

AGENDA
JEFFERSON COUNTY PLANNING COMMISSION
October 11, 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 September 13, 2011 meeting.
2. Citizen Communications.
3. Request for postponement.
4. Concept Plan Review and Public Workshop for Hite Road Park (PC File #S11-15). This property is located on the north side of Hite Road, approximately 2 miles south of the intersection of State Route 9 (Charles Town Road) and County Route 1 (Kearneysville-Virginia Line Road). This project consists of a 119 acre property owned by Jefferson County Parks and Recreations, dedicated for public use to include walking trails, picnic and park areas, athletic fields, sports courts, a skate park, miniature golf course, and sports support facilities. The property is located in Tax District: Middleway; Tax Map: 9 Tax Parcel: 2.17.
5. Determination of Completeness of a Site Plan for Jefferson Asphalt Products (PC File #S11-12). This property is located at 9390 Middleway Pike on WV Route 51 near Tuscowilla Hills. The property is located in Tax District: Charles Town; Tax Map: 13 Tax Parcel: 7.
6. Request by Middleway Volunteer Fire Company (Marshall Edwards) for a waiver from the Subdivision Regulations Appendix B Section 9.6 A and C requiring sidewalks to be provided in non-residential development. This property is located at Leetown Rd. and Darke Hill Rd across from Hinton Rd and is designated as Tax District: Middleway, Map: 24, Parcel: 2.
7. Discussion and vote on the Urban Tree Canopy Goals.
8. Zoning Ordinance Amendments Updates.
9. Reports from Legal Counsel and legal advice to PC.
10. Director's Report.
11. County Commission Liaison Report.
12. 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.
13. President's Report.
14. Actionable Correspondence.

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15. Non-Actionable Correspondence.

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

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

MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
SEPTEMBER 13, 2011

The Jefferson County Planning Commission met on Tuesday, September 13, 2011, with the following Commission members present: Daniel Hayes, President; Gene Taylor, Kelly Baty, Ed Burns, Paul Taylor and Walt Pellish. Staff members present included Jennifer Brockman, Director of Planning and Zoning; Seth Rivard, Planner; Jonathon Saunders, County Engineer; Stephen Groh, Assistant Prosecuting Attorney; and Amy Puetz, Planning Clerk.

Mr. Arnold Dailey, Ms. Morgan Eppers and Mr. Eric Smith were absent with notification.

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

1. Approval of the minutes for the August 9, 2011 meeting.

Mr. Hayes stated that on page 6 under item 7; add "Mr. Hayes opened the public workshop. There was no public comment. Mr. Hayes closed the public workshop." Mr. Burns moved to approve the minutes with the above mentioned amendment. Mr. G. Taylor seconded the motion which carried unanimously.

2. Citizens Communication:

Mr. David Tabb, citizen, stated that he was under the assumption that Items #5, #6, and #7 should be opened for public comment. Ms. Brockman explained that Item #5, Discussion of Future Subdivision Regulation Amendments was a discussion only and that any amendment that would be made would go through a public hearing process. Mr. Tabb raised concern regarding how the Urban Tree Canopy Goals (Item #6) would affect agriculture and development in Jefferson County. Ms. Brockman explained that the Urban Tree Canopy Goals were a guideline and not a requirement. She also informed Mr. Tabb that a public hearing for this topic was held on July 26, 2011 and that the item on the agenda allowed for the Planning Commission discussion of the public comment taken. Mr. Tabb went on to state that Item #7: Discussion and Possible Vote regarding Amendments to Planning Commission Bylaws, caused concern since the amendments were being made by the body that would follow those bylaws. Mr. Hayes confirmed that the amendments were required to follow state law and that any amendments made would be ultimately approved by the County Commission, not the Planning Commission.

Mr. Mark Postma, owner of a neighboring property of Homeland Security/Customs and Border Patrol, stated that he had anticipated a discussion regarding the traffic signal and zoning scenarios in his area. Ms. Brockman explained that discussion would be held at the US 340 East Gateway meeting on Saturday, September 17, 2011.

Ms. Kathy Knight, Homeowner's Association President of Carriage Park I, read from the minutes of November 9, 2010 regarding the US 340 Rezoning of Federal Lands including the fact that the public hearing had been cancelled. She questioned the topic of the meeting that Ms. Brockman had with the Customs and Border Patrol on September 6, 2011. Mr. Hayes clarified the events of the Federal Lands Rezoning Petition that occurred at the end of 2010

and the beginning of 2011. Ms. Brockman clarified that the public hearing had been cancelled by the County Commission and not the Planning Commission. Mr. Hayes requested that Ms. Knight give staff time to research the timeline of events and contact her with the results of that research. Ms. Knight agreed and inquired as to how the Federal Lands Rezoning request relates to the US 340 East Gateway Study and if the rezoning of those lands would be revisited. Ms. Knight also questioned whether Koontz Road was now Federal property since the US 340 Corridor would be directly affected by the modification of that road. Ms. Brockman encouraged Ms. Knight to attend the US 340 Corridor meeting on Saturday, September 17, 2011. Ms. Knight commented that the Planning Commission amending bylaws was a bad public relations move. Ms. Brockman again explained that the County Commission would have the final approval of any amendments to the bylaws.

Mr. Tom Cardamone, representing the Sheridan Homeowner's Association, also raised concern with the Planning Commission amending their bylaws. Mr. Hayes reiterated that the Planning Commission members were making amendments to allow the meetings to be more efficient and that WV State Law governed the duties and authorities of the Planning Commission.

3. **Request for postponement:** None.
4. **Presentation of a petition by James and Barbara Gibson for a zoning map amendment to the Planning Commission for the purpose of scheduling a public hearing within 60 days. This property is currently zoned Residential Growth and the Gibsons are requesting Residential/Light Industrial/Commercial zoning. This property is located on the south side of Route 340 (William L. Wilson Freeway); the east side of Route 27 (Millville Road) and on the north side of Route 27/2 (Allstadt's Hill Road). District: Harpers Ferry; Map: 9; Parcel: 39.1.**

Ms. Brockman described the request. Mr. Hayes questioned whether the applicant had been notified of all options including a Conditional Use Permit. Ms. Brockman explained that a meeting had been held between the applicant and staff to discuss processing options.

Mr. James Gibson, applicant, made the petition to the Planning Commission to request a rezoning of his property as allowable under the ordinance.

Mr. Hayes scheduled the public hearing for the November 8, 2011 Planning Commission meeting.

5. **Discussion of Future Subdivision Regulations Amendments.**

Mr. Rivard reviewed the staff priorities regarding future Subdivision Regulation Amendments:

- Improvement Location Permit Ordinance – Mr. Rivard explained that this was currently a separate ordinance that should be completely incorporated into the Subdivision Regulations to bring it into compliance with state law.

- Site Plan Requirements (Appendix B, Section 9.1.B and Section 9.2) – Mr. Rivard stated that these requirements need clarification.
- Sidewalks (Section 22.208) – Mr. Rivard reported that, due to the number of waivers received regarding sidewalks, this section needs clarification and policy input.
- Event Overflow Parking – Mr. Rivard stated that occasional special events and overflow parking with regards to churches should be addressed.
- Zoning Ordinance Changes(Section 24.109 and 24.112) – Mr. Rivard explained that staff would research the effects of having any amendments that take place in the 2nd year of approval control a project and how that may affect any design that may have already been completed.
- Final Plat Process (Section 21.114) – Mr. Rivard stated that the Planning Commission gives direction at the Concept Plan stage prior to the applicant investing in final engineering. He explained that the final plat could be a staff review although this would require a change in state law. The Planning Commission would need to discuss their role in the final plat review.

Discussion ensued regarding the need for public review at all stages versus public comment affecting the costly engineering that may have already been completed.

Mr. Pellish encouraged staff to look at amending the zoning categories in the Zoning Ordinance as the first priority. Ms. Brockman explained that Mr. Steve Barney, Zoning Administrator, would be taking on those amendments as a priority.

Mr. G. Taylor suggested that the issue of incomplete subdivisions and their bonding need to be addressed. Ms. Brockman suggested requesting that Ms. Rebecca Burns, Bonding Administrator, give a presentation to the Planning Commission to allow for a better understanding of the bonding policy.

There was a short discussion regarding natural resource standards and their definition within the Subdivision Regulations.

6. Urban Tree Canopy Goals Public Comment Discussion and Possible Vote.

Ms. Brockman presented a report of the public comments to the Urban Tree Canopy Goals document and staff's response to those comments. She explained that the intent of this document was to have one document that would act as a guideline for the county and all 5 municipalities. She reported that 3 of the 5 municipalities had recommended amendments to the document at that time and that Charles Town and Ranson still needed to present their suggestions. Ms. Brockman stated that Mr. Doug Griffith, Intern would incorporate the changes into the document and that she would get responses from Charles Town and Ranson to present a complete document at the October 11, 2011 Planning Commission meeting for a vote.

Mr. G. Taylor inquired as to whether there would be grant funding sources available for private land owners to plant trees on their properties. Ms. Brockman explained that a grant

had allowed for the creation of the document and that money had been provided for plantings on public properties. She went on to state that, if the document were adopted, additional grants could be applied for that would allow for funding plantings on public and private land.

Mr. Hayes questioned if the citizens would be obligated to follow the standards if the document were adopted. Ms. Brockman clarified that there would be no obligation to anyone and that the document was simply a guideline emphasizing the importance of planting native trees in the area.

7. Discussion and Possible Vote regarding Amendments to Planning Commission Bylaws.

Mr. Hayes described the changes being suggested for the bylaws:

- The change in meetings from twice monthly to once a month should be reflected in the bylaws.
- Allowing members to attend and be a voting member via telephone in necessary situations needed to be stated in the bylaws.
- The direction from County Commission regarding training for the Planning Commission members also needed to be incorporated into the document.
- An attendance policy for Planning Commission members would be included in the bylaws.

Mr. Hayes read each amendment aloud from Section 4.1, 4.2, 4.4, 4.5, 4.8, 4.9 and 5.1. Mr. P. Taylor identified a grammatical error in Section 4.1. *An additional regular meeting may be called by the President or by two or more members of the Planning Commission for ~~an~~a specific agenda item...*

Mr. Burns stated that since there would be only a two week notice if a second meeting of a month were held, the second meeting should not be factored into the attendance policy. Mr. Hayes reminded the Planning Commission that the amendment would be lenient enough that counting the second meeting of the month toward attendance would not be a cause for concern. Mr. G. Taylor mentioned that the attendance policy amendment made no reference to members showing up late to meetings. Mr. Hayes suggested that tardiness be addressed with any future amendments to the bylaws.

Mr. Pellish moved to approve the amendment to section 5.1 regarding allowing a member to attend a meeting and be a voting participant via telephone. Mr. Burns seconded the motion which carried 5 for and 1 against (Mr. Baty).

Mr. Pellish moved to approve all amendments to Section 4 with the grammatical correction to Section 4.1. Mr. Burns seconded the motion. Mr. G. Taylor stated that he would be more comfortable if there were language added regarding tardiness. There was discussion regarding what defines tardiness and what factors, such as traffic, should be considered when a member is deemed tardy. Mr. G. Taylor stated that he would draft language that could be discussed at the next Planning Commission meeting. The motion carried 5 for and 1 against (Mr. Baty).

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

Mr. Groh stated that there was no litigation to report.

9. Director's Report.

Mr. Hayes requested that staff research the timeline of events of the Federal Lands Rezoning and that staff provide the outcome of that research to Ms. Kathy Knight.

Ms. Brockman reminded the Planning Commission of the US 340 East Gateway Plan meeting on Saturday, September 17, 2011. She reported on a meeting that she attended in Shepherdstown regarding future planning for that area. Ms. Brockman stated that Shepherdstown had adopted a large Urban Growth Boundary that would be presented to County Commission on September 15, 2011. She also informed the members that the current amendments would go to a public hearing to be held the night of September 15, 2011. She stated that the County Commission Public Hearing regarding the Hott property rezoning would be held at Blue Ridge Elementary School on October 6, 2011 at 7 PM.

Ms. Brockman reviewed the agenda for the upcoming Planning Commission meetings.

10. County Commission Liaison Report. None.

11. Planning Commission Exchange.

- **Report from the Health Department Meeting Liaison.** Mr. Burns reported that flu vaccinations were available. He stated that the Health Department was facing similar attendance issues.
- **Report from the Public Service District Meeting Liaison.** None.
- **Report from the Parks and Recreation Meeting Liaison.** None.
- **Report from the Jefferson County Development Authority Meeting Liaison.** Mr. Pellish stated that he advised the Development Authority of Planning Commission discussions in an effort to maintain communications.
- **Report from the Water Advisory Committee Meeting Liaison.** None.

12. President's Report. Mr. Hayes stated that he felt discussions at the meeting were becoming argumentative at times and that he would like for the meetings to become more focused on the task being brought before the body.

13. Actionable Correspondence. None.

14. Non-Actionable Correspondence. None.

Mr. G. Taylor moved to adjourn the meeting at 8:45 PM. Mr. Burns seconded the motion which carried unanimously. An audio recording and/or a video recording of the meeting may be found on our website. These minutes were prepared by Amy Puetz, Planning Clerk.

**A Motion Recommending Direction regarding a
Concept Plan for Hite Road Park
October 11, 2011**

Whereas, Jefferson County Parks and Recreation Commission is proposing a park consisting of trails, passive recreation areas, athletic fields, sports courts, and various structures with a total square footage of 11,480; and

Whereas, The property is located on Hite Road, Charles Town, WV 25414 and is identified as Parcel 2.17 as shown on Tax Map 9 of the Middleway Tax District, cumulatively consisting of 119 acres; and

Whereas, The Planning Commission is required to hold a public workshop regarding the concept plan as outlined in Section 24.121 of the Subdivision and Land Development Regulations; and

Whereas, The Planning and Zoning Department Staff finds the Hite Road Park concept plan complete and in conformance with the Subdivision and Land Development Regulations.

Whereas, The Planning and Zoning Department recommends that a trail be provide along entire length of Hite Road.

Now therefore be it moved, that the Jefferson County Planning Commission gives the above mentioned direction for the concept plan with a trail along Hite Road for property identified in the Jefferson County Tax Map as Parcel 2.17 as shown on Tax Map 9 of the Middleway Tax District.

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

Direction given this 11 day of October 2011
By vote of the Jefferson County Planning Commission

Planning Commission President

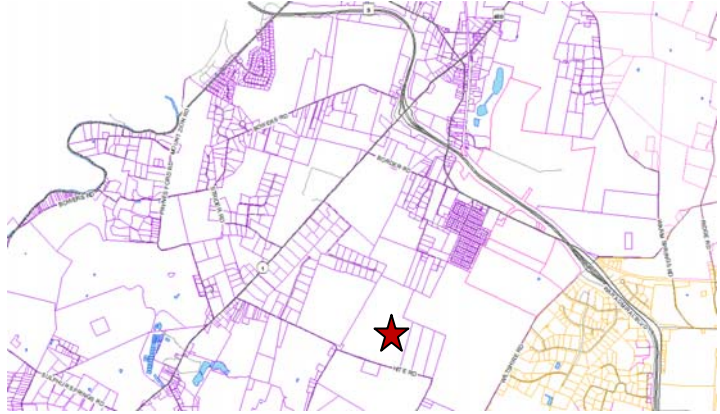

Daniel Hayes

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Item #4 Request by Jefferson County Parks and Recreation for a Major Site Plan Concept Plan Public Workshop for Hite Road Park, a proposed project consisting of trails, passive recreation areas, athletic fields, sports courts, and support facilities. (Subdivision Regulation 24.119)

APPLICANT:	Jefferson County Parks and Recreation Commission
OWNER:	Same
DEVELOPER:	Same
SURVEYOR/ENGINEER:	Land Planning and Design Associates
PROPERTY LOCATION:	This property is located on the north side of Hite Road, approximately 2 miles south of the intersection of Route 9 and Route 1.
LEGAL DESCRIPTION:	District: Middleway; Map 9; Parcel 2.17 
ZONING DISTRICT:	Zoning Map Designation: Rural 
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North: R South: R</i> <i>East: R West: R</i>
LOT AREA:	119 acres
PROPOSED ACTIVITY:	Trails, passive recreation areas, athletic fields, sports courts, and support facilities.

