section 4A.1 Home Occupation and Cottage Industry, General Standards</p> <p>(g) No outdoor storage of any kind is permitted.</p>	Outside storage should be allowed.	The intent of the requirement is to preserve the residential appearance of the property.	<p>Staff recommends amending this section to read:</p> <p>(g) No outdoor storage of any kind, <a href="#">visible from a public or private right-of-way or vehicular access easement</a>, is permitted.</p>
8	Setbacks for a Cottage Industry accessory structure	4A.5(l)	<p>(l) Setbacks shall be as provided below for an accessory structure used for a Cottage Industry:</p> <p>(1) For an accessory structure lawfully constructed during the five years prior to application for a Zoning Certificate for a Cottage Industry, setbacks are 25 feet from all lot lines.</p> <p>(2) For an accessory structure lawfully constructed more than five years prior to application for a Zoning Certificate for a Cottage Industry, the applicable zoning district setbacks for an accessory structure apply.</p>	25' setback requirement for accessory structures should be changed to be consistent with standard zoning district setbacks of the Zoning Ordinance.	<p>25' is the setback currently required for a Cottage Industry. The draft ordinance is more flexible than the current ordinance because it requires the 25' setback only for buildings built in the past 5 years.</p> <p>It should be noted that an accessory structure for a Cottage Industry may be expected to generate noise in greater volume and frequency than an accessory structure used for residential purposes. As such, a greater setback should apply.</p>	No change recommended.

Jefferson County Planning and Zoning Departments  
P.O. Box 338  
Charles Town, WV 25414

RECEIVED  
JUL 06 2011  
JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING  
July 5, 2011

Dear Planning and Zoning Commissions:

After listening to the Webcast of meeting on June 28, 2011 on the draft of Home Occupation/ Cottage Industry regulations, I realized that I needed to make a correction. I did not have complete focus as more than one person was speaking to me at one time. To make our position clear, the twenty-five (25) foot setback for accessory buildings we feel is fair. This is assuming that the structure is legal and satisfies the definition of an accessory or building. However in our case, Ms. Bridy's wood fed kiln is not a building. A kiln is defined as an "oven" (see attached definition). Just because it has a roof over it does not change the fact that it is a kiln (oven). We feel the setback of twenty-five (25) is not appropriate for Ms. Bridy's industrial size kiln (oven). Because of its extremely high heat, being a fire threat and risk of explosion it needs to be further away from our wooded lot for obvious reasons. We feel that her kiln would be appropriate if it were at least fifty (50) feet from ANY boundary or property line. This is one example where one regulation can not fit every situation. It needs individual attention.

We are currently researching how the fire company would get its equipment to her and our property if a fire threatens. Since this part of our property which is eighteen (18) feet from her kiln pavilion, has many rock breaks and large trees, it seems it would be very difficult for fire equipment to reach.

As for setback number two (under Section 4A5, subsection "L" number 2), we consider Ms. Bridy's industrial size box Bourry Box kiln an illegal structure. It is our belief that this kiln was built "under the radar" of zoning. That there was much confusion for us as to who gave approval for construction of the kiln and who said it was safe to use.

We are requesting that the kiln be defined as a special situation. We know Ms. Bridy is proud of her craft and that the kiln was an accomplishment. That being said it still fires at over 2000 degrees for over three days and three nights. Every time it is fired the bricks become pitted and the kiln begins to break down. It is only a matter of time before it becomes unstable. Because of that constant threat, it is inappropriate at a twenty-five (25) foot setback and yet currently sits at eighteen feet from our property. This is why we are requesting at least a fifty (50) foot setback or more in this special case. Furthermore that the kiln be placed in an appropriate location on Ms. Bridy's four acres that is easily accessible by fire equipment and not a threat to neighbors.

We thank you for your time and patience in this matter.

Sincerely,



Joann and Curt Harstad

## thefreedictionary.com

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### **kiln** (kĭln, kĭl)

*n.*

Any of various ovens for hardening, burning, or drying substances such as grain, meal, or clay, especially a brick-lined oven used to bake or fire ceramics.

*tr. v.* **kilned, kiln-ing, kilns**

To process in one of these ovens.

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[Middle English *kilne*, from Old English *cyln*, from Latin *culīna*, *kitchen, stove*; see *pek<sup>w</sup>*- in Indo-European roots.]

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### **kiln** [kɪln]

*n*

(Fine Arts & Visual Arts / Ceramics) a large oven for burning, drying, or processing something, such as porcelain or bricks

*vb*

(Fine Arts & Visual Arts / Ceramics) (*tr*) to fire or process in a kiln

[Old English *cylen*, from Late Latin *culīna* kitchen, from Latin *coquere* to COOK]

Collins English Dictionary – Complete and Unabridged © HarperCollins Publishers 1991, 1994, 1998, 2000, 2003

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ARTICLE 4A. HOME OCCUPATIONS AND COTTAGE INDUSTRIES

***DRAFT*** amendments for public review

Blue = new text

Green = text moved from elsewhere

Red = deleted text

Purple = text moved to elsewhere

Section 4A.1 Home Occupation and Cottage Industry, General Standards

- a. A Zoning Certificate is required for a Cottage Industry or Home Occupation pursuant to Section 3.2 of this Ordinance.
- b. ~~It~~ A Home Occupation or Cottage Industry shall be ~~is~~ clearly incidental and subordinate to the use of the dwelling unit as a residence.
- c. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of ~~such home occupation~~ the Home Occupation or Cottage Industry, other than as provided in this Article.
- d. No equipment or process shall be used in ~~such a home occupation~~ Home Occupation or Cottage Industry which creates offensive manifestations by sight, sound or smell detectable to the normal senses, or electrical interference or vibrations perceptible, ~~outside the dwelling unit~~ at any lot line.
- e. The following land uses cannot be established as a Home Occupations or Cottage Industry:
  - (1) ~~do not include; b~~ Boarding or rooming homes
  - (2) ~~or b~~ Bed and breakfast establishments
  - (3) ~~or a~~ Adult uses.
  - (4) No Any business which ~~includes~~ involves the storage of weapons such as firearms ~~-(other than the residents' hunting, protection and leisure weapons)-shall be permitted.~~ [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]
- f. Any need for parking generated by the ~~conducted use of such home business~~ Home Occupation or Cottage Industry shall be met off street and other than in a required front yard.
- g. No outdoor storage of any kind is permitted.

Section 4A.2 Exempt Activities

The following land uses do not constitute a Home Occupation or Cottage Industry, and do not require a Zoning Certificate:

- (1) Telecommuting
- (2) A computer-based occupation involving one full-time resident and no other on-site employees, provided that the occupation generates no additional vehicular trips, no customer visits, no additional shipping or mailing that exceeds a normal residential volume, and would not be otherwise prohibited by this Article. This category includes internet-based sales activities that do not require the presence of inventory at the property, such as drop-shipping.
- (3) The participation of an individual location in an event conducted annually or twice yearly with multiple locations, such as a home and garden tour or an art studio tour

Section 4A.43 Home Occupation, Level 1

An occupation conducted in a dwelling unit for gain provided that:

- a. No person other than members of the family residing on the premises shall be engaged in such occupation. Said members must be full time residents of the premises.
- b. The use shall be conducted wholly within the dwelling unit and shall not exceed one third (1/3)25% of the floor area of the dwelling unit.
- c. ~~There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation.~~
- d. There shall be no sales, other than items handcrafted on the premises, in connection with such home occupation. Incidental sales of class-related material to students who receive instruction on the premises shall be permitted.
- e. Traffic generated by such home occupation must not exceed two (2) business related vehicle visits per day and no more than ten (10) visits per week at the premises. ~~Any need for parking generated by the conduct of such home occupation shall be met off street and other than in a required front yard.~~
- f. ~~It is clearly incidental and subordinate to the use of the dwelling unit as a residence.~~
- g. ~~No equipment or process shall be used in such a home occupation which creates offensive manifestations by sight, sound or smell detectable to the normal senses, or electrical interference or vibrations perceptible, outside the dwelling unit.~~
- h. ~~No business which includes the storage of weapons such as firearms (other than~~

**Comment [SB1]:** Moved to "General Standards" section.

**Comment [SB2]:** Moved to "General Standards" section.

**Comment [SB3]:** Moved to "General Standards" section.

**Comment [SB4]:** Moved to "General Standards" section.

~~the residents hunting, protection and leisure weapons) shall be permitted. Home occupations do not include; boarding or rooming homes or bed and breakfast establishments or adult uses. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]~~

Comment [SB5]: Moved to "General Standards" section.

Section 4A.24 Home Occupation, Level 2

An occupation conducted in a dwelling unit for gain, provided that:

- a. The occupation must be conducted by a full-time resident of the property. Up to two (2) nonresident employees also may be permitted to work on the premises.
- b. The use shall be conducted wholly within the dwelling unit and shall not exceed one third (1/3) of floor area of the dwelling unit.
- c. ~~The use shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding one two (12) square foot-feet in area, non-illuminated, is permitted.~~
- d. There shall be no sales, other than items crafted on the premises, in connection with such home occupation. Incidental sales of class-related material to students who receive instruction on the premises shall be permitted.
- e. No more than three (3) business-related vehicle visits per day and not more than fifteen (15) visits per week at the premises, including delivery vehicles, but excluding employee commuting, shall be permitted. ~~Any need for parking generated by the conducted use of such home business shall be met off street and other than in a required front yard.~~
- f. ~~It is clearly incidental and subordinate to the use of the dwelling unit as a residence.~~
- g. ~~No equipment or process shall be used in such a home business which creates offensive manifestations by sight, sound or smell detectable to the normal senses, or electrical interference or vibrations perceptible, outside the dwelling unit.~~
- h. ~~No business which includes the storage of weapons such as firearms (other than the residents hunting, protection and leisure weapons) shall be permitted. Home businesses do not include; boarding or rooming homes or bed and breakfast establishments or adult uses. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]~~
- i.h. For a Home Occupation located in an Is not permitted in existing residential subdivisions established after since July 17, 1979, the minimum lot size is 20,000 square feet.

Comment [SB6]: Moved to "General Standards" section.

Comment [SB7]: Moved to "General Standards" section.

Comment [SB8]: Moved to "General Standards" section.

Comment [SB9]: Moved to "General Standards" section.

Comment [SB10]: Moved to "General Standards" section.

Section 4A.35 Cottage Industry

An occupation conducted at a residential premises for gain, provided that:

(a) The occupation must be owned and operated by a full-time resident of the property. Up to four (4) nonresident employees may be permitted to work on the premises.

(b) The use ~~shall~~ may be conducted at least in part within the dwelling unit. Said use area within the dwelling unit shall not exceed ~~one-third (1/3)~~ one half (1/2) of the floor area of the dwelling unit. ~~In addition all cottage industry.~~ Two subordinate structures shall be permitted in accordance with the requirements of this Article. ~~not exceeding two stories and shall not have a footprint greater than 1000 square feet.~~

(c) There shall be no change in the outside appearance of the residential structure. One sign, not exceeding four (4) square feet in area, non-illuminated may be permitted.

~~(e)~~(d) Sales on the premises shall be permitted with the limitation that no less than seventy-five (75) percent of the items for sale shall be products produced on the premises and that items not produced on premises shall be items similar or related to the items produced on the premises.

~~(d)~~(e) No more than twelve (12) business-related vehicle visits per day and ~~nor~~ more than sixty (60) visits per week at the premises, including delivery vehicles, but excluding employee commuting, shall be permitted. ~~Any need for parking generated by the conduct of such cottage industry shall be met off street and other than within the required front yard setback.~~

Comment [SB11]: Moved to "General Standards" section.

~~(e)~~(f) ~~No evidence in the appearance of the property or other visible manifestation of the conduct of cottage industry activity shall be visible from the public way, other than a non-illuminated sign.~~

Comment [SB12]: Moved to "General Standards" section.

~~(f)~~(g) ~~No equipment or process shall be used in such a cottage industry establishment which creates offensive manifestations by sight, sound or smell detectable to the normal senses at any property line, or which creates electrical interference or vibrations perceptible, at any lot line.~~

Comment [SB13]: Moved to "General Standards" section.

~~(g)~~(h) ~~No business which includes the storage of weapons such as firearms (other than the residents hunting, protection and leisure weapons) shall be permitted. Home businesses do not include; boarding or rooming homes or bed and breakfast establishments or adult uses.~~  
~~[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]~~

Comment [SB14]: Moved to "General Standards" section.

(i) Submittal of a sketch plan is required for all Cottage Industry applications. The plan need not be prepared by a licensed engineer or surveyor. Use of a sketch

plan does not preclude compliance with applicable County, State, and Federal regulations. The plan submittal shall include the following elements:

- (1) Accurate locations and dimensions of all existing and proposed:
  - a. Structures, paved areas, parking areas and drive aisles (including setbacks from property lines)
  - b. Septic areas
  - c. Access points to roads, driveways, and easements
  - d. Property boundaries
- (2) Highway entrance permit for the residential use
- (3) Most recent deed for the property

(j) Additionally, ~~Site~~ plans pursuant to ~~Article 4 of the Improvement Location Permit Ordinance~~ the Subdivision and Land Development Regulations are required ~~for~~ if the combined gross floor area of a new building, an addition, and/or an existing accessory structure as described in (1) – (4) below, to be used as a Cottage Industry, exceeds 1,500 square feet but is less than 3,000 square feet:

- (1) ~~New~~ accessory structures, or
- (2) An addition to an existing residence or accessory structure, when the addition is intended for use as part of a Cottage Industry;
- (3) Existing accessory structures that are to be converted to be ~~used~~ used as a part of the Cottage Industry, if constructed during the five years prior to application for a Zoning Certificate for a Cottage Industry; ~~unless otherwise permitted by the Planning Commission.~~
- (+)(4) An existing structure or addition built without a required, valid building permit or Improvement Location Permit after December 20, 1975.