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Jefferson County Planning Commission Meeting

October 11, 2011

1. Summary of Request

The Jefferson County Parks and Recreation Commission proposes to develop a park on Hite Road, fittingly name Hite Road Park. The park will consist of trails, passive recreation areas, athletic fields – including football, soccer and baseball fields, skate park, sports courts, and support facilities. While the applicant did not provide a timeline or a phasing plan, it is expect that the improvements to the proposed park will several years and be phased in over a period of time.

2. Site Plan Category

The Subdivision and Land Development Regulations require that a site plan for a proposed non-residential development exceeding the following to be processed as a major site plan if it does not meet either of the following categories identified in Section 20.203:

- (1) Building(s), both new and additions to existing, where all structures located on the parcel total less than 5,000 square feet gross floor area (GFA) on any site;
- (2) 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;

As a proposed structure of 11,480 square feet, the proposed development does not meet either of the categories listed above; and, as such, fits the category of a major site plan.

3. Staff Determination of Application Sufficiency

The Subdivision and Land Development Regulations require that, prior to the scheduling of a Concept Plan public hearing before the Planning Commission, staff must determine that the plan submitted by the applicant is “sufficient” – i.e. meeting all requirements of Section 24.119. These requirements are described below, with the current review status for the Hite Road Park application noted in the right column:

Required Item	Description	Status
1. General location	A map or aerial photograph showing an area of 500 feet around the property. Zoning boundaries shall be located on this document.	Provided
2. Concept Plan	A Concept Plan shall be submitted in accordance with the content and formatting guidelines provided in Appendix A, <i>Plan & Plat Standards</i> .	Provided
3. Zoning Information	This shall include: <ul style="list-style-type: none"> a) Determination of the zoning district in which the proposed subdivision or development project is situated. b) Density calculations. c) Site resource map. 	Provided
4. Proposal Description	This shall be a written description of the proposal with general identification of the number of dwelling units or floor area proposed, commentary, zoning, and development option selected if the development is residential.	Provided

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5. Traffic Impact Data	This shall include: a) Average Daily Trip figures for the adjoining or accessible State road. b) Trip generation figures c) Nearest key intersection that will serve the proposed project. A “key intersection” is defined as any intersection with a primary or secondary highway as classified by the current Comprehensive Plan. d) “Highway Problem Areas” according to the current Comprehensive Plan that falls within a one-mile radius of the project. e) In the event trip generation in the peak hour exceeds 100 or the limitation designated in the most current DOH Traffic Engineering Directive, a traffic study will be required which includes generators, etc. This type of study should be performed by a traffic engineering consultant. The effect of phasing the subdivision shall be cumulative.	Provided
6. Other Data	Any other data or information the applicant believes will assist in the review.	Provided
7. Other Reviews	Any other staff or agency reviews of the plans.	Provided

Following submission of a Concept Plan, staff has 10 days to review a submittal and determine whether or not the application is sufficient. If found insufficient, the applicant is notified of the deficiencies.

After a few revisions of previous submissions, staff determined that the Hite Road Park Concept Plan application was “sufficient” on August 9, 2011. A letter was sent to the applicant notifying them that they could advance to the next step in the process, a Major Subdivision Concept Plan Completeness Review. Within a 45 working day period, that began on August 10, 2011, the concept plan was required to be scheduled for a public workshop at a regularly scheduled Planning Commission Meeting. Staff scheduled the applicant’s public workshop for the October 11, 2011 Planning Commission Meeting.

4. Concept Plan Completeness Review

During the time period between formal receipt of the application and the public workshop, the Major Subdivision Concept Plan Completeness Review process takes place. Listed below are the requirements in the Major Subdivision Concept Plan Completeness Review process:

Process Requirement	Description	Status and Comment
A. Department and Agency Reviews	The Department and appropriate reviewing agencies shall conduct reviews of the proposed concept plan. Agency comments shall be received by the Department 14 days prior to the scheduled public workshop.	Planning and Zoning Department review complete. See below regarding agency comments.
B. Review Content	The Department and agency reviews shall address the areas indicated in C through F below and any other areas of	See below.

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	concern to the agencies.	
C. Department	<p>The Department review shall include the following:</p> <ol style="list-style-type: none"> 1. Whether the density, use, and plan meet the requirements of the Zoning Ordinance and any other zoning issues that can be identified at the concept plan submission. (Landscaping, for instance, is not generally available at this stage). Staff shall identify conditions that would enable the plan to meet the standards. It shall also identify any other zoning issues the developer shall address in a site plan submittal. 2. Staff opinion as to whether the plan meets the site development planning or subdivision criteria of these Regulations. The Department shall review the concept plan for modifications that would improve the plan. 	Staff has determined that the requirements of the Zoning Ordinance and Subdivision and Land Development Regulations are met in the proposed Concept Plan.
D. WVDOH	When appropriate, the WVDOH shall submit a letter to the Department of Planning indicating issues and data requirements or notice that there are no issues or data requirements. If WVDOH determines that a traffic study needs to include more area than required by these Regulations or the Zoning Ordinance, it shall specify the expanded area. Any issues regarding sight distances, access location, road configuration, or off-site improvements shall be noted with recommendations or required changes. The purpose is to ensure that, at site plan review, all transportation information is available so the agency does not have to seek additional data for a qualitative review.	No letter has been received from the WVDOH to date.
E. Traffic Impact	The review shall indicate whether the traffic impact study follows the generally accepted methodology for a traffic impact study, outlines the traffic impact, and recommends alternatives for mitigating the impact	Staff determined that the traffic impact data submitted by the applicant is sufficient.
F. Public Services	The review shall indicate whether there are existing water and sewer systems in place that can handle the development. If not, the review shall indicate the type or extent of a system that shall be proposed by the developer to best meet the County's needs in that area of the County.	The Jefferson County Public Service District has not submitted a letter
G. Recommended Conditions	All reviews shall contain recommended conditions for moving forward to a site plan or reasons why the plan should be denied.	See below.
H. Approval	Unless there are reviews indicating that the development cannot conform to the Zoning Ordinance, be serviced by public services, or provide its own utilities, or other factors that make the development impossible, Planning staff shall accept or deny the concept plan as complete.	Planning staff accepts the Concept Plan as complete.
I. Effect	Upon accepting the application as complete, Planning staff shall place it on the next possible Planning Commission	The Concept Plan was scheduled for a

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	agenda as a public workshop. Staff shall advertise the public workshop at least fourteen (14) days in advance of the meeting and the applicant shall post notice on the property.	public workshop consistent with this requirement.
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5. External Agency Reviews

No external agencies have responded.

6. Staff Recommendation

The Planning and Zoning Department Staff finds the Hite Road Park concept plan complete based on the information provided related to the criteria above. The applicant has either addressed the conditions within the submitted concept plan or listed when those conditions will be met in future submittals. The applicant needs to be aware that a traffic study will need to be submitted as part of the site plan process with the submission of Phase 1 based on the traffic volume created with this use.

Staff recommends that a trail along Hite Road be added to the park plan. While a trail is shown along a portion of the eastern end of the proposed park, it does not go to the property line and a significant section to the west of the entrance does not have a trail along the road. With a residential development on the west side of this project, additional development opportunities to the west and a residential area near the intersection of Leetown Road and Hite Road, it is reasonable to expect that there would be future pedestrian and bike traffic.

7. Planning Commission Direction

The Major Subdivision Concept Plan Public Workshop allows for the Planning Commission and the general public to comment on the proposed plan. The Subdivision and Land Development Regulations outline the procedure:

1. The applicant makes a short presentation.
2. Staff explains outside agency comments and whether the plan has met the standards of the Zoning Ordinance.
3. Public comment is solicited.

Following the applicant's presentation, staff's explanation and the solicitation of public comment, the Planning Commission shall provide direction to the applicant as required under Major Site Plan Concept Plan Direction outlined in the Subdivision Regulations. The Planning Commission has the option of providing this direction at the same meeting during which the Concept Plan public hearing takes place, or at a subsequent meeting that occurs within 14 days of the meeting at which the Concept Plan public hearing is closed.

The Subdivision and Land Development Regulations outline the direction to be provided to the applicant:

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“The Planning Commission shall direct the preparation of a site plan subject to conditions to be addressed in the site plan application. The purpose of this review is to guide the developer so that when the site plan application is formally reviewed by the staff, there should not be a whole range of issues being raised for the first time. The developer shall cite conditions and demonstrate that they have been met or otherwise addressed.”

It should be noted, that the direction provided to the applicant in the Concept Plan Public Workshop shall be applicable for a period of two years, with the provision that any amendments to the Subdivision and Land Development Regulations or the Zoning and Land Development Ordinance in the second year shall be applicable.

**A Motion Recommending Completeness Review regarding a
Major Site Plan for Jefferson Asphalt
October 11, 2011**

Whereas, Jefferson Asphalt is proposing a 4,200 square foot office and 6,000 square foot shop;
and

Whereas, The property is located at corner of 9390 Middleway Pike (Highway 51), Charles
Town, WV 25414 and is identified as Parcel 7 as shown on Tax Map 13 of the Middleway Tax
District, cumulatively consisting of 34.27 acres; and

Whereas, The Planning Commission is required to schedule a public hearing regarding the
major site plan as outlined in Section 24.124 of the Subdivision and Land Development
Regulations; and

Whereas, The Planning and Zoning Department Staff finds the Jefferson Asphalt Site Plan
complete and in conformance with the Subdivision and Land Development Regulations.

Now therefore be it moved, that the Jefferson County Planning Commission finds the above
complete for the major site plan for property identified in the Jefferson County Tax Map as
Parcel 7 as shown on Tax Map 13 of the Middleway Tax District.

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

Direction given this 11 day of October 2011
By vote of the Jefferson County Planning Commission


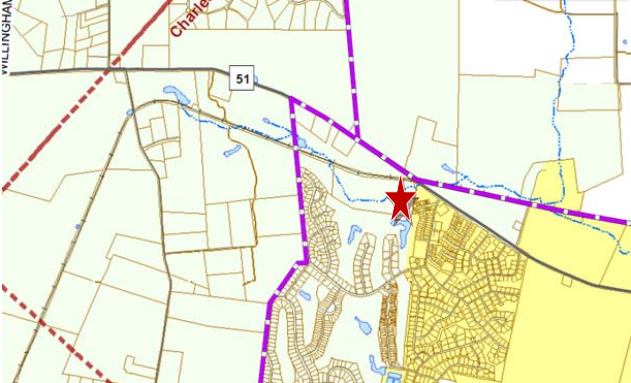
Planning Commission President

Daniel Hayes

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Item #5 Request by Jefferson Asphalt for a Completeness Determination of a Major Site Plan consisting of a proposed office building and maintenance shop (PC File #S11-12). (Subdivision Regulation 24.124)

APPLICANT:	Jefferson Asphalt Products
OWNER:	Same
DEVELOPER:	Same
SURVEYOR/ENGINEER:	D.A. Stansbury Engineering
PROPERTY LOCATION:	9390 Middleway Pike on WV Route 51 near Tuscowilla Hills.
LEGAL DESCRIPTION:	District: Charles Town; Map: 13; Parcel: 7 
ZONING DISTRICT:	Zoning Map Designation: Rural 
SURROUNDING PROPERTIES:	Zoning Map Designation: North: R South: R East: RG West: R
LOT AREA:	34.27 acres
EXISTING STRUCTURES:	Multiple existing buildings that collectively consist of 12,600 square feet

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PROPOSED ACTIVITY:	New office facility consisting of 4,200 sq. ft. and a shop area of 6,000 sq. ft.
CONCEPT PLAN PUBLIC WORKSHOP:	August 9, 2011
COMPLETENESS REVIEW COMPLETED BY STAFF:	September 20, 2011

1. Summary of Site Plan

Jefferson Asphalt proposes to construct an office building consisting of 4,200 square feet and a shop building of 6,000. The applicant is proposing to build this office space in the near future, while the shop is expected to be built later as part of Phase 2. Additional parking is shown for the expanded uses and the required stormwater management is being designed for build out of Phases 1 and 2.

2. Staff Determination of Application Submission and Completeness

The Subdivision and Land Development Regulations require that, prior to the scheduling of a meeting before the Planning Commission; staff must determine that the site plan submitted by the applicant is “complete” for Planning Commission review – i.e. meeting all requirements of Section 24.123 and 24.124.

After a few revisions of previous submissions, staff determined that the Jefferson Asphalt Concept Plan application was “complete” for Planning Commission review on September 20, 2011.

3. Staff Recommendation

The Planning and Zoning Department Staff finds the Jefferson Asphalt Major Site Plan complete based on the information required in Section 24.123 and 24.124. At the Concept Plan Public Workshop no direction was given to the applicant.

4. Planning Commission Role

The Major Site Plan Completeness Review requires the Planning Commission to either accept the site plan as complete or deny the site plan if it “...is incomplete, or the development cannot conform to the Zoning Ordinance, be serviced by public services or on-site utilities,....” This meeting is strictly to determine the Completeness of the site plan. The decision regarding approval of the site plan will occur at a subsequent meeting. The scheduling of that meeting is delineated below.

If the Planning Commission finds the application complete, a public hearing shall be scheduled within 45 days for the purpose of either approving or denying the site plan. The state law requires a 21 day notice for the public hearing. Since the Planning Commission meetings are 21 days apart, and the paper is a weekly paper, it is not possible to schedule the public hearing at the next regular meeting based on deadlines required to the paper for a public notice. Generally this would require calling a second meeting 42 days after the Completeness determination.

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October 11, 2011

In this case, since the second meeting of the month and been canceled, Staff, after consulting with the Planning Commission President, has submitted a public notice to the paper stating that the public hearing for this site plan will be held on November 8, 2011. This notice will appear in the October 12, 2011 Spirit of Jefferson. If the Planning Commission determines they would prefer to call a special session meeting the week of November 14th, the hearing will be advertised.

The Planning Commission needs to vote to determine the site plan complete to schedule the hearing on a date certain. Staff recommends that date be November 8, 2011.

**A Motion Recommending Waiver of sidewalks
for Middleway Volunteer Fire Company
October 11, 2011**

Whereas, Middleway Volunteer Fire Company is proposing a 9,000 sq. ft. fire station with an office, 6 bay garage, a multipurpose room; and

Whereas, The property is located east of Leetown Road and the Cedar Hollow intersection and is identified as Parcel 2 as shown on Tax Map 24 of the Middleway Tax District; and

Whereas, The property is located east of Leetown Road and the Cedar Hollow intersection and is identified as Parcel 2 as shown on Tax Map 24 of the Middleway Tax District is being subdivided for a new lot for the proposed use and only the new parcel create is affected by the waiver; and

Whereas, Middleway Volunteer Fire Company is requesting a waiver of sidewalks; and

Whereas, The Jefferson County Planning Commission finds that the potential future residential development near the proposed Middleway Volunteer Fire Company is limited and therefore sidewalks in this specific location are not appropriate; and

Now therefore be it moved, that the Jefferson County Planning Commission finds the above mentioned waived from installing sidewalks for only the parcel that will be create out of property identified in the Jefferson County Tax Map as Parcel 2 as shown on Tax Map 24 of the Middleway Tax District.