(k) The maximum combined gross floor area of a new building, an addition, and/or an existing accessory structure as described in subsection (j)(1) – (4), to be used as a Cottage Industry, is 3,000 square feet. For any additional building area exceeding 3,000 square feet, the development and property shall meet all requirements of the Subdivision and Land Development Regulations and the Zoning and Land Development Ordinance.

(l) Setbacks shall be ~~as provided below~~ for an accessory structure used for a Cottage Industry:

- (1) For an accessory structure lawfully constructed during the five years prior to application for a Zoning Certificate for a Cottage Industry, setbacks are 25 feet from all lot lines.
- (+)(2) For an accessory structure ~~all round the structure~~ lawfully constructed more than five years prior to application for a Zoning Certificate for a Cottage Industry, the applicable zoning district setbacks for an accessory structure apply.

(m) ~~Permitted anywhere except~~ For a Cottage Industry located in the Residential Growth District ~~and or an~~ existing residential subdivision, ~~the~~

minimum lot size is 2 acres. s.

(n) If a proposed Cottage Industry would utilize a private, shared right-of-way, driveway or easement for vehicular access, a Compatibility Assessment Meeting is required. The meeting shall be conducted as described in Sections 7.6A and 7.6C of this Ordinance, with the following exceptions:

- (1) The purpose of the meeting is for the applicant to inform adjacent owners of the proposed Cottage Industry and to describe any associated traffic impacts.
- (2) Owners of all properties with vehicular access to the right-of-way or easement shall be notified of the date, time, and place of the meeting by registered mail. Letters shall be mailed 14 days prior to the scheduled date of the meeting. Staff shall approve the letter as adequate prior to mailing, and the applicant must provide proof of mailing.
- (3) During the Compatibility Assessment Meeting, attendees should limit their comments to the adequacy of the private, shared right-of-way, driveway or easement, to accommodate traffic generated by the proposed Cottage Industry.
- (4) No Board of Zoning Appeals approval of the application is required.

#### 4A.46 Private Covenants Running with the Land

Jefferson County shall not enforce or become involved in the enforcement of deed restrictions, covenants, easements, or any other private agreement, and, in the review of development proposals, the County will apply only its regulations to evaluate the proposal. All such restrictions shall be enforced by the parties to the restriction. It is the responsibility of an applicant for a proposed Cottage Industry or Home Occupation to  
Although not regulated by the County, it is recommended that prior to the operation of a Home Occupation and/or Cottage Industry applicants research restrictive covenants any private agreements relating to for their the subject property, contact the Homeowners' Association, and or seek the advice of a surveyor, engineer or attorney.

[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

Section 2.2 [Definitions]

<p><u>Boarding or Rooming House</u></p>	<p><u>A building other than a Hotel, Motel, Bed and Breakfast, Residential Care Home, Group Residential Home, Group Residential Facility, or Country Inn where lodging is provided for compensation for more than 6 unrelated persons. Meals may or may not be served but are not provided to outside guests. There is one common kitchen facility.</u></p>
<p>Cottage Industry</p>	<p>An occupation <u>conducted</u> at a residential premises, <u>as described in anywhere except the Residential Growth District and existing residential subdivisions; with a limited number of employees, accessory structures and with specific setbacks. See Article 4A for standards of this Ordinance.</u></p>
<p>Home Occupation, Level 1</p>	<p>An occupation conducted in a residential premises, <u>as described in in any district, but only by family members, wholly within the dwelling unit, with no visible evidence of its conduct. See Article 4A for standards of this Ordinance.</u></p>
<p>Home Occupation, Level 2</p>	<p>An occupation conducted in a residential premises, <u>as described in in any district, but not in subdivisions established since 1979, and with some nonresident employees, but wholly within the dwelling unit and with no visible evidence of its conduct except a small sign. See aArticle 4A for standards of this Ordinance.</u></p>

Section 10.3 Permitted Signs Without Zoning Permit

A sign indicating the name and/or premises or accessory use of a home for a home occupation or professional purpose, not exceeding ~~one square foot in area~~ the maximum size for such a sign as permitted in Article 4A of this ordinance.

**Amendment to the Subdivision and Land Development Regulations:**

Sec. 20.203 Minor Site Development

- B. Limited Site Plan Required. A site plan limited to basic information needed to address (a) erosion and sediment control, (b) parking requirements for the expanded use, (c) stormwater management for the additional impervious area only, (d) handicapped access to the existing and proposed structures and (e) compliance with the Zoning Ordinance, may be used on sites where the structure is:
1. An addition to an existing structure, or, ancillary to an existing use; and
  2. The footprint does not exceed 1600 square feet or 35% of the existing structure, whichever is smaller.
  3. If the principle use is residential and For a home occupation or cottage industry is proposed, the limited site plan standards shall be adhered to are applicable if a site plan is required pursuant to the Zoning Ordinance.

# Urban Tree Canopy Plan and Goals

Jefferson County, West Virginia



May 2011



## **Acknowledgments**

This project was made possible by the efforts of the following people and organizations, to whom we owe our sincere gratitude:

Herb Peddicord, West Virginia Division of Forestry, Watershed Forester

Frank Rodgers, Cacapon Institute, Director of Education and Outreach

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Jefferson County GIS Office

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## Background

In 2009, Jefferson County, West Virginia (WV), with the assistance of the WV Potomac Tributary Strategy Implementation Team (WV Trib Team), began an Urban Tree Canopy (UTC) assessment project. The County, in its effort to foster wider acceptance of voluntary best management practices (BMPs) for urban tree conservation and plantings, first needed an UTC assessment to determine the extent and location of tree canopy. One important benefit to preserving and extending the tree canopy is that it will reduce excessive storm water runoff. Jefferson County's efforts, in conjunction with its five municipalities, will help WV meet the state's commitment to the Chesapeake Bay Program (CBP) goal to have "at least 5 local jurisdictions ... in each state ... complete an assessment of urban forests, adopt a local goal to increase urban tree canopy and encourage measures to attain the established goal."

Coincidentally, at the same time Jefferson was conducting a tree canopy assessment, the U.S. Forest Service published its first National Planting Priority Index. Jefferson and Berkeley Counties (WV) rank in the highest percentile and are among the highest priority counties within the Chesapeake Bay watershed (Figure1).

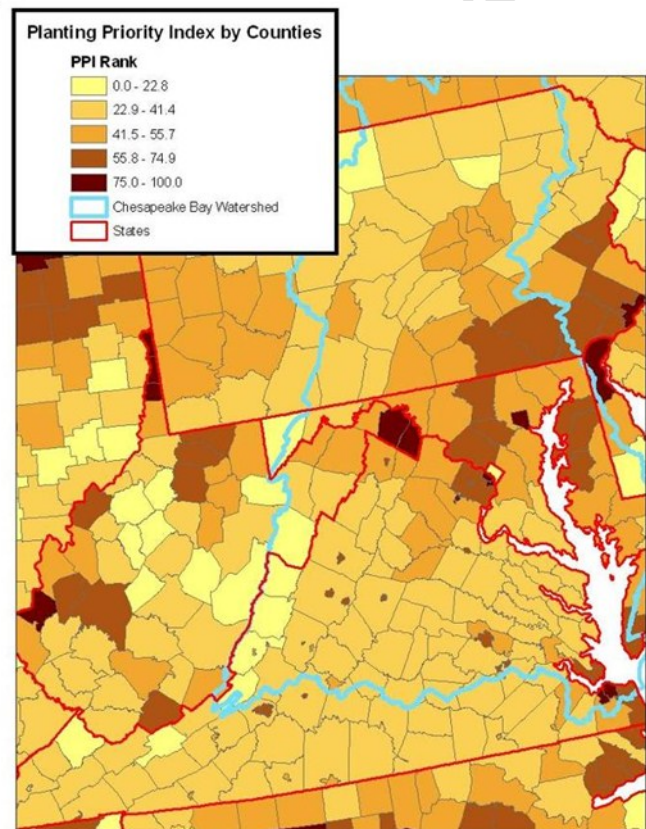


Figure 1.

## Purpose

Tree canopy is the layer of leaves, branches, and stems of trees that cover the ground when viewed from above. "Urban", as defined by the U.S. Census Bureau, is any census block with a population of 500 people per square mile, or the entirety of any incorporated municipality with a single census block meeting that criteria. Urban Tree Canopy (UTC), therefore, is the study of the tree canopy in and around populated areas. Expanding the UTC provides many benefits to communities, including improved water quality, reducing stormwater runoff, saving energy, lowering city temperatures, reducing air pollution, enhancing property values, providing wildlife habitat, facilitating social and educational opportunities, as well as providing aesthetic benefits.

County and Municipal leaders and public officials in Jefferson County are keenly aware and engaged in efforts to reduce stormwater runoff for the sake of protecting local watersheds and the larger Chesapeake Bay watershed. Trees intercept rain water and have the potential to reduce stormwater runoff by up to 75% for the grounds under their canopy. Establishing a UTC Plan and Goals that will be adopted by each of the municipalities and the County Commission is a crucial component of Jefferson County's effort to reduce stormwater runoff and improve the County's green infrastructure.

Trees provide urban and developing rural areas with a wide variety of tangible and intangible benefits. A well developed and preserved tree canopy helps communities preserve, protect, and enhance the natural and built environment and assists in reducing excess stormwater runoff. Additionally, tree canopy helps to mitigate the impact of impervious surfaces and protects local and regional waters, such as the Chesapeake Bay. Trees are an asset that appreciate in value over time because they are living and growing. They do, however, require regular maintenance and protection to ensure that the value continues to grow as they reach maturity. Some municipalities have formed Tree Committees and/or hired an arborist to assist with this critical maintenance component.

There are numerous benefits to communities that value trees and work toward implementation of maintaining, improving, and increasing tree canopy. These benefits fall into the following categories:

### Environmental/Ecological

- Improve air quality by absorbing pollutants such as carbon dioxide, carbon monoxide, ozone, sulfur dioxide and particulates. In turn, trees produce oxygen.
- Improve the quality of our water and our waterways by reducing sedimentation, absorbing excess nutrients and other pollutants, reducing stream channel erosion and reducing water temperatures
- Reduce stormwater runoff and flooding via interception and evapo-transpiration and by promoting infiltration,
- Improve soil quality by adding organic matter and reducing soil erosion.
- Habitat for wildlife and preservation of native ecosystems
- Reduce the urban heat island effect by shading surfaces, dissipating heat through evaporation, and increasing air movement.

### Economic

- Decrease energy costs by shading in the summer (reducing air conditioning costs) and serving as a windbreak in the winter (reducing heating costs).
- Reduce construction and maintenance costs by decreasing costs related to clearing, grading, paving, mowing, and stormwater management.
- Increase property values – The presence of trees and landscaping can increase residential property values up to 20%. Rental rates of commercial properties are also positively affected.
- Stimulate consumer patronage and spending – Consumers shop longer and more often in retail areas shaded by trees. One study reports that consumers are willing to pay up to 11% more for products purchased in shops along tree-lined streets as opposed to shops lacking surrounding trees.

### Community/Social

- Increased recreational and educational opportunities.
- Provide shade and block UV radiation
- Buffer wind and noise
- Enhance community aesthetics.

Various studies have also shown that:

- Trees can reduce the stress response of both the human body and mind in conditions in which urban stressors are present
- A greener school environment can decrease symptoms of Attention Deficit-Hyperactivity Disorder and reduce the number of violent or aggressive acts among children.

A Jefferson County UTC assessment was completed by the University of Vermont's (UVM) Spatial Analysis Laboratory in January 2010, while under contract to Jefferson County. This County-wide study, the largest of its kind in the U.S., utilizes the U.S. Forest Service's premier UTC assessment protocol. By combining existing Light Detection and Ranging (LiDAR, U.S. Geological Survey, 2005) and high resolution color infrared imaging data (National Agricultural Imagery Program, 2007), the UVM high resolution land cover data, from which the UTC assessment was derived (<1 meter resolution, U. Vermont 2009) is more than 95% accurate, approximately 20% more accurate than assessments that use only color infrared. The results are currently under review and being edited by the Jefferson County Department of Planning and Zoning. Results of the UTC assessment have been presented to the Jefferson County "Round Table" (an informal assembly of elected officials and leaders) and to the various planning and public officials and interested public.