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

Direction given this 11 day of July 2011
By vote of the Jefferson County Planning Commission

Planning Commission President

Daniel Hayes

STAFF REPORT

Jefferson County Planning Commission Meeting

October 11, 2011

Item #6 Request by Middleway Volunteer Fire Company for a waiver from Subdivision Regulations Appendix B Section 9.6 A and C requiring that sidewalks be provided in non-residential development.

APPLICANT:	Middleway Volunteer Fire Company
OWNER :	Marshall Edwards
DEVELOPER:	Middleway Volunteer Fire Company
SURVEYOR/ENGINEER:	Fredrick, Seibert and Associates
PROPERTY LOCATION:	Leetown Road, South of Middleway across from Hinton Rd
LEGAL DESCRIPTION:	District: Middleway; Map: 24; Parcel: 2
ZONING DISTRICT:	Zoning Map Designation: Rural
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North:</i> R <i>South:</i> R <i>East:</i> R <i>West:</i> R
LOT AREA:	5 Acres
PRIOR CASES:	11-03 S11-06
PROPOSED ACTIVITY:	Building a new fire station consisting of 4,950 square feet with the ability for expansion up to approximately 9,000 square feet.
TIMELINE:	Pre-proposal Conference: March 30, 2011 PC File #S11-06 Concept Plan Public Hearing Held: July 12, 2011

STAFF REPORT

Jefferson County Planning Commission Meeting

October 11, 2011

PC File #11-03 Approved: September 15, 2011

On this project staff worked with the applicant to allow for concurrent review of the concept plan and the site plan. Generally, the concept plan is the first step and site plan cannot be submitted until after the Public Workshop. In this case the applicant submitted both the site plan and concept plan on April 1, 2011

The Submission phase of Concept Plan required corrections and the Concept Plan was returned to the applicant. The applicant returned the Concept Plan to the office on April 12 and Staff found it "Sufficient" on April 14. On April 27, the Completeness Review began and this is a 45 day period, outlined by state law, in which outside agencies comment on the project. The Concept Plan went before the Planning Commission on July 12, 2011 and was approved by the Planning Commission.

On April 1, 2011, the applicant submitted the site plan for a 9,000 square foot fire station. The project was returned to the applicant on April 28, 2011 with a list of corrections that needed to be addressed. On July 27, 2011, the site plan was resubmitted by the applicant and returned to the applicant on August 15, 2011. It is not uncommon that a site plan will undergo multiple reviews.

The site plan is nearly complete with a few limited outstanding comments. One of the few remaining comments is a need for sidewalks that is required as part of the site plan review for non-residential projects per Section 9.6 of the Subdivision Regulations. The applicant has requested to have the sidewalk requirement waived.

Additionally, during the Site Plan and Concept Plan processes, Staff reviewed a Final Plat which created the lot for the proposed use.

Recommendation

Staff recommends the waiver be granted. Based on the location of the site, sidewalks are not well suited in this particular location. The project is located on a private access easement with minimal improvements, situated several hundred feet from the State Route 1 (Leetown Road) and no residential development is expected in that location.

Engineer's Report

Planning Commission Meeting

October 11, 2011

Middleway Fire Department Waivers

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

Appendix B, Section 9.6 A and C: Curbs, Gutters and Sidewalks

To be able to approve this variance, the applicant needs to prove all of the following:

1. The design of the project will provide public benefit in the form of reduction in county maintenance costs, greater open space, parkland consistent with county parks plan or benefits of a similar nature.
2. The waiver will not adversely affect the public health, safety or welfare or the rights of adjacent property owners or residents.
3. The waiver will be in keeping with the intent and purpose of this ordinance.
4. The waiver will result in a project of better quality and/or character.

The Subdivision Ordinance requires the following:

Section 9.6 A of the Curbs, Gutters and Sidewalks of the 2008 Jefferson County Subdivision Ordinance requires curbs, gutters, and sidewalks to be provided for commercial developments. The applicant is proposing curb, gutter and sidewalk around the proposed structure. Engineering believes the applicant is meeting this requirement.

As to the reason for this variance request, engineering defers to the applicant and Planning and Zoning on this issue.

Section 9.6 C of the Curbs, Gutters and Sidewalks of the 2008 Jefferson County Subdivision Ordinance requires that a sidewalk be continued from any existing public sidewalk or pedestrian conveyance between existing developments on either side of the proposed site. There are no existing sidewalks or pedestrian conveyances on either side of the project. Therefore, no extension of sidewalk is required. Engineering believes the applicant is meeting this requirement.

As to the reason for this variance request, engineering defers to the applicant and Planning and Zoning on this issue.

In summary, the Engineering Department defers the Planning and Zoning Department on the matter at hand.

Oct. 11

RECEIVED

SEP 13 2011

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

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

PCW11-06

WAIVER REQUEST FORM

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

Property Owner (s): Middleway Vol Five (3) Marshall Edwards

Address: PO Box 1
Summit Pt. WV 25442

Phone Number: 304-582-0201

Location of Property: Leetown Rd and Burke Hill Rd (new
road name) across from Hinton Rd

Lot Size: 5 ac

Deed Book Reference: Deed Book #: WBAA Page #: 116

Tax Map Reference: District: Middleway Map: 24 Parcel: 2

Zoning District: _____

Section of Ordinance: 9.6 A & C

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

It is in our opinion that the sidewalk
requirement along the roadway does not
apply to our project because we are
sub dividing a five acre parcel off of a cow
pasture, there is no pedestrian walkways along the
parent dirt farm lane to continue, there is no
pedestrian traffic on this lane, there are no
sidewalks anywhere in the vicinity of the project
and sidewalks would have no benefit to the
area.

Sketch on a separate 8 1/2" x 11" sheet of paper the shape and location of the lot. Show the location of the intended construction or land use indicating building setbacks, size and height. Identify existing buildings, structures or land uses on the property. Sign and date the sketch. Please provide a vicinity map of the area.

Please note waivers to the Subdivision Regulations must comply with Division 24.300 of the Subdivision Regulations. To justify your waiver request, please address the following items:

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

less impervious area which improves natural drainage

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

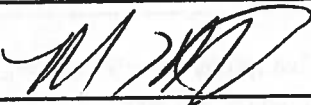
less impervious area which improves natural drainage

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

there is no pedestrian traffic to benefit from sidewalks in this area

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

The waiver of sidewalks will keep the area a more rural area which it is zoned



Signature of Property Owner

Signature of Property Owner

For Official Use Only

Amount of Fees Paid: _____

Date of Meeting/Public Hearing: _____

Official/Administrative Body: _____

Property to be posted by: _____

Adjoiner letters to be mailed by: _____

Official Signature and Seal: _____

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
- Katie See, City of Charles Town, City Planner
- Sarah Kleckner, City of Ranson, Planning Director
- Jarlath O'Neill Dunne and the University of Vermont Spatial Analysis Lab
- Jefferson County, WV GIS Office
- All of the individuals that contributed their time and efforts to the Spring 2011 tree planting projects.

Urban Tree Canopy Municipal Committee

This Committee of representatives of each municipality met faithfully when called upon and served as ambassadors back to their respective communities to ensure they were being well represented:

- Town of Bolivar: Helen Dettmer
- Charles Town: Katie See and Scott Coyle
- Town of Harpers Ferry: Kevin Carden
- Ranson: Sarah Kleckner
- Town of Shepherdstown: Wendy Maddox
- Shepherd University: Dr. Carl Bell
- Allegheny Power: Ron Nichols
- Freshwater Institute: Michael Schwartz
- Jefferson County Planning: Julie Quodala, Seth Rivard, Steve Barney
- Jefferson County GIS: Todd Fagan

Authors:/Contributors:

- W. Douglas Griffith, Shepherd University, Student, Urban Tree Canopy Intern
- Frank Rodgers, Cacapon Institute, Director of Education and Outreach
- Jennifer Brockman, Jefferson County Planning and Zoning, Director

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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 (PPI). PPI rankings are not based simply on the amount of trees or amount of tree canopy alone. Rather, the PPI is a combination of three criteria:

- Population density—The greater the population density, the greater the priority for tree planting [i.e. more people could benefit from new trees]
- Canopy green space—The lower the value, the greater the priority for tree planting [i.e. open "green space" without trees is where trees might easily be added]
- Tree canopy cover per capita—The lower the amount of tree canopy cover per person, the greater the priority for tree planting [i.e. a higher percent of the local population lacks the benefits of trees]

Using mathematical regression, these three criteria were combined to produce a "score" (Norwak and Greenfield 2009). Jefferson and Berkeley Counties (WV) rank in the highest percentile and are among the highest priority counties within the Chesapeake Bay watershed (Figure1).

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

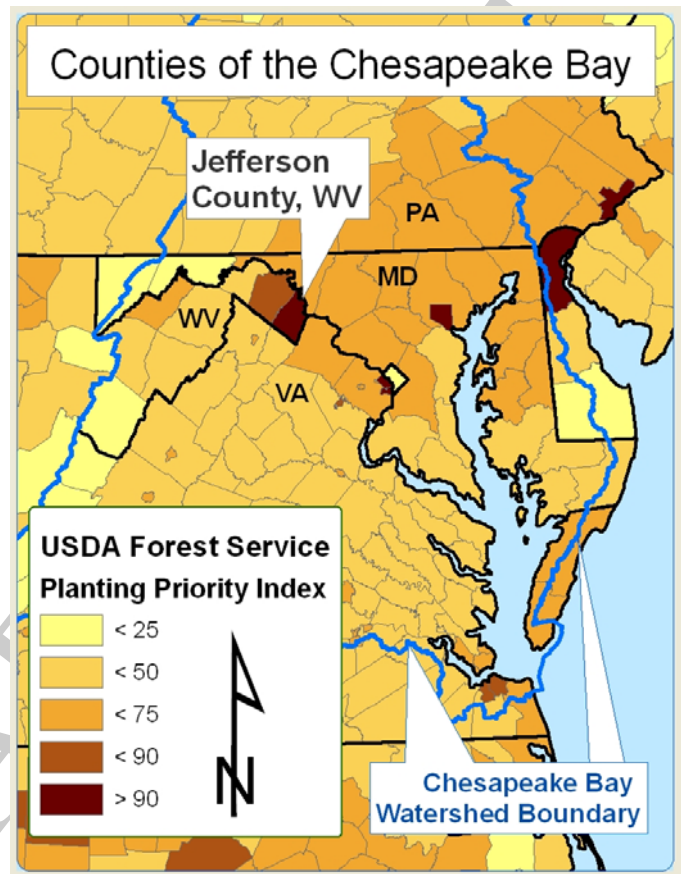


Figure 1.

single census block meeting that criteria. However, in regards to “Urban Tree Canopy”, the word “urban” possesses a less rigid definition. The U.S. Forest Service defines the urban forest as “the system of trees and associated plants that grow individually, in small groups, or under forest conditions on public and private lands in our cities, their suburbs, and towns.” Urban Tree Canopy, therefore, refers to the tree canopy in and around populated areas. So, while Jefferson County as a whole may not be thought of as “urban,” the term “Urban Tree Canopy” is relevant. 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~~ Public officials in Jefferson County are keenly aware of and engaged in efforts to reduce stormwater runoff for the sake of protecting local watersheds and the larger Chesapeake Bay watershed. Studies and estimates conclude that urban tree canopy cover can reduce annual runoff by up to 7% (Fazio 2010, Sanders 1986). 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 evapo-transpiration, and ~~increasing air movement~~ mitigating greenhouse gases.

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~~ Increase 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 (Kuo 2003).
- A greener school environment can decrease symptoms of Attention Deficit-Hyperactivity Disorder and reduce the number of violent or aggressive acts among children (Kuo and Faber 2004; Kuo and Sullivan 2001).

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 Departments 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.

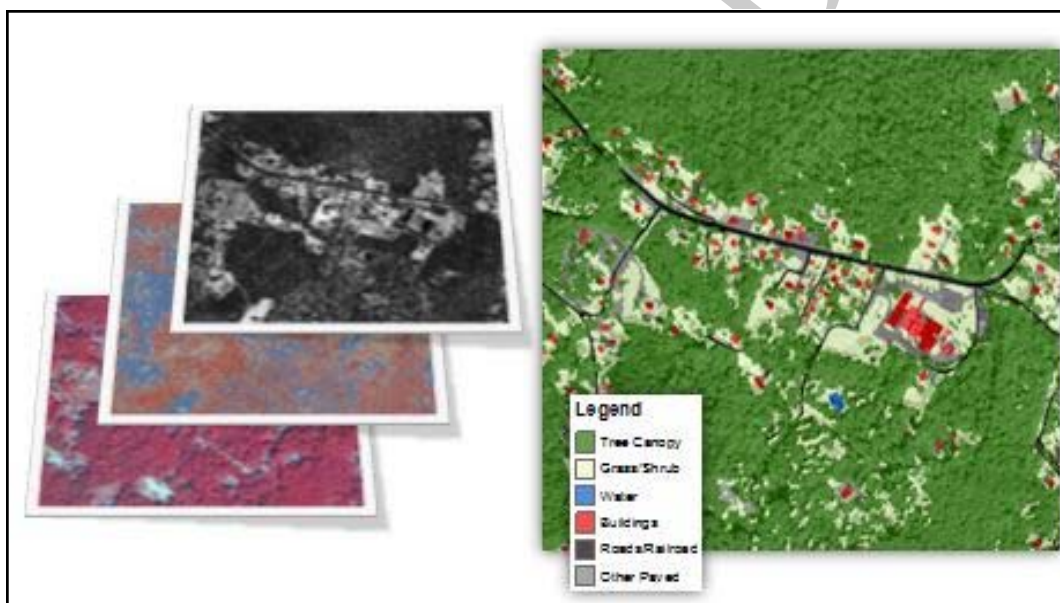


Figure 2. 2007 color infrared imagery and 2005 LiDAR data were combined by the University of Vermont's Spatial Analysis Lab to produce the high resolution land cover data utilized by Jefferson County for the Urban Tree Canopy assessment.

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. It should be**

Chapter 3

Tree Canopy Analysis Methodology and Data

noted that, while the objective of this plan is to increase tree canopy, it is not the goal to do so at the expense of currently productive agricultural land. Those who have collaborated on this project fully realize the importance of agriculture to Jefferson County, and agricultural lands were taken into full consideration throughout the development of the goals outlined in this plan.

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 number of trees per acre of tree canopy is highly variable depending on species, size, age, health and other factors. For the purpose of this study we used a forest industry standard of 109 trees per acre of canopy cover, assuming a 20ft by 20ft spacing between individual trees. It is also important to note that increase in Tree Canopy coverage does not necessarily refer to an increase in the *number* of trees. Proper protection, maintenance, and care of existent trees, allowing for healthy maturation, can increase canopy coverage significantly (i.e., A tree with a 5' diameter canopy growing to a 10' diameter canopy results in a 300% increase in that tree's canopy).

The following is a brief summary of the TC data derived for the County and each of the municipalities from the analysis:

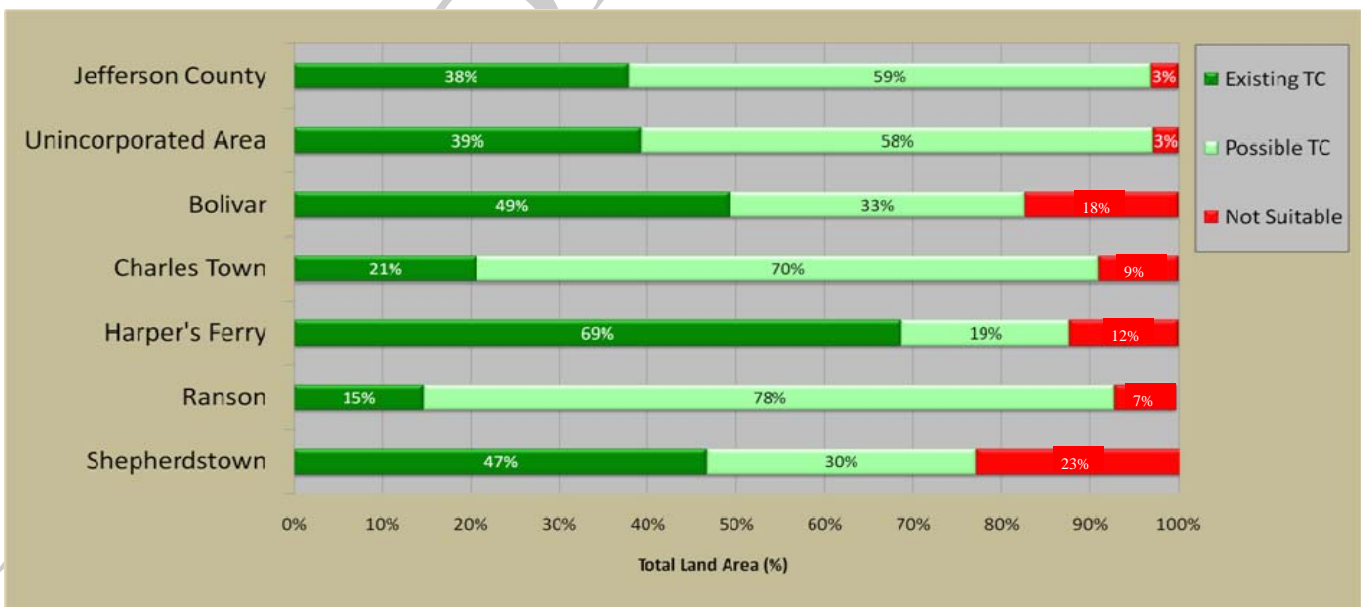


Figure 3. Tree Canopy data for Jefferson County, West Virginia

Chapter 3 Tree Canopy Analysis Methodology and Data

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 potentially 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% (from 38% to 39%), an additional 1,525 acres of tree canopy is required
- To increase Tree Canopy by 2% (from 38% to 40%), an additional 2,861 acres of tree canopy is required
- To increase to 40% Tree Canopy over a 10 yr span, tree canopy coverage would need to increase by 286 acres per year (assuming zero loss during that time span)
- To increase to 40% Tree Canopy over a 20 yr span, tree canopy coverage would need to increase by 143 acres per year (assuming zero loss during that time span)

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 potentially 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% (from 39% to 40%), an additional 981 acres of tree canopy is required

Chapter 3 Tree Canopy Analysis Methodology and Data

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 potentially available for additional Tree Canopy
- 18% of the total land area of Bolivar is unsuitable for tree planting
- To increase Tree Canopy by 1% (from 49% to 50%), an additional 2 acres of tree canopy is required

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 potentially 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% (from 21% to 22%), an additional 48 acres of tree canopy is required

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 potentially 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% (from 69% to 70%), an additional 4.5 acres of tree canopy is required

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

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 potentially available for additional Tree Canopy
- 7% of the total land area of Ranson is unsuitable for tree planting
- To increase Tree Canopy by 1% (from 15% to 16%), an additional 53 acres of tree canopy is required

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% (from 47% to 48%), an additional 3 acres of tree canopy is required

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~~ **on a 5-year interim basis** 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 (~~from 38% 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% (~~from 39% 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~~ **Develop knowledge and conceptual information to assess the costs and benefits of potential conservation and restoration practices to achieve the best results with the least resources** 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).~~
- **Develop recommendations and disseminate educational materials (pamphlets, brochures, news releases, etc.) supporting landowners' and HOA's proper maintenance and care of trees (e.g. recommended watering schedules, stake and wire procedures and removal, mulching). Seek commitment of property owners and HOA's for tree care, especially during the critical first three years after planting.**

Chapter 4 Recommendations and Goals for Jefferson County

- 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.
- Investigate revenue ~~streams~~ **opportunities** to fund updating the tree canopy assessment every 5 ~~–10~~ years in order to monitor and evaluate progress towards goal.
- **Promote and encourage the Jefferson County website as a free tool to host tree canopy assessment data.**
- Develop local regulations ~~that~~ **to** 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~~ **opportunities** or programs to assist with the removal of invasive species and replacement with **appropriate** native species **appropriate** **suitable** 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** **outline** plant species; encourage **desirable and appropriate** native species; require ~~design~~ standards 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 **appropriate** 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 **appropriate** 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~~ **Develop** 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~~ 5 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% (from 49% to 50%) ~~(two additional acres)~~ by 2030. This would require 2 additional acres of tree canopy.
- 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 appropriate 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).~~
- Develop recommendations and disseminate educational materials (pamphlets, brochures, news releases, etc.) supporting landowners' and HOA's proper maintenance and care of trees (eg. recommended watering schedules, stake and wire procedures and removal, mulching). Seek commitment of property owners and HOA's for tree care, especially during the critical first three years after planting.
- 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~~ or revenue opportunities to assist with the removal of invasive species and replacement with appropriate native species appropriate suitable to the planting location.

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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 ~~40~~ 5 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%, ~~from 21% to 22%, (48 additional acres)~~ by 2030. ~~This would require 48 additional acres of tree canopy.~~
- 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.~~ to ensure all new street and sidewalk work takes into consideration the potential for additional tree plantings, that existing street trees are protected wherever possible, and that new street tree pits and plantings follow current best management practices (e.g. root barriers & root deflectors to reduce root-sidewalk conflict, installation of engineered soils, stormwater management techniques to maximize water infiltration to tree pits).
- 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 ~~appropriate~~ 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

- Develop recommendations and disseminate educational materials (pamphlets, brochures, news releases, etc.) supporting landowners' and HOA's proper maintenance and care of trees (eg. recommended watering schedules, stake and wire procedures and removal, mulching). Seek commitment of property owners and HOA's for tree care, especially during the critical first three years after planting.
- 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~~ or revenue opportunities to assist with the removal of invasive species and replacement with appropriate 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 5-10 years and/or in conjunction with locally adopted Comprehensive Plans which may rely on these goals and expand on the recommendations.

- Authorize the Harpers Ferry Tree Committee to be the entity to pursue the goals outlined below.
- 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 general tree maintenance policy for trees on public property and incentives for appropriate tree trimming and maintenance practices on private property. Develop a similar policy specific to view management practices that protect and maintain historically recognized views.
- ~~Build upon~~ Maintain 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.
- Replace severely damaged and dead or dying trees, especially in critical areas such as stream valleys, riparian zones, and steep slopes.
- 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.
- Maintain and, where possible, 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 appropriate 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).~~

- Develop recommendations and disseminate educational materials (pamphlets, brochures, news releases, etc.) supporting landowners' and HOA's proper maintenance and care of trees (eg. recommended watering schedules, stake and wire procedures and removal, mulching). Seek commitment of property owners and HOA's for tree care, especially during the critical first three years after planting.
- 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).
- Consider appropriate percentage of tree canopy coverage and tree locations specific to business districts and residential districts in an effort to stimulate economic viability.
- Investigate ~~revenue streams or~~ programs or revenue opportunities to assist with the removal of invasive species (with the intent of eradication of such species) and replacement with native species appropriate to the planting location on public and private land.

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% (from 15% to 20%) ~~(258 additional acres)~~ by 2030. **This would require an additional 258 acres of tree canopy.**
[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 **appropriate** 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).~~
- Develop recommendations and disseminate educational materials (pamphlets, brochures, news releases, etc.) supporting landowners' and HOA's proper maintenance and care of trees (eg. recommended watering schedules, stake and wire procedures and removal, mulching). Seek commitment of property owners and HOA's for tree care, especially during the critical first three years after planting.
- 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 **or revenue opportunities** to assist with the removal of invasive species and replacement with **appropriate** 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 (Title 9, Shepherdstown Planning and Zoning Ordinance) to improve policies regarding tree planting, tree canopy retention and forest protection, especially on steep slopes and in riparian areas.
- 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% (from 47% to 50%) (~~7 additional acres~~) by 2030. This would require an additional 7 acres of tree canopy.
[NOTE: Tree Canopy located on Shepherd University property, even that which lies outside of town limits, is to be included in all Shepherdstown Tree Canopy figures.]
- 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 appropriate 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

- Develop recommendations and disseminate educational materials (pamphlets, brochures, news releases, etc.) supporting landowners' and HOA's proper maintenance and care of trees (eg. recommended watering schedules, stake and wire procedures and removal, mulching). Seek commitment of property owners and HOA's for tree care, especially during the critical first three years after planting
- 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, **and appropriate tree species were chosen with planting site and habitat in mind.**

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 ROW 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 ROW 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.

Chapter 10 **Planting Priorities and Project Implementation**

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: Internet 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 more.

Arbor Day Foundation
<http://www.arborday.org>

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 Native Plant Society
<http://wvnps.org/>

West Virginia Natural Resources Conservation Service
www.wv.nrcs.usda.gov

Appendix A: Internet Resources

West Virginia University Extension Service
<http://ext.wvu.edu/>

U.S. Department of Agriculture Plants Database
<http://www.plants.usda.gov/java/>

Appendix B: Local 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

Appendix C: References

- Fazio, J.R. (2010). How trees can retain stormwater runoff. *Tree City U.S.A. Bulletin* 55. 8p.
- Kuo, F.E., & Faber Taylor, A. (2004). A potential natural treatment for Attention-Deficit/Hyperactivity Disorder: Evidence from a national study. *American Journal of Public Health*, 94(9), 1580-1586.
- Kuo, F.E. (2003). The role of arboriculture in a healthy social ecology: Invited review article for a Special Section. *Journal of Arboriculture* 29(3), 148-155.
- Kuo, F.E., & Sullivan, W.C. (2001). Environment and crime in the inner city: Does vegetation reduce crime? *Environment & Behavior*, 33(3), 343-367.
- Kuo, F.E., & Sullivan, W.C. (2001). Aggression and violence in the inner city: Effects of environment via mental fatigue. *Environment & Behavior*, Special Issue 33(4), 543-571.
- Nowak, David J. & Greenfield, Eric J. (2009). Urban and community forests of the Southern Atlantic region: Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia. Gen. Tech. Rep. NRS-50. Newtown Square, PA: U.S. Department of Agriculture, Forest Service, Northern Research Station. 85 p.
- Sanders, R.A. (1986). Urban vegetation impacts on the hydrology of Dayton, Ohio. *Urban Ecology* 9: 361–376.

Jefferson County pursuant to, *inter alia*, W.Va. Code § 8A-9-1 *et seq.*, in which FAF alleged error in the Commission's decision to deny the extension of its CIS/plat approval deadlines.

13. FAF's "Petition for Writ of *Certiorari* or *Mandamus*, or, in the Alternative, Complaint for Declaratory Judgment" (hereinafter, "FAF's Petition") was docketed in the Circuit Court at Civil Action No. 11-C-125, upon the entry by the Court of an Order filing same.

14. Upon learning of the filing of FAF's Petition to challenge the denial of the extension of its plat approval deadlines, the Petitioners herein, being immediate neighbors to the FAF parcel and/or otherwise interested in the proposed development, timely filed a motion to intervene in Civil Action No. 11-C-125.

15. Both FAF and the Planning Commission filed responses in opposition to said motion to intervene.

16. At the June 28, 2011, hearing conducted by the Circuit Court in Civil Action No. 11-C-125, and in its response in opposition to said motion to intervene, the Planning Commission made clear that its opposition was motivated in large part by its anticipation of resolving FAF's challenge to the decision of the Planning Commission by negotiated settlement. *See*, Civil Action No. 11-C-125, "Defendant's Response to Motion to Intervene," at n. 2.

17. In their "Reply to Defendant's Response to Motion to Intervene," served on counsel and the Court on July 14, 2011, Petitioners herein pointed out that any plan to privately negotiate a settlement of a duly-rendered Planning Commission decision would be unlawful:

... it is now beyond dispute that [the Planning Commission] anticipated resolving the instant action through a negotiated compromise with FAF. It is equally clear that this is the primary reason for the Planning Commission's opposition to the intervention sought by Movants, who, it appears, are regarded as the potential spoilers in any negotiation. *See*, Defendant's Response at [fn. 2]. Unfortunately for the Planning Commission and FAF, even if Movants were not permitted to intervene in this

civil action, the Commission's decision cannot be compromised through negotiation. To do so would be unlawful.

A planning commission has no inherent power to reopen a matter on which it has already rendered a decision, and it certainly cannot privately negotiate any change to that decision. The law affords only one procedure by which a planning commission can reopen and reconsider a prior decision, and that is upon the timely request of an applicant after denial of a major subdivision plan or plat. W.Va. Code § 8A-5-8. And, because a planning commission is subject to the Open Meetings law of this State, W.Va. Code § 6-9A-1, *et seq.*, any such authorized reconsideration would have to occur in a public meeting, not behind the closed doors of private negotiation.

Footnote omitted. *See*, Civil Action No. 11-C-125, "Reply to Defendant's Response to Motion to Intervene," at p. 5-6.

18. Before the Court had ruled upon the motion to intervene filed in Civil Action No. 11-C-125 by Petitioners herein, the Planning Commission and FAF submitted to the Court an Agreed Settlement Order, which the Court entered on August 3, 2011, thus resolving said civil action. *See*, Agreed Settlement Order, attached hereto as Exhibit A.

19. The Agreed Settlement Order signed by the Planning Commission and FAF was submitted to the Court without service on the prospective intervenors, who had no notice of the purported settlement until receiving a copy, on August 8, 2011, of the order entered by the Court, which copy was mailed by the Circuit Clerk.

20. Upon belief, it was at its regular meeting of July 26, 2011, that the Planning Commission authorized its President and legal counsel to enter into the negotiated settlement reflected in the aforesaid Agreed Settlement Order.

21. The official Agenda of the Planning Commission for its meeting of July 26, 2011, contains no indication that a proposed settlement with FAF in Civil Action No. 11-C-125 would be discussed at the meeting, and the packet of materials to be considered by the Planning

Commission at the meeting contains no copy of a proposed settlement document. *See*, Final Agenda and Attachment Packet for July 26, 2011, appearing at the official website at <http://www.jeffersoncountywv.org/uploads/planning/pc/agendas/2011/07-26-11%20Final%20Agenda%20and%20Attachment%20Packet.pdf> and which material is reproduced on the compact disc submitted herewith.

22. There also is no mention of intent to discuss a potential settlement with FAF in Civil Action No. 11-C-125 in the official Agendas, nor copy of a proposed settlement in the Packets, for the three Planning Commission meetings held prior to the meeting of July 26, 2011. *See*, Final Agenda and Attachment Packet for July 12, 2011, appearing at the official website at: <http://www.jeffersoncountywv.org/uploads/planning/pc/agendas/2011/07-12-11%20Final%20Agenda%20and%20Attachment%20Packet.pdf>. *See*, Final Agenda and Attachment Packet for June 28, 2011, appearing at the official website at: <http://www.jeffersoncountywv.org/uploads/planning/pc/agendas/2011/06-28-11%20Final%20Agenda%20and%20Attachment%20Packet.pdf>. *See*, Final Agenda and Attachment Packet for June 14, 2011, appearing at the official website at: <http://www.jeffersoncountywv.org/uploads/planning/pc/agendas/2011/06-14-11%20Final%20Agenda%20and%20Attachment%20Packet.pdf>.