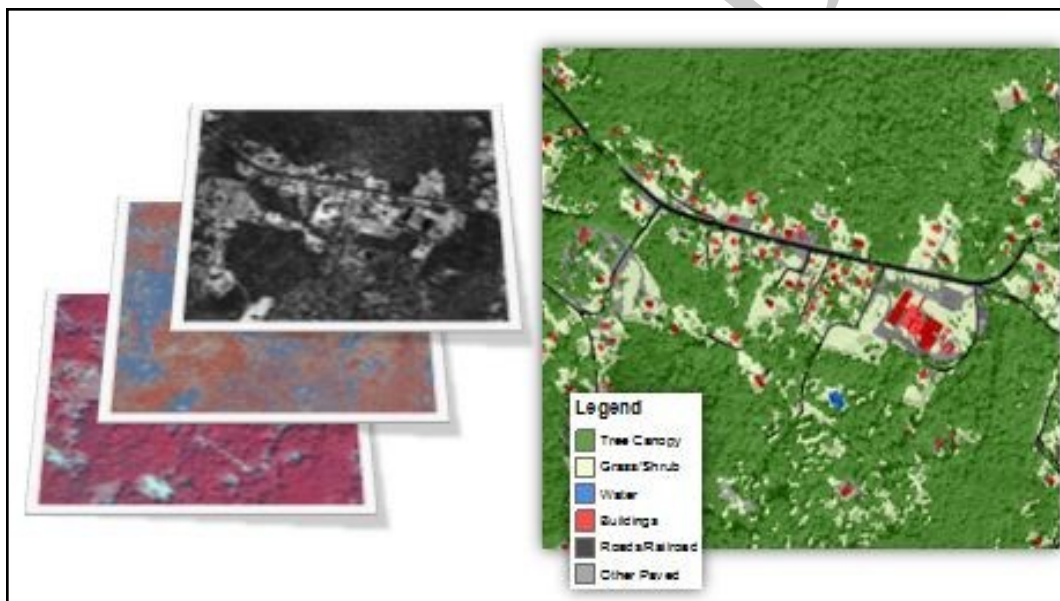


Figure 2. 2007 color infrared imagery and 2005 LiDAR data were combined by the University of Vermont's Spatial Analysis Lab to produce the high resolution land cover data utilized by Jefferson County for the Urban Tree Canopy assessment.

The UTC assessment delineates the percentage of tree canopy (TC), amount of impervious surface and amount of area open to possible tree canopy. The analysis of Jefferson County, based on high resolution aerial imagery sufficient to enumerate single trees, revealed a tree canopy of about 50,600 acres (termed Existing TC) that corresponds to 38% of all land within the county. The UVM assessment also found that 59% (79,000 acres) of the county was available for tree canopy but currently lacked canopy coverage (termed Possible TC). Possible TC includes non-canopy vegetation (e.g., grass/shrubs), bare earth, and certain paved surfaces (e.g., driveways, sidewalks, parking lots) that, under the right circumstances, could be modified to increase tree cover. Areas termed Not Suitable refer to roads, bodies of water, structures, and other locations where tree canopy coverage is impractical. Due to much of Jefferson County being devoted to agriculture, the county's Existing TC generally occurs in scattered patches. The largest, most contiguous patches occur east of the Shenandoah River in the Blue Ridge Mountain area. Note that agricultural land-cover types were not specifically mapped as part of this project, but are included in the Grass/Shrubs land-cover category.

## Chapter 3

## Tree Canopy Analysis Methodology and Data

While the UTC assessment shows in high resolution where tree canopy does and does not exist, it does not specifically identify or recommend where additional trees can be planted. The specific site recommendations and planting specifications are being prioritized in this Plan and goals are being established for the County and each of the municipalities. American Forests, the nation's oldest non-profit conservation organization dedicated to protecting and restoring forest ecosystems, recommends overall tree canopy coverage of 40% for metropolitan areas east of the Mississippi River. This recommendation is commonly referred to by the U.S. Forest Service, West Virginia Division of Forestry, and the Chesapeake Bay Program. The following is a brief summary of the TC data derived for the County and each of the municipalities from the analysis:

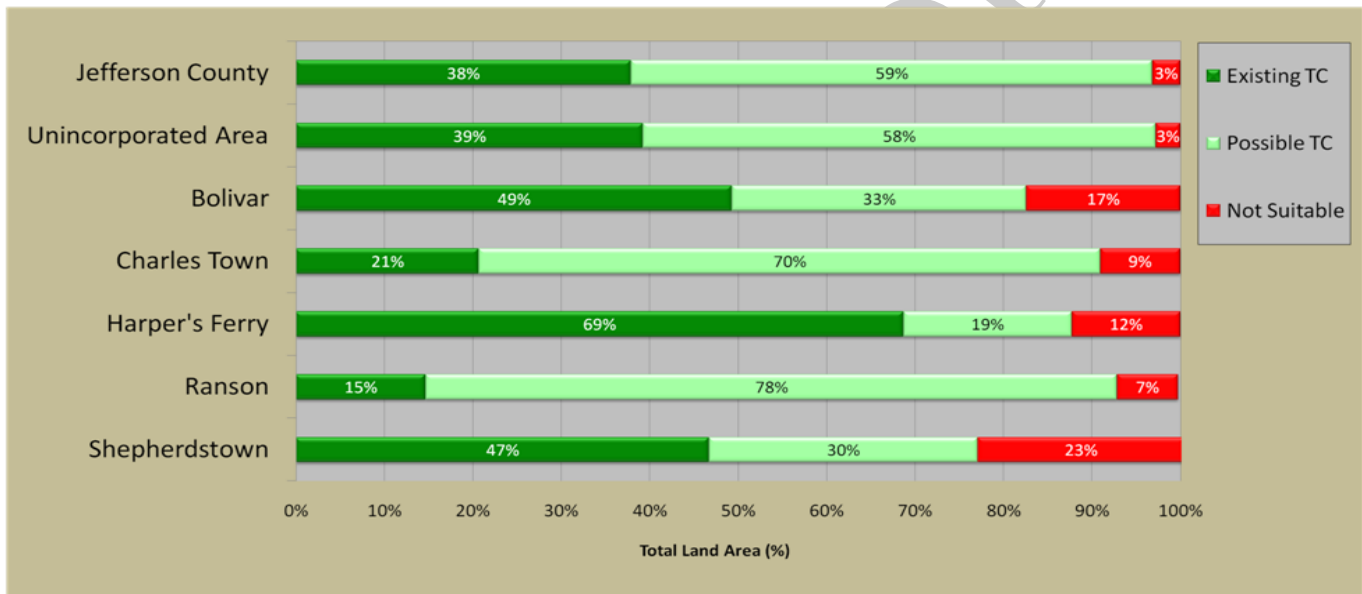


Figure 3. Tree Canopy data for Jefferson County, West Virginia

### Jefferson County, WV Tree Canopy Facts:

- Jefferson County Total Land Area = 133,661 acres
- Total Tree Canopy Area = 50,603 acres
- 38% of the total land area of Jefferson County is identified as tree canopy.
- 59% of the total land area of Jefferson County is available for additional tree canopy.
- 3% of the total land area of Jefferson County is unsuitable for tree planting.
- To increase Tree Canopy by 1% (to 39%), an additional 1,525 acres would be required to be planted in trees.
- To increase Tree Canopy by 2% (to 40%), an additional 2,861 acres would be required to be planted in trees.
- To increase to 40% Tree Canopy over a 10 yr span, 286 acres per year would have to be forested (assuming zero loss during that time span).
- To increase to 40% Tree Canopy over a 20 yr span, 143 acres per year would have to be forested.

## **Chapter 3** **Tree Canopy Analysis Methodology and Data**

### Unincorporated Areas of Jefferson County, WV Tree Canopy Facts:

Unincorporated Total Land Area = 123,986 acres

Total Tree Canopy Area in Unincorporated Areas = 48,613 acres

39% of the total land area of Unincorporated Areas is identified as Tree Canopy.

58% of the total land area of Unincorporated Areas is available for additional Tree Canopy.

3% of the total land area of Unincorporated Areas is unsuitable for tree planting.

To increase Tree Canopy by 1% (to 40%), an additional 981 acres would be required to be planted in trees.

### Bolivar, WV Tree Canopy Facts:

Bolivar Total Land Area = 276 acres

Total Tree Canopy Area in Bolivar = 136 acres

49% of the total land area of Bolivar is identified as Tree Canopy.

33% of the total land area of Bolivar is available for additional Tree Canopy.

18% of the total land area of Bolivar is unsuitable for tree planting.

To increase Tree Canopy by 1% (to 50%), an additional 2 acres would be required to be planted in trees.

### Charles Town, WV Tree Canopy Facts:

Charles Town Total Land Area = 3,669 acres

Total Tree Canopy Area in Charles Town = 759 acres

21% of the total land area of Charles Town is identified as Tree Canopy.

70% of the total land area of Charles Town is available for additional Tree Canopy.

9% of the total land area of Charles Town is unsuitable for tree planting.

To increase Tree Canopy by 1% (to 22%), an additional 48 acres would be required to be planted in trees.

## **Chapter 3**                      **Tree Canopy Analysis Methodology and Data**

### Harpers Ferry, WV Tree Canopy Facts:

Harpers Ferry Total Land Area = 335 acres

Total Tree Canopy Area in Harpers Ferry = 230 acres

69% of the total land area of Harpers Ferry is identified as Tree Canopy.

19% of the total land area of Harpers Ferry is available for additional Tree Canopy.

12% of the total land area of Harpers Ferry is unsuitable for tree planting.

To increase Tree Canopy by 1% (to 70%), an additional 4.5 acres would be required to be planted in trees.

### Ranson, WV Tree Canopy Facts:

Ranson Total Land Area = 5,168 acres

Total Tree Canopy Area in Ranson = 759 acres

15% of the total land area of Ranson is identified as Tree Canopy.

78% of the total land area of Ranson is available for additional Tree Canopy.

7% of the total land area of Ranson is unsuitable for tree planting.

To increase Tree Canopy by 1% (to 16%), an additional 53 acres would be required to be planted in trees.

### Shepherdstown, WV Tree Canopy Facts:

Shepherdstown Total Land Area = 227 acres

Total Tree Canopy Area in Shepherdstown = 106 acres

47% of the total land area of Shepherdstown is identified as Tree Canopy.

30% of the total land area of Shepherdstown is available for additional Tree Canopy.

23% of the total land area of Shepherdstown is unsuitable for tree planting.

To increase Tree Canopy by 1% (to 48%), an additional 3 acres would be required to be planted in trees.

## **Chapter 4 Recommendations and Goals for Jefferson County**

This Tree Canopy Plan sets forth recommendations for tree canopy goals for the unincorporated areas of the County as well as specific goals for each municipality that address their specific needs. The County's and Municipalities' overall Goals should be utilized in setting priorities related to tree canopy improvement and taken into consideration in a variety of local land use decisions.

The goals and recommendations outlined in this plan are intended to be considered and implemented over a twenty year planning period. They should be reviewed at least every 10 years and/or in conjunction with locally adopted Comprehensive Plans which may rely on these Goals and expand the recommendations.

- Increase Overall County Tree Canopy by 2 percent to 40 percent by 2030 as recommended by the American Forests organization, the USDA Forest Service and the WV Division of Forestry.  
[NOTE: April 2008 Green Infrastructure Assessment stated that "Trees in the landscape are so important no matter how big the patch is, that the county should strive to maintain at least 45% forest cover on a watershed basis at minimum, and 51% in watersheds of exceptional value."].
- Increase Overall Tree Canopy in the unincorporated areas of the County by 1 percent to 40 percent by 2030.
- Develop a strategy to add Tree Canopy Coverage along key US and State transportation routes that serve as Gateways to the County and provide an entryway to visitors and residents alike.
- Increase Tree Canopy coverage along key riparian buffers within watersheds that contain primary streams that directly enter the Shenandoah and Potomac Rivers.
- Employ both conservation and strategic restoration of Forests and Stream Corridors to serve as a framework for protection of groundwater, surface water, habitat, and landscape connectivity (source: 2008 Green Infrastructure Assessment).
- Increase Tree Canopy coverage within active agricultural operations along streams and creeks that drain farmland to reduce sedimentation and nutrient loading in receiving streams and rivers.
- Develop an education and outreach program in cooperation with all jurisdictions and the County Extension Service to promote the planting of native tree species on private property through landowner incentive programs; pursue grants to fund such a program.
- Develop policies recommending that landowners water all new trees in the first three years of planting with a commitment by the property owner, through educational materials (handout pamphlets and news releases).
- Review the land coverage data to identify key areas lacking Tree canopy to help prioritize areas to be planted including, but not limited to, additional school site; infilling vacant lots; slowing the flow of stormwater into public areas: such as parking lots, streets, public parks, HOA open space areas; pathways/trails, public buildings, gateways, etc.

## **Chapter 4 Recommendations and Goals for Jefferson County**

- Investigate revenue streams to fund updating the tree canopy assessment every 5 – 10 years in order to monitor and evaluate progress towards goal.
- Develop a mechanism for making the tree canopy assessment data available to the public for future use in reforestation efforts.
- Develop local regulations that ensure that appropriate size and species of trees are located in areas under overhead utility lines and in areas with similar growth restrictions (i.e.: trees that grow over 15 feet tall at maturity should not be planted under the conductor zone on wood pole 138 Kv transmission lines).
- Investigate revenue streams or programs to assist with the removal of invasive species and replacement with native species appropriate to the planting location.
- Review and consider amending Subdivision Regulations and Site Plan development standards to improve policies regarding tree planting and tree and forest protection, including more detailed landscaping plan requirements which detail plant species; encourage native species; require design which integrates landscaping design with stormwater management plans; etc.
- Adopt policies that ensure that tree planting and reforestation efforts restrict the use of invasive species and promote the use of native species throughout the County.
- Establish a policy that requires a developer to conserve a certain percentage of the existing trees before construction or replace with trees native to the area in existing wooded areas after construction with a goal of maintaining or increasing the tree canopy coverage for that property
- Develop local land use policies which employ best management techniques to preserve trees and minimize damage from construction activities such as trenching, soil compaction, and soil clearing and grading.
- Develop implementable land use policies which encourage the retention of existing tree canopy coverage on steep slopes and in riparian buffer areas; pursue ordinance amendments that implement such policies.
- Consider developing implementation recommendations that build upon this planning effort and the 2008 Green Infrastructure Assessment analysis as a part of the 2014 Comprehensive Plan Update, particularly developing land use policies that will help to assure minimizing the fragmentation of the identified core forest areas that contain large patches of intact forest .
- Establish a county-wide Jefferson County Tree Committee to focus on implementing the provisions of this plan and to pursue grant opportunities related to increasing urban tree canopy coverage throughout the County.

This Tree Canopy Plan sets forth recommendations for tree canopy goals for the unincorporated areas of the County as well as specific goals for each municipality that address their specific needs. The following goals are specific to Bolivar and should be utilized in setting priorities related to tree canopy improvement and taken into consideration in a variety of local land use decisions.

The goals and recommendations outlined in this plan are intended to be considered and implemented over a twenty year planning period. They should be reviewed at least every 10 years and/or in conjunction with locally adopted Comprehensive Plans which may rely on these Goals and expand on the recommendations.

- Increase Bolivar's Tree Canopy by 1% to 50% (two additional acres) by 2030.
- Consider appointing a tree committee and pursuing Tree City USA status.
- Develop locally adopted policies that focus on the retention and improvement of existing tree stands including a develop tree maintenance policy and incentives for appropriate tree trimming and maintenance practices.
- Review and consider amending Subdivision Regulations and Site Plan development standards to improve policies regarding tree planting and tree and forest protection.
- Develop a strategy to add Tree Canopy Coverage along US 340 that serves as Gateway to the County and provides an entryway to visitors and residents alike.
- Increase Tree Canopy coverage along key riparian buffers within watersheds that contain primary streams that directly enter the Shenandoah and Potomac Rivers.
- Employ both conservation and strategic restoration of Forests and Stream Corridors to serve as a framework for protection of groundwater, surface water, habitat, and landscape connectivity.
- Develop an education and outreach program in cooperation with all jurisdictions and the County Extension Service to promote the planting of native tree species on private property through landowner incentive programs; pursue grants to fund such a program.
- Develop policies recommending that landowners water all new trees in the first three years of planting with a commitment by the property owner, through educational materials (handout pamphlets and news releases).
- Review the land coverage data to identify key areas lacking tree canopy to help prioritize areas to be planted including, but not limited to, additional school site; infilling vacant lots; slowing the flow of stormwater into public areas: such as parking lots, streets, public parks, HOA open space areas; pathways/trails, public buildings, and gateways; etc.
- Develop local regulations that ensure that appropriate size and species of trees are located in areas under overhead utility lines and in areas with similar growth restrictions (i.e.: trees that grow over 15 feet tall at maturity should not be planted under the conductor zone on wood pole 138 Kv transmission lines).
- Investigate revenue streams or programs to assist with the removal of invasive species and replacement with native species appropriate to the planting location.

## **Chapter 6                      Recommendations and Goals for Charles Town**

This Tree Canopy Plan sets forth recommendations for tree canopy goals for the unincorporated areas of the County as well as specific goals for each municipality that address their specific needs. The following goals are specific to Charles Town and should be utilized in setting priorities related to tree canopy improvement and taken into consideration in a variety of local land use decisions.

The goals and recommendations outlined in this plan are intended to be considered and implemented over a twenty year planning period. They should be reviewed at least every 10 years and/or in conjunction with locally adopted Comprehensive Plans which may rely on these Goals and expand on the recommendations.

- Increase Charles Town Tree Canopy by 1% to 22% (48 additional acres) by 2030.
- Maintain the Town's "Tree City USA" status.
- Improve tree planting/shade tree ordinances and policies including provisions for street tree maintenance, improvement and replacement.
- Develop local policies providing that all new street plantings will have root barriers or root deflectors to prohibit sidewalk lifting and will incorporate the correct soil type to encourage tree longevity.
- Maintain the city's tree maintenance program for tree care including pruning street trees and ensuring that all new tree plantings are selected to provide species diversity and maximum benefits for shade and stormwater mitigation. Include times for watering, weeding and periodic tree health assessment using current arboricultural standards in the maintenance schedule.
- Review and consider amending Subdivision Regulations and Site Plan development standards to improve policies regarding tree planting and tree and forest protection.
- Develop a strategy to add Tree Canopy Coverage along US 340 and State Route 9 and other routes that serve as Gateways to the community and provide an entryway to visitors and residents alike.
- Increase Tree Canopy coverage along key riparian buffers within watersheds that contain primary streams that directly enter the Shenandoah and Potomac Rivers, such as Evitt's Run.
- Employ both conservation and strategic restoration of Forests and Stream Corridors to serve as a framework for protection of groundwater, surface water, habitat, and landscape connectivity (source: 2008 Green Infrastructure Assessment).
- Develop an education and outreach program in cooperation with all jurisdictions and the County Extension Service to promote the planting of native tree species on private property through landowner incentive programs; pursue grants to fund such a program.
- Develop policies recommending that landowners water all new trees in the first three years of planting with a commitment by the property owner, through educational materials (handout pamphlets and news releases).

## **Chapter 6                      Recommendations and Goals for Charles Town**

- Review the land coverage data to identify key areas lacking Tree canopy to help prioritize areas to be planted including, but not limited to, additional school site; infilling vacant lots; slowing the flow of stormwater into public areas: such as parking lots, streets, public parks, HOA open space areas; pathways/trails, public buildings, and gateways; etc.
- Develop local regulations that ensure that appropriate size and species of trees are located in areas under overhead utility lines and in areas with similar growth restrictions (i.e.: trees that grow over 15 feet tall at maturity should not be planted under the conductor zone on wood pole 138 Kv transmission lines).
- Investigate revenue streams or programs to assist with the removal of invasive species and replacement with native species appropriate to the planting location.

## **Chapter 7**                      **Recommendations and Goals for Harpers Ferry**

This Tree Canopy Plan sets forth recommendations for tree canopy goals for the unincorporated areas of the County as well as specific goals for each municipality that address their specific needs. The following goals are specific to Harpers Ferry and should be utilized in setting priorities related to tree canopy improvement and taken into consideration in a variety of local land use decisions.

The goals and recommendations outlined in this plan are intended to be considered and implemented over a twenty year planning period. They should be reviewed at least every 10 years and/or in conjunction with locally adopted Comprehensive Plans which may rely on these Goals and expand on the recommendations.

- Maintain the Town's "Tree City USA" status.
- Develop locally adopted policies that focus on the retention and improvement of existing tree stands including a develop tree maintenance policy and incentives for appropriate tree trimming and maintenance practices.
- Build upon the existing high percentage of tree canopy coverage with a goal of maintaining zero net loss of canopy by protecting and properly maintaining existing tracts of urban forests.
- Review and consider amending Subdivision Regulations and Site Plan development standards to improve policies regarding tree planting and tree and forest protection.
- Develop a strategy to add Tree Canopy Coverage along US 340 and key state transportation routes that serve as Gateways to the community and County and provide an entryway to visitors and residents alike.
- Increase Tree Canopy coverage along key riparian buffers within watersheds that contain primary streams that directly enter the Shenandoah and Potomac Rivers.
- Employ both conservation and strategic restoration of Forests and Stream Corridors to serve as a framework for protection of groundwater, surface water, habitat, and landscape connectivity (source: 2008 Green Infrastructure Assessment).
- Develop an education and outreach program in cooperation with all jurisdictions and the County Extension Service to promote the planting of native tree species on private property through landowner incentive programs; pursue grants to fund such a program.
- Develop policies recommending that landowners water all new trees in the first three years of planting with a commitment by the property owner, through educational materials (handout pamphlets and news releases).
- Review the land coverage data to identify key areas lacking Tree canopy to help prioritize areas to be planted including, but not limited to, additional school site; infilling vacant lots; slowing the flow of stormwater into public areas: such as parking lots, streets, public parks, HOA open space areas; pathways/trails, public buildings, and gateways; etc.
- Develop local regulations that ensure that appropriate size and species of trees are located in areas under overhead utility lines and in areas with similar growth restrictions (i.e.: trees that grow over 15 feet tall at maturity should not be planted under the conductor zone on wood pole 138 Kv transmission lines).

## **Chapter 7**      **Recommendations and Goals for Harpers Ferry**

- Investigate revenue streams or programs to assist with the removal of invasive species and replacement with native species appropriate to the planting location.

DRAFT DRAFT DRAFT DRAFT

This Tree Canopy Plan sets forth recommendations for tree canopy goals for the unincorporated areas of the County as well as specific goals for each municipality that address their specific needs. The following goals are specific to Ranson and should be utilized in setting priorities related to tree canopy improvement and taken into consideration in a variety of local land use decisions.

The goals and recommendations outlined in this plan are intended to be considered and implemented over a twenty year planning period. They should be reviewed at least every 10 years and/or in conjunction with locally adopted Comprehensive Plans which may rely on these Goals and expand on the recommendations.

- Increase Ranson's Tree Canopy by 5% to 20% (258 additional acres) by 2030.  
[NOTE: The American Forests organization, the USDA Forest Service and the WV Division of Forestry recommend a goal of 40 percent tree coverage and the County's 2008 Green Infrastructure Assessment stated that the county should strive to maintain at least 45% forest cover on a watershed basis at minimum, and 51% in watersheds of exceptional value.]
- Develop policies that implement specific recommended average tree coverage percentages by zoning district such as 50% coverage in residential zones, 25% coverage in mixed use zones, 15% coverage in business districts.
- Establish a tree committee to pursue Tree City USA status and to implement a comprehensive street tree planting initiative.
- Develop local land use policies and regulations that encourage the use of well designed and located tree plantings that promote economic development and vitality.
- Develop policies that ensure that all large contiguous areas of impervious surfaces are required to be planned to incorporate well placed, appropriately sized groupings of tree plantings that provide shade, stormwater quality management/detention, and provide a pleasant vehicular and pedestrian experience.
- Develop a plan and program to continue to increase tree canopy on appropriate areas of municipal parks and public lands utilizing citizen volunteers and outreach programs.
- Review and consider amending Subdivision Regulations and Site Plan development standards to improve policies regarding tree planting and tree and forest protection.
- Continue to maintain and plant trees in a nursery area in Ranson, in order to provide a future source of inexpensive native trees for planting along the streets and in other areas around the Municipality.
- Establish economic value/compensatory value of the existing street trees through a professional inventory and utilize this data to draft planting requirements in new retail, employment and industrial areas within the Municipality.
- Develop a strategy to add Tree Canopy Coverage along key US and State transportation routes that serve as Gateways to the community and provide an entryway to visitors and residents alike.
- Increase Tree Canopy coverage along key riparian buffers within watersheds that contain primary streams that directly enter the Shenandoah and Potomac Rivers.

- Employ both conservation and strategic restoration of Forests and Stream Corridors to serve as a framework for protection of groundwater, surface water, habitat, and landscape connectivity (source: 2008 Green Infrastructure Assessment).
- Develop an education and outreach program in cooperation with all jurisdictions and the County Extension Service to promote the planting of native tree species on private property through landowner incentive programs; pursue grants to fund such a program.
- Develop policies recommending that landowners water all new trees in the first three years of planting with a commitment by the property owner, through educational materials (handout pamphlets and news releases).
- Review the land coverage data to identify key areas lacking Tree canopy to help prioritize areas to be planted including, but not limited to, additional school site; infilling vacant lots; slowing the flow of stormwater into public areas: such as parking lots, streets, public parks, HOA open space areas; pathways/trails, public buildings, and gateways; etc.
- Develop local regulations that ensure that appropriate size and species of trees are located in areas under overhead utility lines and in areas with similar growth restrictions (i.e.: trees that grow over 15 feet tall at maturity should not be planted under the conductor zone on wood pole 138 Kv transmission lines).
- Investigate revenue streams or programs to assist with the removal of invasive species and replacement with native species appropriate to the planting location.

## **Chapter 9      Recommendations and Goals for Shepherdstown**

This Tree Canopy Plan sets forth recommendations for tree canopy goals for the unincorporated areas of the County as well as specific goals for each municipality that address their specific needs. The following goals are specific to Shepherdstown and should be utilized in setting priorities related to tree canopy improvement and taken into consideration in a variety of local land use decisions.