23. Public bodies such as the Planning Commission are required to provide advance notice to the public of the agenda for their meetings, W.Va. Code § 6-9A-3, and discussion may not be had, nor action taken on items not appearing on the agenda. *See, Sprout v. Bd. of Educ. of County of Harrison*, 215 W.Va. 341, 599 S.E.2d 764, 768 at n. 2 (2004).

24. Upon belief, the Planning Commission discussed the proposed settlement agreement with legal counsel during an executive session at the meeting of July 26, 2011.

25. The official audio of the meeting of July 26, 2011, reveals that that the Planning Commission moved to go into executive session upon being told by its legal counsel then present that, "... I will expect action immediately after the session." *See*, Official Audio Recording of Planning Commission Meeting of July 26, 2011, posted at the official website at http://129.71.117.176/camera/archived_meeting.php, at time marker 2:02:02.

26. Prior to retiring into executive session, the presiding officer of the Planning Commission did not identify the authorization for the executive session under the Open Governmental Proceedings Act.

27. W.Va. Code § 6-9A-4 provides, *inter alia*:

During the open portion of the meeting, prior to convening an executive session, the presiding officer of the governing body shall identify the authorization under this section for holding the executive session and present it to the governing body and to the general public,

28. After the executive session ended and upon resuming the public meeting, the Planning Commission entertained the motion of a Commissioner, which was stated as follows: "I move that we proceed with the order as drawn by counsel today and presented to the Commission ... and to authorize president to sign it." *Id.*, at time marker 2:02:50.

29. The order to which the aforesaid motion pertained was not read into the record, nor were the terms of the order stated upon the record, nor was there any directive to enter the order into the record, nor was any discussion had upon the motion. *Id.*

30. The aforesaid motion passed by unanimous vote.

31. W.Va. Code § 6-9A-8(a) provides, *inter alia*:

Except as otherwise expressly provided by law, the members of a public agency may not deliberate, vote, or otherwise take official action upon any matter by reference to a letter, number or other designation or other secret device or method, which may render it

difficult for persons attending a meeting of the public agency to understand what is being deliberated, voted or acted upon.

32. The terms of the order were not revealed in the official minutes of the Planning Commission meeting of July 26, 2011, which were approved at the meeting of August 9, 2011. *See*, Minutes of July 26, 2011, attached hereto as Exhibit B.

33. W.Va. Code § 6-9A-4(b)(11) provides:

Nothing in this article permits a public agency to close a meeting that otherwise would be open, merely because an agency attorney is a participant. If the public agency has approved or considered a settlement in closed session, and the terms of the settlement allow disclosure, the terms of that settlement shall be reported by the public agency and entered into its minutes within a reasonable time after the settlement is concluded[.]

34. On or about August 1, 2011, the Agreed Settlement Order was presented to the Circuit Court in Civil Action No. 11-C-125. *See*, Exhibit A attached hereto.

35. The Planning Commission privately negotiated, discussed and approved the settlement with FAF in Civil Action No. 11-C-125 – which settlement resulted in a wholesale reversal of the Planning Commission’s duly-issued decision of March 22, 2011 – less than two (2) weeks after being put on notice that such action would, *inter alia*, violate the requirements of the Open Governmental Proceedings Act. *See*, Para. No. 17, *supra*.

36. The aforesaid conduct of the Planning Commission in entering into an agreed settlement with FAF in Civil Action No. 11-C-125 evinces a knowing and intentional violation of the Open Governmental Proceedings Act, W.Va. Code § 6-9A-1, *et seq.*

37. Upon belief, the intentionally secretive conduct of the Planning Commission as aforesaid was undertaken with the conscious objective of preventing adjacent and nearby landowners and other interested parties (such as the Petitioners herein) from learning of its plan

to unlawfully negotiate the reversal of a duly-rendered decision, and to preclude public participation in advance of its deliberation of same.

38. As a result of the conduct of the Planning Commission as aforesaid, the public, including the Petitioners herein, were deprived of the opportunity to observe and/or comment upon the issues considered by the Planning Commission in its deliberation of the proposed settlement and wholesale reversal of its duly-rendered decision on FAF's request for an extension of its final plat hearing deadline.

39. The rights of your Petitioners, who are immediate neighbors to the parcel on which FAF proposes to develop a residential subdivision and/or otherwise interested in said proposal, have been significantly violated and harmed by the intentionally surreptitious conduct of the Planning Commission.

40. Upon information and belief, the Planning Commission did not advise the Court in Civil Action No. 11-C-125 that the Agreed Settlement Order presented for entry therein had been approved by the Planning Commission in violation of the Open Governmental Proceedings Act.

41. Upon information and belief, the Planning Commission has adopted as a common practice the negotiation with private parties to amend, modify or reverse decisions that have been duly-rendered upon public hearings, and has entered settlements not only with FAF, but with other private parties, also.

WHEREFORE, your Petitioners respectfully ask that this Court, as specifically authorized by W.Va. Code § 6-9A-1, *et seq.*, to:

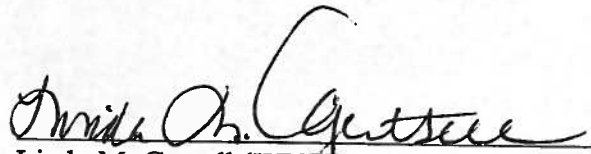
1. Annul the decision of the Jefferson County Planning Commission to approve the Agreed Settlement Order in Civil Action No. 11-C-125;

2. Issue an injunction compelling the Jefferson County Planning Commission to comply with all provisions of the Open Governmental Proceedings Act and to enjoin any further actions or meetings in violation of the Act;

3. Award to your Petitioners the attorney fees and costs incurred herein; and,

4. Award to your Petitioners any and all other relief as may be authorized by the laws of the State of West Virginia and the rules of this Court.

GARY CAPRIOTTI, et al.,
The Petitioners,
By counsel.



Linda M. Gutsell (WVSB #5774)
Attorney at Law
107 N. College St.
Martinsburg, WV 25401

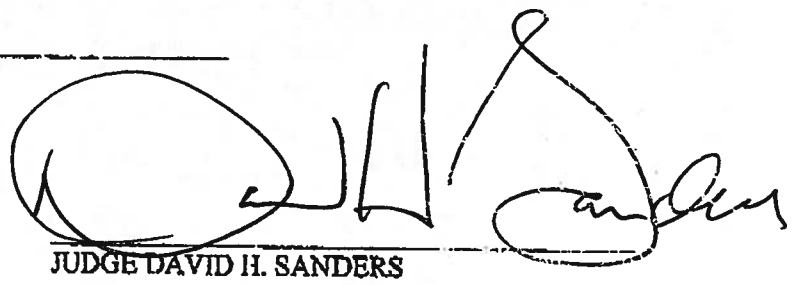
WHEREAS, the parties have agreed to resolve and settle the issues in this case under the following terms and conditions:

1. The Planning Commission will re-issue the conditional use permit to Far Away Farm, and all conditions to the existing conditional use permit will attach to the re-issued conditional use permit;
2. The developer will agree to proceed under the new subdivision regulations (as enacted on October 9, 2008, and as amended as of August 19, 2010, effective November 2010);
3. Further the Planning Commission agrees that the conditional use permit shall be valid for eighteen (18) months in addition to an eighteen (18) month extension permitted under the Jefferson County Zoning Ordinance, for a total of three (3) years;
4. Because Far Away Far, has submitted extensive documentation in relation to the community impact statement under the prior ordinance, and participated in an extensive public hearing, the Planning Commission agrees that the pre-existing community impact statement serves in lieu of the concept plan, public workshop/comments, and related pre-preliminary plat phase requirements that exist under the new subdivision ordinance;
5. All time lines with respect to the new subdivision regulations and the re-issuance of the conditional use permit will be reset and begin as of the date the Court signs the entry of the Agreed Settlement Order in this Civil Action No. 11-C-125; and

The parties agree this settlement resolves all issues that were raised in Civil Action No. 11-C-125. The case shall be dismissed with prejudice and removed from the docket of the Jefferson County Circuit Court. Further, each party shall bear its own costs and attorney fees incurred to date in this matter.

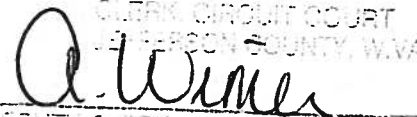
IT IS SO ORDERED.

DATE: 8/3/11


JUDGE DAVID H. SANDERS

A TRUE COPY
ATTEST:

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

BY: 
DEPUTY CLERK

3cc
- L. Gutschell
- R. Gay
- S. Gron
8/4/11
AW

Agreed:

By: Jefferson County Planning Commission

Donald B. Hays
President of the Planning Commission

[Signature]
Jefferson County Prosecutor's Office
Counsel for Jefferson County Planning Commission

By: Far Away Farm, LLC

[Signature], Managing Member
Mike Bolt

Richard G. Gay
Law Office of Richard G. Gay, LC
Counsel for Far Away Farm, LLC

MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
JULY 26, 2011

The Jefferson County Planning Commission met on Tuesday, July 26, 2011, with the following Commission members present: Daniel Hayes, President; Morgan Etters, Secretary; Gene Taylor, Kelly Baty, Ed Burns, Eric Smith, and Walt Pellish. Staff members present included Jennifer Brockman, Director of Planning and Zoning; Seth Rivard, Planner; Jonathon Saunders, County Engineer; Stephanie Grove, Assistant Prosecuting Attorney; and Amy Puetz, Planning Clerk.

Mr. Arnold Dailey and Mr. Paul Taylor were absent with notification.

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

1. Approval of the minutes for the July 12, 2011 meeting.

Mr. Pellish moved to approved the July 12, 2011 Planning Commission Meeting minutes.
Mr. Burns seconded the motion which carried 5 for and 1 abstention (Mr. Baty).

2. Citizens Communication: None.

3. Request for postponement: None.

4. Old Business

- **Report back to the Planning Commission regarding the Hott property processing options.**

Ms. Brockman reported that staff had held a meeting with applicants for the Hott property rezoning request to discuss processing options of Rezoning versus a Conditional Use Permit (CUP). She notified the Planning Commission that the applicants had chosen to continue with the rezoning process and not process as a CUP.

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.

Mason Carter, Ordinance Compliance Officer, requested a declaration of violation for Robert Schelin for a violation of a shed built on the property without a permit. Mr. Carter presented photographs as support for his request. Mr. Burns moved to declare a violation against Robert Schelin. Mr. Pellish seconded the motion which carried unanimously.

Mr. Hayes called to hear agenda item #7 before agenda item #6.

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.

Mr. Barney reviewed the comments made at the June 28, 2011 Planning Commission Meeting when a public hearing regarding these amendments was held. Mr. Barney presented a chart of 8 issues with the amendments describing the current language in the ordinance, the

MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
JULY 26, 2011
PAGE 2 of 5

public comment that was made, and staff's recommendation of changes that could be made to satisfy those requests:

- Comment #1: In Section 4A.5.1.2, a WV Department of Highways (WVDOH) Highway Entrance Permit is required with plan submittal. Public comment addressed the concern that the WVDOH did not have different requirements for small home businesses and large commercial businesses. Mr. Barney reported that staff feels that the intent of this section was to address whether or not an existing or proposed access to a state road was permitted and that the entrance permit should be for the residential use, not the business use.
 - Mr. Pellish moved to strike Section 4A.5.i.2 completely from the amendments. Mr. Burns seconded the motion which carried unanimously.
- Comment #2: Section 4A.5.e allowed no more than twelve business-related vehicle visits per day and no more than sixty visits per week. Public comment requested that the weekly number of vehicle visits be maintained while the daily visits be more flexible. Mr. Barney suggested revising the section to increase the limit of the Cottage Industry to 15 visits per day and the Home Occupation Level 2 (Section 4A.4.e) to 5 visits per day provided that the weekly limit would not be exceeded.
 - Mr. Smith moved that 4A.4.e and 4A.5.e be amended as suggested by staff. Mr. Pellish seconded the motion that carried 6 for and 1 opposed (Mr. Baty).
- Comment #3: Section 4A.6 stated "It is the responsibility of an applicant for a proposed Cottage Industry or Home Occupation to research any private agreements relation to the subject property, contact the Homeowner's Association (HOA), or seek the advice of a surveyor, engineer or attorney. Public comment requested that the County require written approval from each HOA board prior to review of a Cottage Industry or Home Occupation application. Mr. Barney reported that the Jefferson County legal counsel had advised that HOA approval could not be used as a condition of County approval and that no change would be recommended.
 - No change was made by the Planning Commission.
- Comment #4: Public comment addressed public notification of a Home Occupation or Cottage Industry application. A request was made at the June 28, 2011 meeting that the property be posted with a placard for 30 days prior to approval to allow neighbors to appeal the request. Mr. Barney explained that a 30 day posting requirement would significantly delay a Zoning Certificate process and that staff was unsure how the appeal process would function as the appeal would have to be based on whether or not the land use meets the requirements of the Zoning Ordinance and not just personal issues or preferences. Mr. Barney did suggest that if the Planning Commission does provide an amendment to require posting for a Zoning Certificate, that the posting be limited to 14 days not 30 days.
 - No change was made by the Planning Commission.

MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
JULY 26, 2011
PAGE 3 of 5

- Comment #5: Section 4A.5.j explained that a site plan is required if the combined gross floor area of a new building, an addition, and/or an existing accessory structure to be used as a Cottage Industry exceeds 1,500 square feet but is less than 3,000 square feet. Public comment requested that the square footage to trigger a site plan be increased to 3,000 or 5,000 square feet. Mr. Barney replied that any other non-residential development (other than a Cottage Industry) requires a site plan at 250 square feet and he recommended no change.
 - No change was made by the Planning Commission.
- Comment #6: Sections 4A.3.e, 4A.4.e and 4A.5.e detail the amount of traffic visits allowed for each level of Home Occupations and for Cottage Industry. Public comment asked that a clause be added to allow more traffic during an open house event such as an art studio tour. Mr. Barney stated that staff believes that the existing language is adequate as Section 4A.2, Exempt Activities, explains that participation in an event conducted yearly or twice-yearly with multiple locations do not constitute a Home Occupation or Cottage Industry and do not require a Zoning Certificate. Mr. Barney recommended no change although he did state that if the Planning Commission would opt to make this change, that Section 4A.2(3) have language added that states, "Such an event need not comply with the vehicular trip limits established by this article".
 - Mr. Burns moved to add the staff recommended comment to Section 4A.2(3). Mr. Pellish seconded the motion. Discussion ensued regarding if the added language would benefit the amendment or cause confusion. The motion failed 0 for, 5 opposed, 2 abstention (Mr. G. Taylor and Mr. Burns).
- Comment #7: Section 4A.1.g explained that no outdoor storage of any kind is permitted. Public comment requested that outdoor storage be allowed. Mr. Barney explained that since the intent of the requirement was to preserve the residential appearance of the property that staff would be comfortable amending the section to read, "No outdoor storage of any kind, *visible from a public or private right-of-way or vehicular access easement*, is permitted".
 - Mr. Smith moved to accept staff recommended language. Mr. Burns seconded the motion. Mr. Hayes offered a friendly amendment to add the words *property line* after the word right-of-way. Mr. Burns and Mr. Smith accepted the friendly amendment. The motion passed 6 for and 1 opposed (Mr. Baty).
- Comment #8: Section 4A.5.l discussed a setback of 25 feet for accessory structures used for a Cottage Industry. Public comment suggested that the setbacks should be consistent with the standard zoning district setbacks of the Zoning Ordinance. Mr. Barney reasoned that an accessory structure for a Cottage Industry may generate greater noise than an accessory structure used for residential purposes and therefore, a greater setback should apply. He recommended no change to the amendment.
 - No change was made by the Planning Commission.