The goals and recommendations outlined in this plan are intended to be considered and implemented over a twenty year planning period. They should be reviewed at least every 10 years and/or in conjunction with locally adopted Comprehensive Plans which may rely on these Goals and expand on the recommendations.

- Reactivate the Town's "Tree City USA" status.
- Maintain and improve the health of existing trees along streets, public rights-of-way and in parks.
- Review and consider amending Subdivision Regulations and Site Plan development standards to improve policies regarding tree planting, tree canopy retention and forest protection, especially on steep slopes and in riparian areas.
- Review and consider amending Subdivision Regulations and Site Plan development standards to improve policies regarding tree planting and tree and forest protection.
- Update recommended tree list to encourage planting of appropriate native trees and enhance diversity.
- Update Shepherdstown Tree Inventory to incorporate German Street streetscape plantings and other changes in trees along streets, public rights-of-way and in parks.
- Collaborate with the Shepherd University Faculty Tree Committee to increase Shepherdstown's overall Tree Canopy by 3% to 50% (7 additional acres) by 2030.
- Develop a strategy to add Tree Canopy Coverage along key US and State transportation routes that serve as Gateways to the City and County and provide an entryway to visitors and residents alike.
- Increase Tree Canopy coverage along key riparian buffers within watersheds that contain primary streams that directly enter the Shenandoah and Potomac Rivers.
- Employ both conservation and strategic restoration of Forests and Stream Corridors to serve as a framework for protection of groundwater, surface water, habitat, and landscape connectivity (source: 2008 Green Infrastructure Assessment).
- Develop an education and outreach program in cooperation with all jurisdictions and the County Extension Service to promote the planting of native tree species on private property through landowner incentive programs; pursue grants to fund such a program.
- Develop policies recommending that landowners water all new trees in the first three years of planting with a commitment by the property owner, through educational materials (handout pamphlets and news releases).

## **Chapter 9 Recommendations and Goals for Shepherdstown**

- Review the land coverage data to identify key areas lacking Tree canopy to help prioritize areas to be planted including, but not limited to, additional school site; infilling vacant lots; slowing the flow of stormwater into public areas: such as parking lots, streets, public parks, HOA open space areas; pathways/trails, public buildings, and gateways; etc.
- Develop local regulations that ensure that appropriate size and species of trees are located in areas under overhead utility lines and in areas with similar growth restrictions (i.e.: trees that grow over 15 feet tall at maturity should not be planted under the conductor zone on wood pole 138 Kv transmission lines).

## **Chapter 10                      Planting Priorities and Project Implementation**

This Plan and its Goals are a part of a larger effort to improve water quality within the Chesapeake Bay Watershed, while providing other benefits that increased Tree Canopy provide to a community. This plan was prepared through an Urban Tree Canopy (UTC) Grant awarded to the Jefferson County Commission, in partnership with the Cities of Ranson and Charles Town, by the WV Division of Forestry in 2010.

This grant allowed the County to build on the 2009 TC assessment effort to work towards two primary tasks:

- a. Utilizing the data from the study conducted by the University of Vermont containing land coverage analysis to develop an urban tree canopy assessment and create a long term management plan, setting Urban Tree Canopy Goals for the County and the five municipalities within the County; Bolivar, Charles Town, Harpers Ferry, Ranson and Shepherdstown (this document).
  
- b. Plan and execute multiple Spring 2011 tree planting events in priority areas using grant and matching funds to purchase trees, site preparation and planting and other related planting supplies including: mulch, stakes and ties, watering bags, hoses and tanks.

The development of the Plan and Goals is intended to lay the groundwork for future grants and projects to work towards improving and increasing the UTC within Jefferson County and its municipalities in years to come. In addition to the Plan and Goals, this grant provided for the following plantings that occurred in the Spring of 2011 “kicking off” this County-wide planning effort.

### **2010 Forestry UTC Grant Activities**

County and municipal planners, working with the WV Tributary Team, developed specific planting plans for the Spring of 2011. In addition to planning plantings to maximize the environmental benefits of trees, all plantings will also be developed for the purpose of outreach and public education on the value of trees. In an effort to foster wider acceptance of voluntary best management practices (BMPs) for urban tree conservation and plantings, public plantings under the grant included an educational component to encourage private citizens to “reforest” their own properties and/or plant shade trees.

The following priority areas were identified to implement the current grant, which was limited to public lands within urban areas. These sites were chosen, based on the UTC assessment, for their lack of adequate tree canopy in relation to their potential for planting and for maximum stormwater runoff mitigation. Tree planting sites considered included public school grounds, transportation corridors and public parks. Specific planting plans were developed for each of the eight plantings that occurred, with both functionality and aesthetics in mind. All trees planted were native species to the area.

## **Chapter 10                      Planting Priorities and Project Implementation**

### **Priority Planting Areas**

**Schools** offer a unique opportunity for public education through involvement of the students, parents and teachers. The grounds at a number of **Jefferson County Public Schools** were identified with an insufficient tree canopy. The environmental, ecological and social benefits of trees on school grounds will serve to enhance the learning environment for both students and faculty. Plantings occurred in March and April 2011 utilizing these grant funds at the following schools:

- Jefferson High School
- CW Shipley Elementary School
- Page Jackson Elementary School
- Driswood Elementary School
- North Jefferson Elementary School

**Shepherd University** was also a target site for increased tree canopy. Through grant funds, the University received 86 trees, which were planted by volunteers in a highly publicized tree planting event.

**Road right-of-ways (ROW)** often offer potential for tree plantings, if located in such a way as to not interfere with public safety or highway operations. Road ROW plantings are highly visible and demonstrate the benefit of cost savings from reduced mowing, the aesthetic value of trees and their ability to reduce stormwater runoff. Examples of areas that might be appropriate for road right-of-way plantings include the new Route 9 corridor (which has a limited landscaping plan along the bike trail), Route 51 and the urbanized portion of US 340 east of Charles Town and Ranson. For the purpose of utilizing the 2010 grant funds, no road right-of-ways were chosen for a tree planting; however, plantings in these areas continue to be a priority for the County and municipalities.

**Public parks** that have aging and/or insufficient tree canopy can be ideal locations to engage public volunteers in planting projects, as they are visible and the communities are often invested in the park areas. Park plantings, in addition to providing the environmental benefits of shade and cooler ambient temperature, offer an opportunity to demonstrate proper planting techniques to the general public and disseminate information on the benefits of trees to encourage citizens to plant trees on private property. While parks typically have more tree canopy and open green space than other “urban” areas might, focusing on maximizing the extent of the tree canopy in parks helps to increase the net tree canopy for a municipality. Charles C. Marcus Field in Ranson and Willingham Knolls Park in Charles Town were chosen for a “double planting event”, as a part of this grant funding cycle -. These plantings were widely advertised to ensure maximum public involvement and outreach.

Approximately 450 trees of 26 different native species were planted in the Spring 2011 under this grant. Utilizing a forestry standard of 109 trees per acre, this is the equivalent of an increase in the Tree Canopy of approximately 4 acres.

**Next Steps**

The County and each municipality will work to implement the goals established in this document and develop local regulations to ensure that the goals are reached and community benefits are maximized. The Urban Tree Canopy Working Group should meet annually to report back to each other progress made and to collaborate on upcoming tree planning and planting efforts in each jurisdiction.

Grants should be pursued to allow future tree plantings on private and public properties. A program should be developed to implement the utilization of grant funds and to document the use of such funds towards the recommended tree canopy coverage goals.

The Tree Committees that have been established should coordinate their Public Outreach and Education efforts to make the most effective use of these efforts and to ensure that the goals of this plan is being communicated to the public in a consistent manner.

## **Appendix A: Resources**

The following resources can be utilized to find information on proper tree planting techniques, tree care and upkeep, native tree species, tree identification, local tree projects and events, benefits of trees, urban forestry, and much more.

Cacapon Institute

<http://www.cacaponinstitute.org/>

Chesapeake Bay Program – West Virginia

<http://www.wvca.us/bay/>

International Society of Arboriculture – Trees are Good

<http://www.treesaregood.org>

Potomac Valley Audubon Society

<http://www.potomacaudubon.org/>

Watershed Forestry Resource Guide

<http://www.forestsforwatersheds.org/>

West Virginia Conservation Agency

<http://www.wvca.us>

West Virginia Department of Agriculture

<http://www.wvagriculture.org>

West Virginia Department of Environmental Protection

<http://www.dep.wv.gov>

West Virginia Division of Forestry

<http://www.wvforestry.com/>

West Virginia Division of Natural Resources

<http://www.wvdnr.gov>

West Virginia Natural Resources Conservation Service

[www.wv.nrcs.usda.gov](http://www.wv.nrcs.usda.gov)

West Virginia University Extension Service

<http://ext.wvu.edu/>

U.S. Department of Agriculture Plants Database

<http://www.plants.usda.gov/java/>

## **Appendix A: Resources**

Charles Town Tree Board  
PO Box 14  
Charles Town, WV 25414  
304-725-2311 ext 231  
304 725-1014 (fax)

Scott Coyle – Chair

Harpers Ferry Tree Committee  
1000 Washington Street  
PO Box 217  
Harpers Ferry WV 25425  
304-535-2206  
<http://hftrees.org/default.aspx>

Kevin Carden - Chair

Shepherdstown Tree Commission  
c/o Town Clerk  
Corporation of Shepherdstown  
Po Box 248  
Shepherdstown, WV 25443  
Phone: 304-876-2398

Borys Tkacz - Chair

## In the Circuit Court of Jefferson County, West Virginia

FAR AWAY FARM, LLC  
Petitioner

VS.

Civil Action No. 11-C-125  
Judge Sanders.

THE JEFFERSON COUNTY PLANNING COMMISSION, a public body, et al  
Respondents

### Defendant's Response to Motion to Intervene

On this 11<sup>th</sup> day of July, 2011 comes the Jefferson County Planning Commission, a public body, by counsel who respectfully opposes the pending motion to intervene but does not oppose the pending motion to file a brief *Amicus Curiae* by the proposed intervenor. In support thereof the Planning Commission states as follows:

1. The Planning Commission is a public body constituted by Jefferson County under the authority of West Virginia Code §8A-1-1 et seq.
2. The plaintiff is a land-owner who petitioned the Planning Commission for a waiver of the time limits imposed for development under the Jefferson County Land Use and Development Ordinance.
3. The Ordinance grants to the Planning Commission the discretion to grant waivers from the time requirements of the Ordinance. See Jefferson County Subdivision Regulations of 1979 (as amended)<sup>1</sup> Article 12, Section 17.1 "Variance"
4. The Planning Commission denied the request for an extension of time to complete the project in December, 2011.
5. The Planning Commission is the expert body assigned by law to review planning issues and enjoys a presumption of correctness. See Maplewood Estates HOA v Putnam County Planning Commission, 218 W.Va. 719 (2006) The Court must apply a very deferential standard of review to the factual findings of the Planning

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<sup>1</sup> The Subdivision regulations replaced the 1972 version and were amended approximately 25 times until they were replaced in October, 2009. While recent caselaw seems to allow a jurisdiction to adopt a new planning ordinance and apply its requirements to existing platted lots, see McClure v. City of Hurricane --- S.E.2d ----, 2010 WL 4723615 W.Va.,2010.the local ordinance does not have the applicable language allowing application to application to existing projects and the standard practice of Jefferson County staff is to apply throughout a development the regulations in effect at the time of the application.

Commission and can only reverse the findings if “plainly wrong,” *Id.* The West Virginia Supreme Court of Appeals has defined the “plainly wrong” standard as requiring a court to “presume an administrative tribunal’s actions are valid as long as the decision is supported by substantial evidence. . .sufficient that a reasonable mind might accept as adequate to support such a conclusion.” *In re: Queen*, 196 W.Va. 442, 446 (1997) The Court further explained that “neither this Court nor the circuit court may supplant a factual finding of [the planning commission] merely by identifying an alternative conclusion that could be supported by the evidence.”

#### Lack of *Corliss* Injury Bars Intervention

6. From previous cases involving the Board of Zoning Appeals and the issuance of conditional use permits (“CUP”s) a third party may intervene:

“where the individual demonstrates that, as a result of the challenged ruling, he/she will **uniquely suffer injury** separate and apart from that which the general citizenry might experience as a result of the same ruling.” *Corliss v. Jefferson County Bd. Of Zoning Appeals*, 214 W.Va 535, 591 S.E.2d 93 (2003)(emphasis added)

7. On the most basic level, the intervenors fail to comply with the *Corliss* standard because they do not suffer any injury from the challenged ruling, the intervenors fully agree that the project should have been denied the extension. As such, the ruling by the Planning Commission denied further time to the development, ending any injury for the intervenors and their motion should fail on those grounds alone. To allow third parties to intervene when they are not injured with the ruling at issue would needlessly expand intervention which, as set forth, *infra*, requires “direct and substantial” injury. <sup>2</sup>

#### Failure to File Petition Bars Intervention

8. West Virginia Code §8A-9-1 provides that “Within 30 days after a decision or order . . . any aggrieved person may present to the circuit court . . . a duly verified petition

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<sup>2</sup> Injured parties have a right to participate in such proceedings but to allow intervention by an uninjured party could potentially allow other uninjured parties to participate in future litigation. Here, the intervenors stated at the hearing they would object to any potential settlement or compromise with the plaintiff (with whom they have long an protracted prior litigation history) In the future, an uninjured “pro-development interest” could intervene and oppose any compromise or settlement with an actually injured party who filed a petition. With all due respect to members of the public concerned with such litigation, the Planning Commission is the public body charged with making planning decision and must protect and vindicate its public duties without intervention by uninjured parties who may want to influence future litigation.

for certiorari.” The plaintiff landowner, an aggrieved person, filed a timely petition with this Court.