Mr. Smith moved to accept the amendments with the above approved changes to send to the County Commission. Mr. Pellish seconded the motion which carried 6 for and 1 opposed (Mr. Baty).

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.

Mr. Rivard explained the changes made to the amendments as a result of discussions by the subcommittee and public comment. He clarified that Section 20.203.2 was amended to state "*Section 20.203, Sub-Sections (1) and (3) do not apply to this provision*" and that the definitions for section B of both definitions of Minor Site Plan and Site Plan, Minor were amended to state "*Sub-Sections A and C of this definition do not apply to this provision*".

Ms. Ethers moved to recommend to the County Commission the amendments dated July 25, 2011 as written. Mr. Smith seconded the motion which carried unanimously.

8. Public Workshop regarding the Urban Tree Canopy Plans and Goals for Jefferson County.

Ms. Brockman introduced Ms. Dawn Childs, Planning and Zoning Office Manager. She also introduced Doug Griffith, Intern tasked with drafting the Urban Tree Canopy Plans and Goals.

Ms. Brockman described the Urban Tree Canopy Plans and Goals project and the next steps in the process of approving the document. She reported that the Water Advisory Committee requested that the public workshop be left open for a week to allow for written public comment. Mr. Hayes agreed to leave the public workshop open to public comment until August 5, 2011 for discussion at the August 9, 2011 Planning Commission meeting.

Mr. Burns requested that staff write a letter of thanks to Doug Griffith so that he can include that with his resume.

9. Discussion of Planning Commission Bylaws.

Ms. Brockman suggested that this item be postponed since staff had not had the opportunity to discuss this issue with Mr. Stephan Groh, Assistant Prosecuting Attorney. Mr. Pellish distributed his comments regarding allowing a Planning Commissioner to vote via phone. Mr. Hayes rescheduled this discussion to the September 13, 2011 Planning Commission meeting.

Mr. Hayes called for a break at 9:02 PM. Mr. Hayes called the meeting to order at 9:07 PM.

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

Mr. Smith moved to go into executive session to discuss legal matters. Mr. Burns seconded the motion which carried unanimously. The executive session began at 9:09 PM.

Video
inaudible
2:02
Video stopped

Audio
2:02:23



MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
JULY 26, 2011
PAGE 5 of 5

Mr. Burns moved to come out of executive session. Mr. Smith seconded the motion which carried unanimously. Regular session resumed at 9:18 PM.

Audio 2:03:08

Mr. Burns moved to proceed with the order as presented by Counsel in executive session and to authorize Mr. Hayes as President to sign the order. Ms. Ethers seconded the motion which carried unanimously.

*No specific
re: order of PA*

11. Director's Report.

Ms. Brockman presented the 4th quarterly report and explained the history behind the reason for these reports.

Ms. Brockman discussed upcoming amendments to the Zoning Ordinance and the priority in which staff suggested they be handled. Mr. Hayes suggested moving forward with amendments for a recreational overlay district along the Shenandoah and Potomac Rivers with provisions for camping, river access points, and other tourist features. Mr. Hayes also supported initiating an amendment which would create new zoning categories.

Ms. Brockman reported that a list of upcoming Subdivision Regulation Amendments was being compiled. Mr. Hayes asked that the list be presented at the September 13, 2011 Planning Commission meeting.

12. County Commission Liaison Report. None.

13. Planning Commission Exchange. Mr. Baty reported on the recent Water Advisory Committee meeting.

14. President's Report. None.

15. Actionable Correspondence. None.

16. Non-Actionable Correspondence. None.

Mr. Burns moved to adjourn the meeting at 9:47 PM. Mr. Smith seconded the motion which carried unanimously. 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.

Last Transaction

Date	Time	Type	Station ID	Duration	Pages	Result
Sep 23	9:32AM	Fax Sent	913042581687	1:04	0	Cancel

COPY

LINDA M. GUTSELL

Attorney at Law
107 North College Street
Martinsburg, WV 25401

Telephone: (304) 262-0223

Facsimile: (304) 262-0225

October 4, 2011

RECEIVED

OCT 06 2011

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

The Hon. David H. Sanders
Circuit Court of Jefferson County
100 East Washington Street
Charles Town, WV 25414

RE: Capriotti, et al. v. Jefferson County Planning Comm'n
Civil Action Nos. 11-C-325, -326, -327, -328

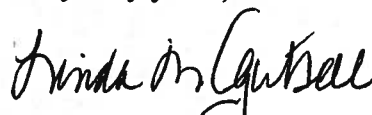
Dear Judge Sanders:

Enclosed is Petitioners' proposed "Order Granting Motion to Consolidate" in the above-referenced civil action(s), per the Court's Trial Court Rule 22 Scheduling Order regarding same.

To date, we have not been advised which Assistant Prosecuting Attorney will be assigned to this action. However, we note that the Circuit Clerk's office sent a copy of the Rule 22 Order to both the Planning Commission and to Ms. Grove. Accordingly, following the lead of the Circuit Clerk, this letter and the attached proposed order are being sent to both the Planning Commission and to Ms. Grove.

Thank you for your time and attention to the enclosed.

Very truly yours,


Linda M. Gutsell

Enclosure

xc: Jefferson County Planning Commission
Stephanie Grove, Esq.

RECEIVED

COPY

OCT 06 2011

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

**JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING**

**GARY L. CAPRIOTTI,
Petitioner,**

v.

CIVIL ACTION NO. 11-C-325

**JEFFERSON COUNTY PLANNING
COMMISSION, a public body,
Respondent**

-and-

**EDWARD R. MOORE,
Petitioners,**

v.

CIVIL ACTION NO. 11-C-326

**JEFFERSON COUNTY PLANNING
COMMISSION, a public body,
Respondent**

-and-

**EDWARD E. DUNLEAVY,
Petitioner,**

v.

CIVIL ACTION NO. 11-C-327

**JEFFERSON COUNTY PLANNING
COMMISSION, a public body,
Respondent**

-and-

**SHEPHERDSTOWN BATTLEFIELD
PRESERVATION ASSOCIATION, INC.,
Petitioner,**

v.

CIVIL ACTION NO. 11-C-328

**JEFFERSON COUNTY PLANNING
COMMISSION, a public body,
Respondent.**

ORDER GRANTING MOTION TO CONSOLIDATE

This matter came on this ____ day of _____, 2011, upon the Motions to Consolidate Civil Action filed herein by Gary L. Capriotti, Edward R. Moore, Edward E. Dunleavy, and the Shepherdstown Battlefield Preservation Association, Inc., and the Response and Reply thereto.

The Court has examined the Motion to Intervene and accompanying materials submitted therewith, and has considered the Response and Reply. And the Court, upon all of the foregoing, makes the following findings of fact and conclusions of law:

1. Petitioners herein, Gary L. Capriotti, Edward R. Moore, Edward E. Dunleavy, and the Shepherdstown Battlefield Preservation Association, Inc., are jointly and identically aggrieved by the single act of the Jefferson County Planning Commission which gave rise to the instant civil action, that is, an official act taken in an alleged violation of West Virginia's Open Governmental Proceedings Act, W.Va. Code § 6-9A-1, *et seq.*
2. Petitioners jointly filed a single petition for said alleged violation of the Open Governmental Proceedings Act, W.Va. Code § 6-9A-1, *et seq.*
3. Because of the language of W.V.R.Civ.P. 3(a), as amended effective November 10, 2008, the Circuit Clerk docketed the single claim as separate civil actions.
4. Petitioners intended to jointly assert a single civil action, and to jointly proceed in a single civil action.
5. At Syll. Pt. 2, *State ex rel. Appalachian Power Co. v. Ranson*, 190 W.Va. 429, 438 S.E.2d 609 (1993), the Supreme Court identified the factors to be considered in deciding a motion to consolidate brought pursuant to W.V.R.Civ.P. 42(a):
... (1) whether the risks of prejudice and possible confusion outweigh the considerations of judicial dispatch and economy; (2)

what the burden would be on the parties, witnesses, and available judicial resources posed by multiple lawsuits; (3) the length of time required to conclude multiple lawsuits as compared to the time required to conclude a single lawsuit; and (4) the relative expense to all concerned of the single-trial, multiple-trial alternatives. When the trial court concludes in the exercise of its discretion whether to grant or deny consolidation, it should set forth in its order granting or denying consolidation sufficient grounds to establish for review why consolidation would or would not promote judicial economy and convenience of the parties, and avoid prejudice and confusion.

6. Each of the factors identified in *State ex rel. Appalachian Power Co., Id.*, favor the consolidation sought by Petitioners.

7. The time and expense of the parties, and the burden upon the resources of the Court that would be occasioned by the conduct of separate proceedings for each Petitioner is not justified by the commonality of alleged wrong and claimed injury; no party would be prejudiced by consolidation.

8. No party will be prejudiced by the consolidation sought herein, in fact, all parties will benefit from consolidation.

9. The Court notes that, should Petitioners prevail in this action, they may be entitled to an award of fees and costs against Respondent, W.Va. Code § 6-9A-7(b), which claim would be needlessly enlarged by separate actions.

And, in consideration of all of the foregoing, the Court concludes that the Motions to Consolidate Civil Actions should be, and hereby is, GRANTED.

Accordingly, it is hereby ORDERED that those civil actions now docketed at 11-C-325, 11-C-326, 11-C-327 and 11-C-328 shall be consolidated, and shall hereafter proceed as a single civil action as Civil Action No. 11-C-325.

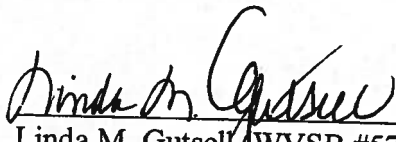
It is further ORDERED that the consolidated case shall proceed under the case caption as it appears on the Petition originally filed by Petitioners herein.

The Clerk is directed to enter the foregoing upon the record of this action, and to forward attested copies hereof to counsel of record for the parties.

ENTER: _____

DAVID H. SANDERS, Circuit Judge

Prepared by:



Linda M. Gutsell (WVSB #5774)
Attorney at Law
107 N. College St.
Martinsburg, WV 25401

RECEIVED

OCT 06 2011

**JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING**

Jeff C. Planning

**IN THE CIRCUIT COURT OF
JEFFERSON COUNTY, WEST VIRGINIA**

**GARY L. CAPRIOTTI
Plaintiff**

vs.

CIVIL ACTION NO. 11-C-325

**JEFFERSON COUNTY PLANNING COMMISSION
Defendant**

and

**EDWARD R. MOORE
Plaintiff**

vs.

11-C-326

**JEFFERSON COUNTY PLANNING COMMISSION
Defendant**

and

**EDWARD E. DUNLEAVY
Plaintiff**

vs.

11-C-327

**JEFFERSON COUNTY PLANNING COMMISSION
Defendant**

and

**SHEPHERDSTOWN BATTLEFIELD PRES. ASSOC.
Plaintiff**

vs.

11-C-328

**JEFFERSON COUNTY PLANNING COMMISSION
Defendant**

TRIAL COURT RULE 22 SCHEDULING ORDER

RECEIVED

SEP 23 2011

**JEFFERSON COUNTY
CIRCUIT CLERK**

This **September 23, 2011**, it appears that the **Plaintiffs** previously filed a **Motion To Consolidate Civil Actions** pursuant to Rule 22 of the West Virginia Trial Court Rules as follows:

The movant will provide a proposed Order when filing the motion and serve a copy upon all non-moving parties and this Court. If a proposed order has not already been provided, one must be served immediately. Non-moving parties shall file written responses and a proposed Order within **15 calendar days of the entry date of this Scheduling Order** and serve copies on the moving party and this Court. The moving party shall have **10 calendar days from the date of service of the response** to file a rebuttal memorandum, if desired. Thereafter, the Court will rule upon the motion. Original proposed Orders shall be mailed by the respective parties to the office of the Judge along with copies of their memoranda. **DO NOT FAX ANY MOTIONS OR ORDERS.**

Said motion is herewith set down for a hearing before this Court on the _____ day of _____, 2011 at _____, ____ M.
IT SHALL BE MOVANT'S OBLIGATION TO GIVE TIMELY NOTICE OF SAID HEARING DATE AND TIME TO ALL PERSONS ENTITLED THERETO UNDER THE RULES OF CIVIL PROCEDURE.

The Clerk shall enter the following as and for the day and date first above written and forward attested copies hereof to all counsel and pro se parties of record.

6 cc's

11.C.326

11.C.327

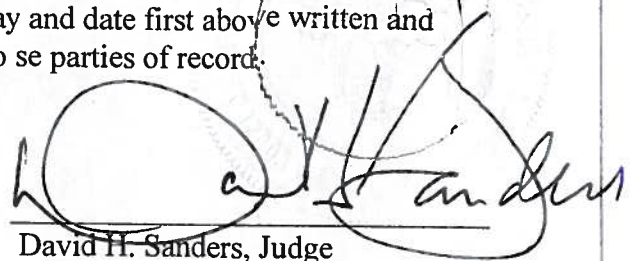
11.C.328

L. Gutsell

Jebb. Co. Planning

S. Grove

9.26.11 BC



David H. Sanders, Judge
Jefferson County Circuit Court

A TRUE COPY
ATTEST:

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

BY: B. Chalk
DEPUTY CLERK

In the Circuit Court of Jefferson County, West Virginia

GARY L. CAPRIOTTI
EDWARD R. MOORE
EDWARD DUNLEAVY
SHEPHERDSTOWN BATTLEFIELD PRESERVATION ASSOCIATION, Inc.
Plaintiffs

11-C-325, 326, 327 & 328

Judge Sanders

JEFFERSON COUNTY PLANNING COMMISSION,
A public body,
Defendant

ANSWER

COMES NOW THE JEFFERSON COUNTY PLANNING COMMISSION by the undersigned counsel who, incorporating and restating all matters in previously filed Motion to Dismiss, does ANSWER the complaint in this matter as follows:

1. The Defendant has no personal knowledge of the facts alleged and therefore must DENY the assertions.
2. The Defendant has no personal knowledge of the facts alleged and therefore must DENY the assertions.
3. The Defendant has no personal knowledge of the facts alleged and therefore must DENY the assertions.
4. Based on examination of public records from the Secretary of State the defendant admits the assertions.
5. The defendant admits the assertions.
6. The paragraphs merely states a legal proposition which requires no answer.
7. The defendant admits that it approved a community impact statement for a proposed development called Faraway Farms.
8. The defendant admits that December 2010 was the deadline for the final plat public hearing.
9. The defendant has no knowledge as to "progress" by the property owner and so must DENY in part and admits in part that in November, 2010 the property owner appeared to request an extension to time because of delay it alleged were caused by litigation by the instant plaintiffs and by the Planning Commission itself when it

- brought suit against the property owners in federal court. Said suit was ultimately dismissed but the property owners claimed that the suit by the Planning Commission itself prevented them from completing the project and justified the Planning Commission granting additional time to finish the project.
10. The defendant admits that the Planning Commission as then constituted denied the property owners any extension of time.
 11. The defendant admits that toward the end of March 2011 a vote was taken to approve written decision denying the extension of time. The exact date in the end of March at which the written findings were signed is denied.
 12. The defendant admits that the Faraway Farms property owners filed a lawsuit against the defendant some time in April 2011.
 13. The defendant admits that the Court accepted said Faraway Farms lawsuit for filing contemporaneously with its filing.
 14. The defendant admits that the instant plaintiffs filed a motion to intervene in the Faraway Farms lawsuit of April, 2011.
 15. The defendant admits that motions in opposition to the motion to intervene in the Faraway Farms lawsuit of April, 2011 were filed.
 16. The defendant admits in part that a hearing was conducted but denies the characterization as to the defendant's motivation for said opposition.
 17. The paragraph merely asserts and legal theory and as such does not an answer but to the extent it may assert facts the defendant denies the same and asserts that W.V. Code §8A gives the Planning Commission full authority to exercise any and all legal and equitable remedies, including the equitable ability to reach just and equitable settlement of pending litigation. The Planning Commission is a public body and has an obligation to fairly deal with any and all parties with which it interacts, including litigants. Plaintiff's erroneous legal theory would require the Planning Commission to ignore just and equitable claims of citizens and force citizens to prosecute needless and expensive litigation when justice requires that a matter be settled. To adopt the plaintiff's flawed legal theory would unjustly force aggrieved citizens to "fully litigate" all claims, even claims which the Planning Commission believes have merit, which would be an abuse of power.
 18. The defendant admits that the parties to Faraway Farms lawsuit of April, 2011, proposed to the Court an agreed settlement order to said lawsuit, a settlement the parties believed was just and equitable. On, or about, August 3, 2011, this Court reviewed said proposed settlement and, finding it just, signed and entered the same. The defendant admits that the Court chose to enter the proposed settlement order before the Court chose to rule upon the plaintiffs' motion to intervene. All other facts that may have been asserted in said paragraph are Denied.
 19. The defendant admits that the plaintiffs received a copy of public settlement order of the April 2011 Faraway Farms lawsuit. The defendant admits that said

settlement order is public document from a public court file about a public settlement of a lawsuit. The defendant admits that no copy of the proposed order was submitted to the plaintiffs prior to acceptance by the Court because the plaintiffs were not a party to the action and were not entitled receive a copy nor to respond to the proposed settlement. The defendant has no knowledge of the exact time when the plaintiffs received a copy of said settlement order but argues that plaintiffs receiving a copy of said order in the timely fashion undercuts the plaintiffs' assertion that the settlement was somehow "secretive." The defendant denies any other allegations in the paragraph.