9. The intervenor failed to file a petition with this Court. Instead, well after the 30 day time limit, the intervenor filed the instant motion to intervene.
10. Assuming for the sake of argument, the intervenors did suffer a cognizable loss within the meaning of §8A, they failed to exercise their statutory right to file a petition with this Court. Failure to act is a waiver and the intervenors should not be permitted cure their failure to petition in a timely manner by “bootstrapping” themselves into the position of a petitioner by a motion to intervene when a statutory remedy existed and they failed to exercise the same.

#### Rule 24 Intervention Not Appropriate Due To Lack Of “Direct And Substantial Injury”

11. The West Virginia Rules of Civil Procedure permit intervention upon the following: Intervention of right is allowed if an applicant meets four conditions: (1) the application must be timely; (2) the applicant must claim an interest relating to the property or transaction which is the subject of the action; (3) disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect that interest; and (4) the applicant must show that the interest will not be adequately represented by existing parties. Rules Civ.Proc., Rule 24(a)(2).
12. However, the West Virginia Supreme Court further clarified and limited an adjoining landowners right to intervene stating “To warrant intervention of right, an applicant's interest in the property or transaction which is the subject of the action must be direct and substantial or legally protectable to justify intervention of right, **the interest claimed by the proposed intervenor must be direct and substantial**; for these purposes, a “direct interest” is one of such immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment to be rendered between the original parties, and a “substantial interest” is one that is capable of definition, protectable under some law, and specific to the intervenor.” State ex rel Ball v. Cummings, 208 W.Va. 393 (1999)(Case involving down-stream landowners intervention in DEP enforcement action; landowners the subject of active and on-going pollution not possible future pollution)
13. From the arguments of counsel for intervenors, it can be inferred that the intervenors believe they have some form of conditional standing: IF the Planning Commission were to lose this litigation THEN they claim potential injury which might be caused by if plaintiff's proposed development in a manner they fear it

might. This potential “injury” is not sufficiently “direct and substantial” interest required for intervention.

14. The intervenors claim the project if developed in the future may cause damage a) to their existing private wells b) by overburdening “maintenance and level of service” on existing Trough Road c) due to a lack of demonstrated suitability of a possible new road associated with the development d) because of potential issues associated with “quality of the design, engineering and construction of surface water and erosion control elements of the proposed development” e) because of possible issues with the construction of the “storm-water management and erosion control elements.”<sup>3</sup>
15. All of the concerns of the intervenors are not direct but merely represent potential or possible injury which depend upon uncertain future actions of the developer and of the Planning Commission. At this point, the state of the ground-water, surface water, road layout, road useage and other such potential problems are unknown (and in fact, unknowable). Therefore, intervention is not appropriate at this point.
16. It is clear from the nature of the claims that none of them involve the sole matter at issue in the instant matter: the Planning Commission’s decision to deny a variance of time to the development. Each and every claim of injury is speculative and depending upon future possible errors or failures which have not occurred and may never occur. Such indirect, potential or speculative concerns are not of the nature and character required by the Supreme Court to merit intervention.<sup>4</sup>
17. The intervenors’ concern about the damage to their wells is purely speculative (See paragraphs 7, 23 and 33 “expressed concern and objection to approval or continuation of the project **absent sufficient proof the proposed** central water system will not draw down his well.”) The plaintiff’s are expressing a fear that in the future the development might “draw down” their wells. This issue might be a serious issue in the future (and the basis for a private nuisance action) or it could never occur. If it occurs depends upon the nature of the as yet un-built and as yet

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<sup>3</sup> To the extent that the intervenors assert claims that relate to issues raised in opposition to the approval of increased density involved in the CUP for the subject property and to the extent that the claims flow solely from the increased density and not from the as yet undetermined plat of the subject property, the petitioners are correct that such issues are moot as there are properly subject to an application of res judicata and/or issue preclusion. However, even if the not moot, the Planning Commission believes that are not ripe as they are unrealized and are unrelated to the sole issue of the denial of extra time to the plaintiffs.

<sup>4</sup> If in the future the Planning Commission were to actually approve an actual plat with the intervenors believe will cause them cognizable injury they can under §8A file a petition at that point when the damage can tied directly to an actual planning decision of the Planning Commission.

un-engineered water system.<sup>5</sup> In either case, the claim is certainly not “direct and substantial” enough to support intervention.

18. The intervenors’ concerns about the public road “level of service” set forth in paragraphs 11-15, 34-36 are of two types: 1) either tied directly to the increase in density previously litigated with the CUP and, thus, barred by the application of Res Judicata 2) related to the as yet un-platted potential future road lay-out which has yet to be addressed as part of the planning process and as such may or may not manifest in the future, thus are not sufficiently “direct and substantial” as required to support intervention; or, 3) are not different from any other public user of Trough road and thus not particular to the intervenors and thus not sufficient to support intervention.
19. The intervenors’ concerns about surface water and storm water control are potentially serious future issues which would be considered and addressed as part of any future potential plat approval under the applicable ordinances. Beyond the action by the Planning Commission such engineering considerations would require inspection and approval by the County Engineer. See e.g. Jefferson County Subdivision Ordinance Article Eight, §8(c) “Storm Water Drainage and Erosion Control” (which lists five pages of requirements and with cross references to West Virginia Erosion and Sediment Control Handbook). The Planning Commission, County Engineer and Ordinances take seriously concerns with storm water and surface water but such plans have yet to be proposed, evaluated and approved. Once approved the Planning Commission believes such issues would be fully addressed. Again, at this time such concerns are merely potential issues yet to be addressed and the claims are certainly not “direct and substantial” enough to support intervention.
20. The Planning Commission respectfully re-asserts that the arguments against the individual intervenors also apply to the motion to intervene by the Shepherdstown Battlefield Preservation Association (SBPA).

#### No Opposition to Amicus Curiae Brief

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<sup>5</sup>To the extent that this concern flows from the number of homes approved as part of the CUP which the West Virginia Supreme Court has ordered approved the issue is arguably moot as a matter of land-use law if such damage does occur could form the basis of a private nuisance action. See generally Burch v. Nedpower Mount Storm, LLC, 220 W.Va. 443, 647 S.E.2d 879 W.Va., 2007 (Approval by a governmental agency (PSC) does not abrogate a private nuisance action “substantial and unreasonable interference with the private use and enjoyment of another’s land.”)

21. With respect to the motion to present a brief as *Amicus Curiae*, while Planning Commission does not believe that the fact support intervention, the intervenors do have considerable past experience with both the facts and the law associated with this particular development and, therefore, he Planning Commission does not oppose the filing of a brief with respect to the issues that may be presented.

WHEREFORE, the Jefferson County Planning Commission respectfully requests that the motion to intervene be DENIED and does not oppose the motion to present a brief *Amicus Curiae*.

Respectfully submitted,

Jefferson County Planning Commission, by

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Stephen V. Groh, Assistant Prosecuting Attorney

Certificate of Service

On this 11<sup>th</sup> day of July, 2011, I certify that I cause a copy of the foregoing to be mailed to plaintiff's Counsel, Richard Gay, Esq. Nathan Cochran, Esq. 31 Congress St. Berkeley Springs, WV 25411 and to Linda Gutsell, Esq. Intervenor's Counsel, 107 N College St. Martinsburg, WV 25401.

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Stephen V. Groh, Assistant Prosecuting Attorney

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

Email: [planningdepartment@jeffersoncountywv.org](mailto:planningdepartment@jeffersoncountywv.org)  
[zoning@jeffersoncountywv.org](mailto:zoning@jeffersoncountywv.org)

Phone: (304) 728-3228  
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**Director's Report**  
**July 23, 2011**  
**Planning Commission Meeting**

- 1) Activity Report (attached)
- 2) 4<sup>th</sup> Quarterly Report/Annual Report FY 2010-11 (attached) – discussion required
- 3) Regional Staff activities:
  - a) MS4 Meeting, Ranson (7/12/11)
  - b) WIP II Meetings (7/13/11)
- 4) Upcoming CC agenda items:
  - a) Public Hearing on Proposed Text Amendment to Article 12 of the Jefferson County Zoning and Land Development Ordinance regarding the process of amending the zoning map and/or text (*pending approval of PC 7/12/11 minutes*)
  - b) Public Hearing on Proposed Text Amendment to Article 24 of the Subdivision and Land Development Regulations regarding time frames and noticing requirements for processing procedures (*pending approval of PC 7/12/11 minutes*)
- 5) Upcoming PC meetings:
  - a) August 9, 2011
    - Two Concept Plan Workshops scheduled (Harvest Pointe Community Church and Jefferson Asphalt Products, LLC)
    - Hott Property Zoning Map Amendment Request

## Christine Chalmers

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**To:** PLANNING COMMISSION  
**Subject:** RE: WEEKLY CALENDAR / RE: 7.11.11 - 7.15.11

### MONDAY, JULY 11, 2011

2:00 pm JENNIE, STEVE, JENNILEE, SETH & AMY – MEETING/  
RE: NEW SUBDIVISION REGULATIONS (PHASING)

### TUESDAY, JULY 12, 2011

8:30 am – 11:30 am JENNIE – MS4 MEETING (RANSON)  
10:00 am – NOON DAWN – PURCHASE CARD TRAINING SESSION  
1:00 pm – 2:30 pm STAFF MEETING  
2:30 pm JENNIE & DAWN – WEEKLY UPDATE MEETING  
7:00 pm PLANNING COMMISSION MEETING

### WEDNESDAY, JULY 13, 2011

9:00 am – 10:30 am SETH & DAWN – POSTING BANNERS ON MOUNTAIN  
9:30 am – NOON JENNIE, SETH & AMY – WEEKLY PLANNING MEETING  
2:30 pm JENNIE, STEVE & SETH – MEETING WITH ROGER & JONATHAN  
RE: MOUNTAIN REZONING  
2:30 – 4:00 pm JENNIE & STEVE – WEEKLY ZONING MEETING

### THURSDAY, JULY 14, 2011

9:00 am COUNTY COMMISSION MEETING  
NOON STEVE – SITE VISITS / RE: JULY VARIANCE PROPERTIES  
1:00 pm – 2:30 pm JENNIE, STEVE, SETH & DAWN – RTE. 340 GROUP MEETING  
2:30 pm JENNIE, STEVE, SETH, DAWN & AARON – WEEKLY MEETING

### FRIDAY, JULY 15, 2011

BOARD OF ZONING APPEALS PACKET DAY

## Christine Chalmers

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**To:** PLANNING COMMISSION  
**Subject:** RE: WEEKLY CALENDAR / 7.18.11 - 7.22.11

### MONDAY, JULY 18, 2011

9:30 am – 11:00 am SETH & AARON – MEETING / RE: 340 CORRIDOR USE  
10:00 am – 11:00 am JENNIE & DAWN – WEEKLY UPDATE MEETING  
3:30 pm JENNIE, STEVE & SETH – MEETING WITH WILLIAM DAVIS /  
RE: ENCROACHMENT INTO BUFFER MATTER

### TUESDAY, JULY 19, 2011

11:00 am JENNIE, STEVE & SETH - MEETING WITH JASON GERHART &  
JIM CRAWFORD / RE: CEDAR MEADOWS AIRPARK SUBDIVISION  
1:00 pm JENNIE, STEVE, SETH & AARON– MEETING WITH DAN SZEKERES /  
RE: 340 EAST GATEWAY CORRIDOR  
3:00 pm – 4:30 pm JENNIE – RANSON TRAFFIC STUDY PRESENTATION (CHARLES TOWN)

### WEDNESDAY, JULY 20, 2011

9:30 am – 10:30 am STAFF MEETING  
10:30 am – NOON JENNIE & STEVE – WEEKLY ZONING MEETING  
1:00 pm – 2:00 pm JENNIE & SETH – WEEKLY PLANNING MEETING  
3:30 pm – 4:30 pm JENNIE, STEVE, SETH, DAWN & AARON – WEEKLY MEETING

### THURSDAY, JULY 21, 2011

9:00 am COUNTY COMMISSION MEETING  
9:00 am – 2:30 pm SETH & DAWN – APUS / SUSTAINABILITY SUMMIT  
3:00 pm JENNIE, STEVE & JENNILEE – BOARD OF ZONING APPEALS MEETING

### FRIDAY, JULY 22, 2011

PLANNING COMMISSION PACKET DAY

## End of Fiscal Year Report on FY 2011 Work Plan County Commission

PRIORITY	PROJECTS	TIME FRAMES from FY 10-11 Work Plan	Status or Number Completed (July 10 -- Sept. 10)	Status or Number Completed (Oct. 10 -- Dec. 10)	Status or Number Completed (Jan. 11 -- March 11)	Status or Number Completed (April 11 -- June 11)	Outstanding Tasks	REQUIRED RESOURCES/STAFF	REQUIRED HEARINGS	ANTICIPATED RESULTS
	<b>Day to Day Customer Service</b>	on-going								
	Walk in Customers - general information, zoning requests, process questions		75	158	143	191				
	Information Request Forms		38	11	32	35				
	Zoning Certificates Issued		5	7	10	10				
	Call-in customers - general info, zoning, questions		537	472	571	575				
	E-mail to general planning/zoning mailboxes (note: individuals receive over 100 per month each)		105	71	785 (includes all received)	607				
	<b>Day to Day Development Review Responsibilities:</b>	on-going								
	Minor Site Plans		1	4	4	4				
	Merger Deeds, Lot Line Adjustments		12	5	1	3				
	Major Site Plans		3	0	1	4				
	Minor Subdivision Plats		new submittals -3; recorded - 5	new submittals -1; recorded - 1	new submittals -1; recorded - 1	new submittals - 3; recorded - 1				
	Major Subdivision Plats (Concept, Preliminary, Final)		new submittals - 2	1	1	1				
	<b>Zoning Map Amendment Submissions</b>				1	2				
	Conditional Use Permits/Neighborhood Compatibility Meetings		2	0	1	1				
	Zoning Variances (requirements, dimensional variances, CUP Time extensions)		7	7	3	9				
	Subdivision Waivers including requests related to time frames or requirements		3	5	2	2				
	Pre-proposal Conferences		17	10	25	16				
	Follow up meetings with applicants		14			1				
	<b>Staff to Planning Commission meetings, including staff reports and presentations</b>	on-going	6 regular PC meetings; 4 special called meetings; 4 special CC meetings related to PC items; 4 staff reports related to land development applications	5 regular PC meetings; 1 special called meeting; 1 Joint PC/CC meeting related to PC items; 7 staff reports related to land development applications	4 Regular Meetings; 1 Special Called Meeting; 1 Workshop; 1 Special CC Meeting related to PC items; 3 staff reports related to land development applications	5 Regular Meetings; 6 staff reports related to land development applications				
	<b>Staff to Board of Zoning Appeals meetings, including staff reports and presentations</b>	on-going	3 BZA meetings; 17 staff reports for land development applications	2 BZA meetings; 8 staff reports for land development applications	2 BZA meetings; 3 staff reports for land development applications	2 BZA meetings; 15 staff reports for land development applications				
	<b>Participation in County Commission, WAC, JCDA, Health Department, Joint Utility Meeting, HEPMPO TAC, Region 9 Stormwater Committee</b>	on-going	JB - 128 meetings attended; SR - 72 meetings attended; SB - 58 meetings attended	JB - 99 meetings attended; SR - 41 meetings attended; SB - 40 meetings attended	JB -140 meetings attended; SR-95 meetings attended; SB- 89 meetings attended	JB - 112 meetings attended; SR-80 meetings attended; SB- 83 meetings attended				
Special Project	<b>Blue Ridge Mountain Study</b>	(Project Initiated - Nov 09) July 10 - Mar 11	3 meetings	Joint PC/ CC meeting	Final Invoice and Closed out grant paperwork by 3/31/11; two follow up meetings with Citizen's Committee re: next steps	<b>Citizen's Committee formed its own 501C3 (Blue Ridge Watershed Coalition); BRWC applied for 2 NFWF grants</b>		SR, JB		

**End of Fiscal Year Report on FY 2011 Work Plan County Commission**

PRIORITY	PROJECTS	TIME FRAMES from FY 10-11 Work Plan	Status or Number Completed (July 10 -- Sept. 10)	Status or Number Completed (Oct. 10 -- Dec. 10)	Status or Number Completed (Jan. 11 -- March 11)	Status or Number Completed (April 11 -- June 11)	Outstanding Tasks	REQUIRED RESOURCES/STAFF	REQUIRED HEARINGS	ANTICIPATED RESULTS
Special Project	<b>Revise, rewrite, update Subdivision Regulations</b>	(Project Initiated - Nov 09) July 10 - April 10	1st round of "policy neutral" Sub Reg amendments recommended for approval by PC 4/10 was approved by CC 8/19/10	Comments received re: additional amendments needed to Sub Regs during previous PHs organized and prioritized	Sub Reg Amendments drafted to allow minor site plans within major non-residential subdivisions; PC PH held 3/8/11; recommended to CC for approval; CC PH scheduled for 4/14/11	<b>CC PH 4/14/11 re: Minor Site Plans in Major Subdivisions, approved 4/28/11; Additional site plan sq. footage Am PC PH 6/28/11, pending recommendation; Proposed Amendments to Article 24 combining Submission &amp; Completeness Reviews for Site Plans and Plats drafted and PH scheduled for 7/12/11</b>	<b>PC action on Minor Site Plan Am. pending; Art. 24 PC PH 7/12/11; Overall amendments anticipated to continue through 2011</b>	SR, AP, DC, JB	Hearings Required by PC and CC at various stages of	Adoption of Amendments
Special Project	<b>Proposed amendments to Zoning Ordinance</b>	To be initiated Summer 2010	"policy neutral" amendments initiated 7/10, but put on hold due to Wireless (Art 4B) amendments being initiated; PC reviewed and edited proposed Wireless amendments throughout 1st quarter; stakeholder mtg 8/31/10	Wireless Amendment actions: PC PH 10/12/10; PC vote to recommend to CC 10/26/10; CC presentation 0/28/10; "Policy Neutral" Amendments, which were put on hold due to wireless ordinance efforts, were drafted for PC review and input prior to making available to the public	Stakeholder Meeting to consider amendments to Article 4A, Home Occupations and Cottage Industries held 3/1/11; Wireless ordinance amendments approved by CC 3/10/11; final draft policy neutral amendments reviewed by PC 3/22/11 -- PC PH scheduled for 4/12/11	<b>Policy Neutral Am. PC PH 4/12/11, CC PH 6/9/11, Approved 7/7/11; Draft amendments to Article 4A PC PH 6/28/11, pending recommendation; Article 12 Am. PC PH scheduled 7/12/11</b>	<b>PC action on Art. 4A pending; Art 12 PC PH 7/12/11; Overall amendments anticipated to continue through 2011</b>	SB, JH, SR, DC, JB	Hearings Required by PC and CC at various stages of	Adoption of Amendments
Special Project	<b>Zoning Map Update</b>	To be initiated Summer 2010	Staff has completed research and worked with GIS Dept. to complete a good draft; efforts related to UGBs and Federal Land Rezoning to be included	Final version referred to CC -- December 2010	2010 Zoning Map approved by CC 1/14/11 and recorded by County Clerk	<b>1st update due to Zoning Map amendment Approved 6/23/11</b>	Task Completed			

**End of Fiscal Year Report on FY 2011 Work Plan County Commission**

PRIORITY	PROJECTS	TIME FRAMES from FY 10-11 Work Plan	Status or Number Completed (July 10 -- Sept. 10)	Status or Number Completed (Oct. 10 -- Dec. 10)	Status or Number Completed (Jan. 11 -- March 11)	Status or Number Completed (April 11 -- June 11)	Outstanding Tasks	REQUIRED RESOURCES/STAFF	REQUIRED HEARINGS	ANTICIPATED RESULTS
Special Project	<b>Urban Growth Boundary - follow up with municipalities; proposed changes to zoning ordinance text and map; public hearings</b>	Summer 2010 - Summer 2011	Ranson and Charles Town have adopted the UGBs as agreed upon by the County; Harpers Ferry, Bolivar, and Shepherdstown are in discussion with staff to determine best course of action	Staff participated in meetings with Harpers Ferry and Shepherdstown to discuss the concept of the UGB and benefits of adopting a UGB; referred to CC for consideration of a UGB for HF and Bolivar	CC held PH re: Bolivar and Harpers Ferry UGBs 2/17/11 - decision to be made at a CC meeting 4/11	<b>CC denied Bolivar and Harpers Ferry UGBs 4/14/11; Shepherdstown UGB under discussion at Town level</b>	No Action	JB	Possible future hearing for a proposed UGB for Shepherdstown	Approved UGBs reflected on County Zoning Map
	<b>Staff Training -- new skills, planning and zoning related functions</b>	on-going	SR - APA Conf. (4/10); JQ -- 3 day Grant Writing course (7/10), NCTC; SR & SB - Eastern Panhandle GIS Users Group (8/10); JB -- 5 day Green Infrastructure Conf. (9/10), NCTC; SB -- 2 day KARST Conf. (9/10), NCTC; JQ - Smart Code webinars (8/10 & 9/10); JB, SB, SR -- 1 day Smart Code On-Site Workshop	SR -- Ranson Smart Code Webinars (10/10 & 11/10)		<b>National APA conference 4/9 - 4/12/11 (JB); Balancing Nature and Commerce Course 4/18 - 4/20/11 (Team Course - JB member); Multi-state Regional Conference, Cumberland MD 5/6-5/7/11 (JB, SR, SB)</b>				
Special Project	<b>Proposed amendment to Land Development Fees</b>	(Project Initiated - July 09)	July 2010 CC held Roundtable Discussion; Staff worked to address comments and concerns on 10/7/10 CC meeting agenda	CC considered cost recovery fees at 10/7/10 meeting and referred the fees back to the PC for reconsideration; PC directed staff to revise to reflect a 20% increase over current fees utilizing the new format; reflect the current ordinances; Staff worked to revise the fees for PC consideration in early 2011	PC reviewed 20% increase 1/25/11 and requested 10% increase instead; PC considered 10% increase 2/8/11 and forwarded these to CC for approval	<b>Revised fees recommended to CC for approval -- CC denied any increase in fees 6/23/11</b>	<b>Task Completed</b>			
Special Project	<b>340 Corridor Gateway Enhancement Study</b>	Spring 2011 - Summer 2012	In late June, 2010 staff attended a meeting re: a Nat'l Governor's Assoc. project that includes the 340 Corridor and a meeting with the WV DOH re: their 340 Corridor project; in late September, staff met with Comm. Widmyer to discuss potential work program for project	Initial meeting Technical Advisory Committee (TAC) was held for the purpose of defining study area boundary, determining what data exists, and developing an existing conditions report and related maps; multiple maps have been drafted and are under review; multiple related meetings with interested parties were held	Follow up TAC and organizational meetings held; US 340 Kick-off Meeting held 3/24/11 -- 130 people in attendance with 15 volunteer staff; on-going coordination with MPO staff to draft consultant scope of work	<b>3/24 meeting summary and follow up; 2nd Public Meeting 6/16/11 meeting; monthly TAC/Citizen Committee meetings in April and May; Metro Quest release</b>	<b>Prep for 9/17 Public Meeting; draft land use alternatives; on-going work with MPO consultants</b>	JB, SR, DC, GIS Dept.	Public Hearing will be required when plan is drafted	Adoption of Small Area Plan as an amendment to the Comprehensive Plan; recommended amendments to the Zoning Ordinance and Subdivision
Special Project	<b>2014 Comprehensive Plan</b>	Fall 2011 - Fall 2013; adoption 2014	No activity		contacted Shepherd University for recommendations regarding potential summer intern to initiate data analysis	<b>Summer intern hired to initiate data analysis</b>				

**End of Fiscal Year Report on FY 2011 Work Plan County Commission**

PRIORITY	PROJECTS	TIME FRAMES from FY 10-11 Work Plan	Status or Number Completed (July 10 -- Sept. 10)	Status or Number Completed (Oct. 10 -- Dec. 10)	Status or Number Completed (Jan. 11 -- March 11)	Status or Number Completed (April 11 -- June 11)	Outstanding Tasks	REQUIRED RESOURCES/STAFF	REQUIRED HEARINGS	ANTICIPATED RESULTS
<b>NEW PROJECTS NOT INCLUDED IN FY 2011 WORK PLAN</b>										
Special Project	Urban Tree Canopy Grant and Planting Event	October 2010 - May 2011	Grant has been approved; MOU is being reviewed prior to signing	Intern hired; work effort underway -- two-fold emphasis: development and adoption of Urban Tree Canopy goals by 5 cities and County; tree planting effort on public land	Urban Tree Canopy Plan Meeting held 1/25/11; Attended mtgs in Harpers Ferry (2/14/11) and Ranson (2/15/11 ); Tree Planting Meeting held 2/3/11; tree plantings scheduled, coordinated and prepared for; tree planting JHS 3/28/11	<b>Urban Tree Canopy Plan Goals Meeting scheduled for 4/28/11; Mtgs in May for S'Town, C'Town, Bolivar; Tree Plantings scheduled, coordinated and prepared for Shipley, Page Jackson, Driswood, North Jefferson, Shepherd University, Ranson and C'Town parks in April and May; draft Plan and goals finalized June 2011</b>		JB, city planners, Doug Griffith (intern), SR, JQ	CC approval of UTC Plan and Goals may require a hearing	
Special Project	JCOHOA Study Follow Up	September 2010 -- ?	Initial contacts have been made with WVU to determine interest and costs	no additional work planned	no additional work planned	<b>no additional work planned</b>				
Special Project	Region 9 Model Stormwater Regulations	May 2010 - February 2011	Monthly Meetings and Review/Input into draft ordinance	Monthly Meetings and Review/Input into draft ordinance	Final meeting held 2/23/11; Final draft Model Stormwater Regulations available for consideration by various jurisdictions for incorporation into local regs	<b>County staff should review Model Regs to consider best process for incorporating these locally (tentatively Fall 2011)</b>		JB	Public Hearing may be required by both PC and CC	Stormwater regulations that reflect Chesapeake Bay standards