20. The defendant admits in part that, as fully reflected in the minutes of the July 26, 2011 Planning Commission meeting, the Planning Commission, after an executive session to discussion pending litigation, publically voted on a prepared written settlement proposal which settlement order and vote are noted in the minutes of said meeting. The defendant denies that said vote concluded the settlement of the pending lawsuit as the settlement was not concluded until accepted by the plaintiffs of said lawsuit and then ultimately accepted and signed by the Court.
21. The public documents referred to speak for themselves and require no answer but to the extent that the paragraph makes factual characterizations about the packet the characterizations are denied. Further the defendant asserts that "Update from Legal Counsel" was a recurring agenda item, that on at least two prior occasions the Planning Commission went into executive session to discussion pending litigation and that earlier packets included documents, motions and other pleadings specific to pending Faraway Farms litigation of April 2011. The defendant further asserts that no public discussion of on-going litigation is required and that the only requirement is that the terms of any final settlement be entered in to the minutes of the meeting after the settlement is concluded. West Virginia Code §6-9A-4(11) clearly permits a public agency to consider issues associated with litigation and possible settlement of litigation in closed session. The only require of public notice of such settlement discussions is terms of the settlement shall be reported and entered into its minutes within **a reasonable time after the settlement is concluded.**" To require a public body to publically discuss pending litigation issues, much less publically announce it that it was considering settlement and the reasons thereof, undercuts sound litigation and negotiation strategy, undermines attorney-client privilege and is not required by law. While the defendant continues to assert that the specific references in the July 26th 2011 minutes suffice, the settlement was clearly not "concluded" until after the Faraway farms plaintiff accepted the proposed offer of the defendants and until after the Court accepted and signed the Order on August 3rd 2011. Thus, the defendant fully complied with the applicable law.

22. The public documents referred to speak for themselves and require no answer but to the extent that the paragraph makes factual characterizations about the packet the characterizations are denied. Further the defendant asserts that "Update from Legal Counsel" was a recurring agenda item, that on at least two prior occasions the Planning Commission went into executive session to discussion pending litigation and that earlier packets included documents, motions and other pleadings specific to pending Faraway Farms litigation of April 2011. The defendant further asserts that no public discussion of on-going litigation is required and that the only requirement is that the terms of any final settlement be entered in to the minutes of the meeting after the settlement is concluded. West Virginia Code §6-9A-4(11) clearly permits a public agency to consider issues associated with litigation and possible settlement of litigation in closed session. The only require of public notice of such settlement discussions is terms of the settlement shall be reported and entered into its minutes within **a reasonable time after the settlement is concluded.**" To require a public body to publically discuss pending litigation issues, much less publically announce it that it was considering settlement and the reasons thereof, undercuts sound litigation and negotiation strategy, undermines attorney-client privilege and is not required by law. While the defendant continues to assert that the specific references in the July 26th 2011 minutes suffice, the settlement was clearly not "concluded" until after the Faraway farms plaintiff accepted the proposed offer of the defendants and until after the Court accepted and signed the Order on August 3rd 2011. Thus, the defendant fully complied with the applicable law.
23. The paragraph states a legal conclusion and requires no answer. To the extent that is may assert facts, the facts are denied.
24. The general purpose of the executive session was stated upon the record of the July 26th, 2011 meeting and speaks for itself. The motion made after the hearing speaks for itself. The actual discussions between the defendant and its counsel are subject to attorney-client privilege, the defendant asserts the privilege and must respectfully decline to provide any details of said communication.
25. The record quoted speaks for itself and requires no answer. To the extent that is may assert facts, the facts are denied.
26. The record quoted speaks for itself and requires no answer but the defendant denies that the general purpose of the executive session was in any way unclear from the context: discussion with legal counsel about pending litigation.
27. The paragraph states a legal conclusion and requires no answer. To the extent that is may assert facts, the facts are denied.
28. The record quoted speaks for itself and requires no answer. The defendant agrees that the Planning Commission after leaving executive session with its counsel

- clearly identified the settlement proposal by reference a specific document and that a public vote was taken upon the settlement proposal.
29. The record speaks for itself and requires no answer. The defendant asserts that the reference to a specific existing document is sufficient. The defendant further asserts that the Open Meetings Act, W.V. Code §6-9A-4(11), clearly permits a public agency to consider issues associated with litigation and possible settlement of litigation in closed session. The law requires only that terms of the settlement shall be reported and entered into its minutes within **a reasonable time after the settlement is concluded.** W.V. Code §6-9A-4(11). As discussed elsewhere in this answer, the requirement of reporting a settlement only after it is concluded protects proper attorney-client relations and promotes the ability of the public body to conduct sound litigation strategy on behalf of the public interest.
 30. The record quoted speaks for itself and requires no answer. The defendant admits that the motion upon the publically identified motion referenced in the minutes of the July 26th, 2011 meeting was unanimous.
 31. The record speaks for itself and requires no answer. The defendant asserts that the reference to a specific existing document is sufficient. The defendant further asserts that the Open Meetings Act, W.V. Code §6-9A-4(11), clearly permits a public agency to consider issues associated with litigation and possible settlement of litigation in closed session. The law requires only that terms of the settlement shall be reported and entered into its minutes within **a reasonable time after the settlement is concluded.** W.V. Code §6-9A-4(11). As discussed elsewhere in this answer, the requirement of reporting a settlement only after it is concluded protects proper attorney-client relations and promotes the ability of the public body to conduct sound litigation strategy on behalf of the public interest.
 32. The record quoted speaks for itself and requires no answer.
 33. The record speaks for itself and requires no answer. The defendant asserts that the reference to a specific existing document is sufficient. The defendant further asserts that the Open Meetings Act, W.V. Code §6-9A-4(11), clearly permits a public agency to consider issues associated with litigation and possible settlement of litigation in closed session. The law requires only that terms of the settlement shall be reported and entered into its minutes within **a reasonable time after the settlement is concluded.** W.V. Code §6-9A-4(11). As discussed elsewhere in this answer, the requirement of reporting a settlement only after it is concluded protects proper attorney-client relations and promotes the ability of the public body to conduct sound litigation strategy on behalf of the public interest.
 34. The document referred to speaks for itself but the defendant agrees that the proposed settlement agreement was forwarded to the Court for consideration after the July 26th, 2011 sometime in the early part of August 2011 and it was reviewed and approved by the Court on August 3rd, 2011.

35. To the extent that the paragraph asserts legal conclusions, said legal conclusions require no answer, to the extent that the paragraph asserts fact the facts are denied except to the extent that the Planning Commission asserts that the settlement agreement improves upon the situation of the proposed Faraway Farms by requiring the developer to conform to the more modern and effective revised 2008 subdivision ordinance to which the original proposal was not require to comply. The defendant argues that the plaintiffs' legal conclusion that the Open Meeting Act bars settlement of civil lawsuits involving a public body is incorrect as the Act clearly contemplates closed session discussions about settlement with legal counsel and the defendant again argues that the Open Meetings Act, W.V. Code §6-9A-4(11), clearly permits a public agency to consider issues associated with litigation and possible settlement of litigation in closed session. The law merely requires that the terms of the settlement shall be reported and entered into its minutes within a **reasonable time after the settlement is concluded.**"
36. To the extent that the paragraph asserts legal conclusions, said legal conclusions require no answer, to the extent that the paragraph asserts fact the facts are denied except to the extent that the Planning Commission asserts that the appropriate private discussions with legal counsel are not "secretive" merely privileged. The defendant asserts that the plaintiffs' legal conclusion that the Open Meeting Act bars settlement of civil lawsuits involving a public body is incorrect as the Act clearly contemplates closed session discussions about settlement with legal counsel and the defendant again asserts that the Open Meetings Act, W.V. Code §6-9A-4(11), clearly permits a public agency to consider issues associated with litigation and possible settlement of litigation in closed session. The law require of public notice of such settlement discussions is terms of the settlement shall be reported and entered into its minutes within a **reasonable time after the settlement is concluded.**" The defendant asserts that nothing is unlawful about a public body settling litigation against it. Finally, the defendant again asserts that it is clearly lawful for a public agency to receive legal advice about pending litigation in closed session.
37. To the extent that the paragraph asserts legal conclusions, said legal conclusions require no answer, to the extent that the paragraph asserts fact the facts are denied except to the extent that the Planning Commission asserts that the settlement agreement improves upon the situation of the proposed Faraway Farms by requiring the developer to conform to the more modern and effective revised 2008 subdivision ordinance to which the original proposal was not require to comply. The defendant argues that the plaintiffs' legal conclusion that the Open Meeting Act bars settlement of civil lawsuits involving a public body is incorrect as the Act clearly contemplates closed session discussions about settlement with legal counsel and the defendant again argues that the Open Meetings Act, W.V. Code §6-9A-4(11), clearly permits a public agency to consider issues associated with litigation and

possible settlement of litigation in closed session. The law merely requires that the terms of the settlement shall be reported and entered into its minutes within a **reasonable time after the settlement is concluded.**" Finally, the defendant again asserts that it is clearly lawful for a public agency to receive legal advice about pending litigation in closed session.

38. To the extent that the paragraph asserts legal conclusions, said legal conclusions require no answer, to the extent that the paragraph asserts fact the facts are denied except to the extent that the Planning Commission asserts that the settlement agreement improves upon the situation of the proposed Faraway Farms by requiring the developer to conform to the more modern and effective revised 2008 subdivision ordinance to which the original proposal was not required to comply. The defendant argues that the plaintiffs' legal conclusion that the Open Meeting Act bars settlement of civil lawsuits involving a public body is incorrect as the Act clearly contemplates closed session discussions about settlement with legal counsel and the defendant again argues that the Open Meetings Act, W.V. Code §6-9A-4(11), clearly permits a public agency to consider issues associated with litigation and possible settlement of litigation in closed session. The law merely requires that the terms of the settlement shall be reported and entered into its minutes within a **reasonable time after the settlement is concluded.**" The defendant asserts that nothing is unlawful about a public body settling litigation against it. Finally, the defendant again asserts that it is clearly lawful for a public agency to receive legal advice about pending litigation in closed session. Nothing in the Open Meetings Act requires public input upon a decision to reach a settlement in a pending lawsuit (since permits closed session discussions with legal counsel and only requires settlement be announced a reasonable time after the conclusion) and to infer such a requirement would totally destroy the public bodies ability to confer with counsel and to properly defend and/or prosecute litigation.¹The Planning Commission asserts that the settlement improved upon the proposed development by requiring it to proceed under the up-dated 2008 sub-division regulations.²

39. To the extent that the paragraph asserts legal conclusions, said legal conclusions require no answer, to the extent that the paragraph asserts fact the facts are denied

¹ Contemplate the absurdity: "I now ask public comment upon the litigation strategy publically outlined by our lawyer about the on-going multi-dollar litigation. . .the chair recognized the plaintiff's counsel [Who with his court reporter present ask about details of litigation strategy, insists that the settlement offer be increased and demands the body relinquish its most potent defensive arguments]. . ." That is why the Open Meetings Act permits closed sessions and only requires the terms be revealed after settlement to do otherwise would prevent a public body from being able to defend litigation and would prevent any meaningful attorney-client privilege.

² Ironically, this new requirement was one of the current plaintiff's requests when it attempted to intervene in the April 2011 Faraway Farms litigation: it wanted the project to be required to proceed under the 2008 regulations and now objects to a settlement that incorporates one of its own requirements.

except to the extent that the Planning Commission asserts that the appropriate private discussions with legal counsel are not "secretive" merely privileged. The defendant asserts that the plaintiffs' legal conclusion that the Open Meeting Act bars settlement of civil lawsuits involving a public body is incorrect as the Act clearly contemplates closed session discussions about settlement with legal counsel and the defendant again asserts that the Open Meetings Act, W.V. Code §6-9A-4(11), clearly permits a public agency to consider issues associated with litigation and possible settlement of litigation in closed session. The law requires of public notice of such settlement discussions as follows: "terms of the settlement shall be reported and entered into its minutes within a **reasonable time after the settlement is concluded.**" W.V. Code §6-9A-4(11). The defendant asserts that nothing is unlawful about a public body settling litigation against it. Finally, the defendant again asserts that it is clearly lawful for a public agency to receive legal advice about pending litigation in closed session. Nothing in the Open Meetings Act requires public input upon a decision to reach a settlement in a pending lawsuit and to infer such a requirement would totally destroy the public bodies ability to confer with counsel and to properly defend and/or prosecute litigation. The Planning Commission asserts that the settlement improved upon the proposed development by requiring it to proceed under the up-dated 2008 sub-division regulations.

40. To the extent that the paragraph asserts a legal conclusion it requires no answer to the extent that it asserts facts the facts are denied. Specifically, as outlined elsewhere herein, the settlement fully complied with the requirements of the Open Meetings Act which clearly contemplates and permits closed discussions with legal counsel about pending litigation.
41. To the extent that the paragraph asserts a legal conclusion it requires no answer to the extent that it asserts facts the facts are denied. Specifically, as outlined elsewhere herein, the settlement as issue fully complied with the requirements of the Open Meetings Act which clearly contemplates and permits closed discussions with legal counsel about pending litigation.

Motions

- 1) For the Reasons set forth in the previously filed motion to dismiss which is incorporated herein by reference, the Defendant respectfully moves this Court to Dismiss the complaint has failing to state a claim for which relief can be granted because plaintiffs' claims to the contrary, the Open Meetings Act permits closed sessions with legal counsel to discuss pending litigation and only requires "terms of the settlement shall be reported and entered into its minutes within a **reasonable time after the settlement is**

concluded.” W.V. Code §6-9A-4(11). Since the Settlement was not concluded until the Court approved and signed the Order on August 3, 2011, the plaintiffs complaint that the settlement was not fully revealed in July 26th, 2011 fails to state a claim and must be dismissed.