## Subdivision Regulation Amendment Suggestions

May 18, 2010

Number	Topic	Sub Reg Section	Brief Description of Public Comment	Staff Recommendation			
				Include now	Requires research or policy input	Postpone to future amendments	Not applicable to Subdivision Regulations
1	Conservation Easements	20.107	concerned about the need to process a plat for a conservation easement if the entire property is being put in a conservation easement.	modified			
2	Minor Site Plan (MSP) Definition	26.100	Do single family uses need MSP? Add language to clarify.	modified			
3	Minor Site Plan size	20.203	Will take too long to process a "major" of only 5,000 sq ft.			needs policy input from PC	
4	Minor Site Plan size	20.203	Consider Industrial Park or Commercial Subdivision			appropriate to consider at this time	
5	Outdoor recreation	General	Define; parking standards? Gravel parking?			appropriate to consider at this time	also needs clarification in zoning ordinance
6	Churches	General	Occasional special event? Overflow parking? Grasskrete - SWM requires gravel to be impervious due to Ches. Bay Standards.			appropriate to consider at this time	
7	Subdivision Plat General Review Standards, Natural Resources	20.302.B	Remove wetlands and flood plain listings b/c feds take care of this already.			needs policy input from PC and further research	
8	Protection of Resources	22.504	Change how slope is calculated or add wording that gives the County Engineer discretion (or other methods as approved by County Engineer)	modified			
9	Subdivision Plat General Review Standards, Natural Resources	20.302.B	Remove PC's ability to make comment @ Concept Plan stage because there are no definable standards for natural resources/protection.			consider quantifiable definition	
10	Final Plat process	21.114	remove this from the public hearing process			state law does not appear to permit this	
11	Site capacity calculations	page 11	Remove since there are none	modified			

## Subdivision Regulation Amendment Suggestions

May 18, 2010

Number	Topic	Sub Reg Section	Brief Description of Public Comment	Staff Recommendation			
				Include now	Requires research or policy input	Postpone to future amendments	Not applicable to Subdivision Regulations
12	Block	Div. 21.100	topography not conducive to block layout. Restrictiveness of lots per block also not workable			need to research application in rural areas	
13	SWM Easements	21.402.B	Give cubic feet per second (CFS) for stormwater easements.	requires input from engineering			
14	Streams definition	22.504.B.3	Change ephemeral to intermittent - Split and define	modified			
15	Elk Branch/watershed	22.504.B.3	Increased standards for the Elks Run watershed may be excessive.			needs further research/policy input	
16	Elk Branch/watershed	22.504.B.3	Strengthen buffer restrictions for the Elk Run/Branch watershed areas to 500-1000 ft.			needs further research/policy input	
17	SWM	General	Include Chesapeake Bay requirements - Clarify intent of easement			needs further research - Region 9 developing model SWM regs	
18	Agency Reponses	General	How do you get agencies to respond? What if they don't? Review tied up? Timeframes?			needs further research	
19	Incomplete subdivisions	General	How to protect current taxpayers from the burden of incomplete subdivisions where the developer cannot afford to finish. (Phasing)			needs policy input from PC to include possible phasing	
20	Master Plan	24.107	A concept plan is only good for 2 years. It would not be feasible for a major development to be completed in this timeframe. A master plan/full build out would be more beneficial built slowly over time. Existing water/sewer plants? Self served communities?			may be appropriate to consider at this time but requires policy input -- should relate to non-CUP properties only	
21	Pervious	General	Pervious is defined but not used. Use the term to encourage water control measures	See App B Section 4.3 D appears to be addressed			
22	Vesting	20.105	separate the terms site plan and preliminary plat	modified			

## Subdivision Regulation Amendment Suggestions

May 18, 2010

Number	Topic	Sub Reg Section	Brief Description of Public Comment	Staff Recommendation			
				Include now	Requires research or policy input	Postpone to future amendments	Not applicable to Subdivision Regulations
23	Vesting	20.105	Include language that recognizes the vested rights of subdivisions that predate the Sub Regs.	modified			
24	Vesting	SB 595	Include language that clarifies the extension process.	modified			
25	Natural Resources are not defined	20.302.B.2	Naturals "areas"			Requires significant policy discussion	
26	Define HOA	General	Add references to the WV State Code in definitions section of the Subdivision Regulations.	modified			
27	Rural Development	20.203	Clarify LID techniques	modified			
28	Cul-de-sac	22.206.B	Longer than 800 feet length; define.			appropriate to clarify definition of where cul de sac measurement begins	
29	Street lighting	22.209	Eliminate requirement for lights at intersections.			requires more research	
30	Roof drain Discharge Points	22.401.B	Require erosion control; make grading part of ordinance			requires more research	
31	Erosion	General	Prevention of erosion for Chesapeake Bay Initiative			needs further research - Region 9 developing model SWM regs	
32	Modulation	General 20.302.J & 20.303.G	Modulation: remove definition since there are no definable standards. Remove from sub reg text.	modified			
33	Zoning ordinance changes	24.109-24.112	Zoning ordinance changes made after the preliminary plat is approved should not be made conditions of approval of the final plat.			needs policy input	
34	Public Easements	21.402	The County is trying to dictate easements between private parties.			needs more research	

## Subdivision Regulation Amendment Suggestions

May 18, 2010

Number	Topic	Sub Reg Section	Brief Description of Public Comment	Staff Recommendation			
				Include now	Requires research or policy input	Postpone to future amendments	Not applicable to Subdivision Regulations
35	Public Easements	21.402.B	Require storm drainage easements when conveying channel is in excess of 2 cfs during 10-yr storm.	requires input from engineering			
36	Sideways	22.208	Do not require sidewalks in all non-residential developments.			needs policy input	
37	Pre-proposal Conference	24.103	Change the scheduling of a PPC from 15-days prior to the 1st & 3rd Wednesday with submittals required 1 week prior.			needs discussion	
38	Traffic Impact Data	24.119.B.5	Suggest an option under item b. that allows for the ITE Trip Generation Manual to be issued in lieu of corresponding use in the table provided	modified			
39	Major Site Plan Concept Plan - Completeness	24.120	The concept plan is intended to be general in nature. Therefore the review time should be reduced to 21 days.			needs policy input	
40	WVDOH	24.120.D	WVDOH can take months to issue responses and if they do not have a process to generate a "letter" to the planning department to indicate issues. Suggest either removing this requirement or only requiring the applicant to submit proof of submittal to WVDOH of the Concept Plan so to not delay a project by months.			need engineering input and policy discussion -- important to ensure access is available	
41	Major Site Plan Application - public hearing	24.125	Require the staff to post signs & charge applicant for service			needs policy input	

## Subdivision Regulation Amendment Suggestions

May 18, 2010

Number	Topic	Sub Reg Section	Brief Description of Public Comment	Staff Recommendation			
				Include now	Requires research or policy input	Postpone to future amendments	Not applicable to Subdivision Regulations
42	Amendments	24.200	Suggest adding an option to modify a site plan if there are more significant changes than allowed to be approved by the Zoning Administrator. These changes would come before the planning commission for approval. Add a Section C under 24.201 to allow for Substantial Compliance with Previous Approval <u>WITH</u> material changes such as increased paving (adding a few parking spaces), modification of building location, addition of amenities, etc. The determination of what is material changes is spelled out pretty clearly under Section B, but the determination can be made by the Zoning Administrator and appealed to the planning commission.			needs staff review and possibly policy input	
43	Site Plan Requirements	App. B, 9.2	Is info outlined all applicable to non-residential site plans?			needs clarification	
44	Road Maintenance		Lack of state follow through on commitment to pave roads in orphan road program				not a subdivision issue
45	Spelling	App B, 9.2.a.1	Correct all typos within the Subdivision Regulations. (like "soil")	modified			
46	Greater Compatibility	20.302.C.2.a	Create definition			needs policy input	
47	Resubdivision	20.102.A	Define; process?	modified			
48	Site Plan Requirements	App. B, 9.1.B	Clarify	not modified			
49	Maintenance Bonds	24.502	Remove from text	modified			

## Subdivision Regulation Amendment Suggestions

May 18, 2010

Number	Topic	Sub Reg Section	Brief Description of Public Comment	Staff Recommendation			
				Include now	Requires research or policy input	Postpone to future amendments	Not applicable to Subdivision Regulations
<b>Suggestions from Legal - Amendment related</b>							
L1	Staff Determination of Process	20.202 20.203.D.3 21.201.B	Add provision to permit applicant to appeal staff determination	amend proposed			
L2	Public Easements	21.402.C	Remove "County" and add "Homeowner's Assn."	amend proposed			
L3	Public Easements	21.402.D	Make inclusive of all easements	amend proposed			
L4	Public Easements	21.402.F	Too broad	amend proposed			
L5	Private Roads	22.207	Add ownership	amend proposed			
L6	Protection of Resources	22.504	Percentage of land to be protected	requires input from legal			
<b>Additional Suggestions from Legal - Subdivision Regulation related</b>							
L7	Adequacy of Water/Sewer Availability	20.302.F	Remove PC	amend proposed			
L8	Water/Sewer Requirement	20.302.K.2	Remove PC	amend proposed			
L9	Adequacy of Water/Sewer Availability	20.303.E	Remove PC	amend proposed			
L10	Water/Sewer Requirement	20.303.H.2	Remove PC	amend proposed			
L11	Donation of Land to the County	21.105.C.2	Add "County Commission"	amend proposed			
L12	Public Easements	21.402 intro. Para.	Remove "County"	amend proposed			
L13	Final Plat Recording	24.118	Approval shall be void if not recorded; Remove "filed"	amend proposed			

## 2010/2011 ZONING ORDINANCE AMENDMENTS

### Status Report for FY 2010-11

Time Frame	Topic	Use of Stakeholder Group	STATUS
October 2010 – July 2011	<p><b>Policy Neutral Revisions</b>, including but not limited to:</p> <ul style="list-style-type: none"> <li>Clean up language that references 1979 Subdivision Ordinance and replace with references to 2008 Subdivision Regulations</li> <li>Reformat for ease of use and clean up typographical errors</li> <li>Add language that includes relevant portions of SB 595, the urban growth boundary provisions, and other relevant sections of WV Code as advised by legal counsel</li> <li>Create a clear section that delineates the WV Code provisions regarding the Board of Zoning Appeals' roles and responsibilities and the Planning Commission's roles and responsibilities, including provisions of Article 3</li> </ul>	NO	<p><b>Approved by County Commission 07/07/11</b></p> <p><b>Effective Immediately</b></p>
Mid -July 2010 – March 2011	Amendments to <b>Wireless</b> Ordinance Provisions	YES	<p><b>Approved by County Commission 3/10/11</b></p>
March - September 2011	Amend and Clarify <b>Home Occupation and Cottage Industries</b>	YES	<p><b>Planning Commission Public Hearing 6/28/11; recommendation to County Commission pending</b></p>
	Consider clarification and amendments to appropriate portions of the Ordinance that address <b>Bed and Breakfasts, Country Inns, and Private Clubs</b> could either	YES	
	Consider <b>Recreational Overlay</b> District along the Shenandoah and Potomac Rivers with provisions for camping, river access points, and other tourist features	YES	<p><b>Priority #1</b></p>
	Review and potentially revise provisions of <b>Rural/Agricultural</b> Zoning District Issues, including, but not limited to reviewing Permitted and Conditional Uses and design standards, and clarifying when a site plan is required	YES, include reps of Ag community and Ag Preservation	<p><b>Priority #2</b></p>
	Review and potentially revise provisions of <b>Village</b> Zoning District, including, but not limited to reviewing Permitted and Conditional Uses and design standards, and clarifying when a site plan is required	YES	

	Rewrite of <b>Sign</b> Regulations	YES, include BZA	
	Strengthen provisions related to <b>Historic Preservation</b> and protection of freestanding historic structures	YES, include HLC	
	Consider amending <b>Nonconforming Use</b> provisions	Possibly	
	Review and potentially revise provisions of <b>urban-type Zoning</b> Districts (Residential Growth, Commercial/Industrial and Residential/Light Industrial/Commercial Zoning Districts) including, but not limited to reviewing Permitted and Conditional Uses and design standards (ie: height, setbacks, lot size) in all; <b>including the creation of additional zoning categories</b>		<b>Priority #3</b>
	Review of Articles 6 and 7 <b>DRS/LESA</b> Point System	YES	
	Consider Amendments to the Zoning Ordinance as a result of <b>Blue Ridge</b> Mountain Vision Document and Engineering Document		
	Address <b>Environmental Provisions</b> including steep slopes	YES	
	Review <b>Parking</b> Requirements and consider alternatives that meet the Chesapeake Bay goals	NO	
	Consider Amendments to the Zoning Ordinance as a result of the <b>US 340</b> Corridor-East Gateway Plan		
On-going throughout	Review and Amend <b>Definitions</b>	Staff	