- 2) Pursuant to Rule 19 WVRCP, the defendant respectfully note the absence of a party in interest, Faraway Farms, LLC. As the plaintiffs seek to set aside a settlement agreement between the defendant and a third party, Faraway Farms, LLC if the plaintiffs succeed it would stop any on-going development of the subject property injuring the third party. Further, the defendant respectfully suggests that the absence of Faraway Farms as a party to this action would “impair or impede the [Faraway Farms, LLC] ability to protect that interest” at trial or on appeal. Wherefore, the defendant respectfully requests that in the event that the Court denies the motion to dismiss and proceeds further in litigation of the instant matter, then the Court Order that Faraway Farms, LLC be made a party to this matter to fully protect its interests.
- 3) The Defendant objects to further proceedings in this matter because the Court lacks personal jurisdiction over the defendant (as set forth in previously filed motion to dismiss). Plaintiffs failed to follow the requirements of WVRCP Rule 4(c)(6)(B) in that they failed to serve any member of the Planning Commission, failed to serve the county clerk and failed to serve the Prosecuting Attorney. Upon information and belief the plaintiffs merely had county commission employees who work for the Department of Planning and Zoning served. The plaintiffs did not serve any commissioner, nor the county clerk nor the prosecuting attorney served. County Commission employees are not members of the planning commission and, in fact, appear in front of the planning commission as witnesses. Since service was not perfected, the defendant respectfully requests that this matter be Dismissed.

WHEREFORE THE DEFANDENT respectfully submits this Answer and associated motions and ask that the Court take such actions are required by the same and as the Court deems just and equitable.

Jefferson County Planning Commission, by

Stephen V. Groh, Assistant Prosecuting Attorney

Certificate of Service.

I certify that on this _____ day of _____, 2011, I caused a copy of the foregoing to be mailed first class mail, postage pre-paid to counsel for the Plaintiffs, Linda Gutsell, Esq. 107 North College St. Martinsburg, WV 25401

Stephen V. Groh, Assistant Prosecuting Attorney

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

FAR AWAY FARM, LLC
Petitioner,

v.

CIVIL ACTION NO.: 11-C-125

JEFFERSON COUNTY PLANNING COMMISSION,
A public body;
JOHN MAXEY, President,
THOMAS TRUMBLE, Vice-President,
MORGAN ETTERS, Member,
GENE TAYLOR, Member,
KELLY BATY, Member,
ARNOLD DAILEY, Member,
ERIC SMITH, Member, and
FRANCES MORGAN, Commission liason,
Respondents.

AGREED SETTLEMENT ORDER

On the _____ day of _____, 2011, came the parties, Far Away Farm, LLC, by counsel, the Law Office of Richard G. Gay, LC, and the Jefferson County Planning Commission, by counsel, Jefferson County Prosecutor's Office.

WHEREAS, the Planning Commission is currently in litigation in the Circuit Court of Jefferson County, West Virginia in the above-referenced case.

WHEREAS, the Planning Commission has determined that it is in the best interest of the Planning Commission and the citizens of Jefferson County to resolve the issues currently before the court in Civil Action No. 11-C-125 by agreeing to settle the Circuit Court case under the conditions stated below.

RECEIVED
AUG 03 2011
By *MA*

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

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

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

Director's Report
October 11, 2011
Planning Commission Meeting

- 1) Activity Report (attached)
- 2) First Quarterly Report FY 2012 Work Plan (attached)
- 3) US 340 Corridor - East Gateway Plan Affiliated Public Meeting

On Tuesday, October 18, 2011, 6:30 - 9:00 PM, the Eastern Panhandle Trail Blazers is hosting a meeting in conjunction with the Harpers Ferry National Historic Park's Alternate Transportation Stakeholders meeting in the Mather Training Center, 51 Mather Place, Harpers Ferry, WV. :

PLAN A TRAIL BETWEEN HARPERS FERRY AND CHARLES TOWN

Join as we put pencil to paper and identify a preferred trail route along US 340, between Harpers Ferry and Charles Town. Creating an attractive, safe trail connection in this area will provide an important part of the proposed regional Eastern Panhandle Recreational Trail.

- 4) Regional Staff activities:
 - a) Chesapeake Bay Watershed Forum, Jennie Brockman spoke at the session entitled "Using Forest Conservation to Meet Water Quality Goals" and co-presenting with Sally Claggett, USDA Forest Service and Anne Hairston-Strang, MD DNR. 1 (9/30/11)
- 5) Recent CC agenda items:
 - a) The following items were on the October 6, 2011 County Commission agenda for "action":
 - i. Continued Public Hearing, Discussion of Comments Received, and Possible Action on a Proposed Amendment to Article 4A, Section 2.2 and Section 10.3 of the Zoning and Land Development Ordinance, and Section 20.203 of the Subdivision and Land Development Regulations Regarding Home Occupations and Cottage Industries **(continued for public comment to 10/20/11 and scheduled for CC workshop 11/3/11)**
 - ii. Discussion of Comments Received and Possible Action on a Proposed Amendment to Articles 20 and 26 of the Jefferson County Subdivision and Land Development Regulations regarding the Maximum Square Footage Requirements for a Minor Site Plan in each Zoning District **(continued for written County Commission comment to 10/20/11 and scheduled for CC workshop 11/3/11)**

- iii. Discussion of Comments Received and Possible Action on a Proposed Amendment to Article 12 of the Jefferson County Zoning and Land Development Ordinance (March 2011) regarding the Process of Amending the Zoning Map and/or Zoning Text District (**continued for written County Commission comment to 10/20/11 and scheduled for CC workshop 11/3/11**)
 - iv. Discussion of Comments Received and Possible Action on a Proposed Amendment to Sections of Article 24 of the Jefferson County Subdivision and Land Development Regulations regarding Timeframes and Noticing Requirements for Processing Procedures District (**continued for written County Commission comment to 10/20/11 and scheduled for CC workshop 11/3/11**)
 - v. Presentation and Possible Action on Proposed Revisions to the Bylaws of the Jefferson County Planning Commission (**approved with one edit, see attached copy with change highlighted**)
- b) The following item was scheduled for a public hearing before the County Commission on October 6, 2011:
 - i. Hott Rezoning – PC Recommendation with 15 conditions
 - c) Shepherdstown Town Council's Proposed Urban Growth Boundary (discussed at CC 9/15/11)
- 6) Upcoming PC meetings:
- a) No second meeting scheduled for October at this time
 - b) November 8, 2011
 - Gibson Zone Change, Millville Road (scheduled by PC)
 - Corum Zone Change, US 480 (accepted by CC)
 - Jefferson Asphalt Major Site Plan
 - Cedar Meadows Airpark (lot 16 revision) Amendment to previously approved Major Subdivision under 1979 Subdivision Regulations
 - Spruce Hill Amendment to previously approved Major Subdivision under 1979 Subdivision Regulations
 - c) No second meeting scheduled for November at this time; November 22, 2011 meeting cancelled

Christine Chalmers

To: PLANNING COMMISSION
Subject: RE: WEEKLY CALENDAR / 9.12.11 - 9.16.11

MONDAY, SEPTEMBER 12, 2011

9:30 am JENNIE – MEETING IN RANSON / RE: PARKS & REC
9:30 am STEVE & SETH – MEETING WITH DR. & MRS. GIBSON / RE: ALLSTADTS
1:00 pm JENNIE – RANSON CITY HALL
3:00 pm JENNIE, STEVE, SETH, DAWN & AARON – PREP FOR RTE. 340 MEETING

TUESDAY, SEPTEMBER 13, 2011

9:30 am JENNIE, STEVE, SETH & DAWN – PREP FOR RTE. 340 MEETING
BOB GORDON (MPO) TO ATTEND)
7:00 pm JENNIE, STEVE, SETH & AMY – PLANNING COMMISSION MEETING

WEDNESDAY, SEPTEMBER 14, 2011 AARON SCHEDULED

9:30 am STEVE – MEETING WITH PAUL RACO / RE: LARRY FRITTS, SR.
10:00 am – 11:00 am STAFF MEETING
11:00 am – NOON JENNIE, STEVE, SETH, DAWN & AARON - PREP FOR RTE. 340 MEETING
1:30 pm – 3:00 pm JENNIE, SETH & AMY– WEEKLY PLANNING MEETING
3:00 pm – 4:30 pm JENNIE & STEVE – WEEKLY ZONING MEETING

THURSDAY, SEPTEMBER 15, 2011

9:00 am COUNTY COMMISSION MEETING
MORNING JENNIE, STEVE, SETH & DAWN – PREP FOR RTE. 340 MEETING
3:00 pm STEVE & JENNILEE – BOARD OF ZONING APPEALS MEETING
6:30 pm JENNIE, STEVE & SETH – COUNTY COMMISSION PUBLIC HEARING /
RE: ZONING & SUBDIVISION REGULATIONS TEXT AMENDMENTS

FRIDAY, SEPTEMBER 16, 2011 AARON SCHEDULED

10:00 am JENNIE, STEVE, SETH, DAWN & AARON – PREP FOR RTE. 340 MEETING
1:00 pm JENNIE – MEETING w/SUE LAWTON – 340 MEETING INSTRUCTION
2:00 pm – 5:00 pm DAWN – LIBRARY SET UP W/ MAINTENANCE DEPT. – RTE. 340 MEETING

SATURDAY, SEPTEMBER 17, 2011

10:00 am JENNIE, STEVE, SETH & AARON - ROUTE 340 CORRIDOR AREA STUDY MEETING

Christine Chalmers

To: PLANNING COMMISSION
Subject: RE: WEEKLY CALENDAR / 9.19.11 - 9.23.11

MONDAY, SEPTEMBER 19, 2011

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

TUESDAY, SEPTEMBER 20, 2011

1:00 pm JENNIE, STEVE, SETH, DAWN & AARON – 340 SUMMARY MEETING
3:00 pm – 4:00 pm JENNIE, STEVE, SETH, DAWN & AARON – EAST GATEWAY MEETING
WITH DAN SZEKERES

WEDNESDAY, SEPTEMBER 21, 2011

THURSDAY, SEPTEMBER 22, 2011

9:00 am COUNTY COMMISSION MEETING

FRIDAY, SEPTEMBER 23, 2011

NOON – 1:30 pm STEVE & SETH – PLANNERS LUNCHEON

Christine Chalmers

To: PLANNING COMMISSION
Subject: RE: WEEKLY CALENDAR / 9.26.11 - 9.30.11

MONDAY, SEPTEMBER 26, 2011

9:30 am – 10:30 am JENNIE – MEETING WITH BRIAN CLARK / REPORTER (“SPIRIT”)
RE: ZONING PROCESS
10:30 am - 11:30 am JENNIE – STAFF MEETING
1:30 pm – 2:30 pm JENNIE, SETH & AMY – WEEKLY PLANNING MEETING
2:30 pm – 4:00 pm JENNIE, STEVE & JENNILEE – WEEKLY ZONING MEETING

TUESDAY, SEPTEMBER 27, 2011

AFTERNOON JENNIE, STEVE & DAWN – CONFERENCE CALL WITH DAN SZEKERES

WEDNESDAY, SEPTEMBER 28, 2011

1:00 pm– 2:30 pm JENNIE, STEVE & SETH – LUNCH MEETING WITH JOHN ALLEN
2:00 pm – 4:00 pm DAWN – MEETING / RE: FRONTIER PHONE SERVICE
3:00 pm JENNIE, STEVE & SETH – MEETING WITH (LEGAL) STEVE GROH

THURSDAY, SEPTEMBER 29, 2011

9:00 am COUNTY COMMISSION MEETING

FRIDAY, SEPTEMBER 30, 2011

10:30 am – NOON JENNIE – CHESAPEAKE WATERSHED FORUM / PANEL DISCUSSION
LOCATION: NATIONAL TRAINING CENTER

Christine Chalmers

To: PLANNING COMMISSION
Subject: RE: WEEKLY CALENDAR / 10.01.11 - 10.07.11

MONDAY, OCTOBER 3, 2011

10:00 am - 11:00 am JENNIE – STAFF MEETING

TUESDAY, OCTOBER 4, 2011 ELECTION DAY – OFFICES CLOSED

WEDNESDAY, OCTOBER 5, 2011

8:00 am – 9:30 pm JENNIE – MONTHLY DEPARTMENT HEAD MEETING w/ TIM BOYDE
1:30 pm – 3:00 pm JENNIE & STEVE – WEEKLY ZONING MEETING
3:00 pm – 4:00 pm JENNIE & SETH – WEEKLY PLANNING MEETING

THURSDAY, OCTOBER 6, 2011

9:00 am COUNTY COMMISSION MEETING
2:30 pm STEVE, MASON & ROGER – MEETING w/GEORGIANNA PARDO & MR. BAIHLY
3:00 pm – 5:00 pm JENNIE – OUT OF OFFICE APPOINTMENT
7:00 pm JENNIE, STEVE & SETH – PUBLIC MEETING / RE: HOTT REZONING
LOCATION: BLUE RIDGE ELEMENTARY SCHOOL

FRIDAY, OCTOBER 7, 2011

PLANNING COMMISSION PACKET DAY

10:00 am JENNIE – MEETING WITH ROBERT SNYDER / RE: SPIRIT OF JEFFERSON

1st Quarter Report -- FY 2012 Work Plan County Commission (July - September 2011)

PRIORITY	PROJECTS	TIME FRAMES from FY 11-12 Work Plan	Status or Number Completed (July 11 -- Sept. 11)	Outstanding Tasks	REQUIRED RESOURCES/STAFF	REQUIRED HEARINGS	ANTICIPATED RESULTS
	Day to Day Customer Service	on-going					
	Walk in Customers - general information, zoning requests, process questions		196				
	Information Request Forms		26				
	Zoning Certificates Issued		6				
	Call-in customers - general info, zoning, questions		471				
	E-mail to general planning/zoning mailboxes (note: individuals receive over 100 per month each)		803				
	Day to Day Development Review Responsibilities:	on-going					
	Minor Site Plans		1				
	Limited Site Plan		1				
	Major Site Plans, including Concept Plans		4				
	Merger Deeds, Lot Line Adjustments		5				
	Minor Subdivision Plats		3				
	Major Subdivision Plats (Concept, Preliminary, Final)		0				
	Conditional Use Permits/Neighborhood Compatibility Meetings		0				
	Zoning Variances (requirements, dimensional variances, CUP Time extensions)		11				
	Subdivision Waivers including requests related to time frames or requirements		2				
	Pre-proposal Conferences		6				
	Zoning Map Amendments (Rezoning)		3 new (Sanderson Approved by CC 6/30/11)	Public Hearings: Hott --- 10/6/11; Gibson -- 11/8/11; Corum -- 11/8/11	SR, SB, JMB	PC PH and possible CC PH	
	Staff to Planning Commission meetings, including staff reports and presentations	on-going	4 Regular Meetings 6 staff report related to land development applications				

1st Quarter Report -- FY 2012 Work Plan County Commission (July - September 2011)

PRIORITY	PROJECTS	TIME FRAMES from FY 11-12 Work Plan	Status or Number Completed (July 11 -- Sept. 11)	Outstanding Tasks	REQUIRED RESOURCES/STAFF	REQUIRED HEARINGS	ANTICIPATED RESULTS
	Staff to Board of Zoning Appeals meetings, including staff reports and presentations	on-going	3 BZA meetings 11 staff reports for land development applications				
	Staff Training -- new skills, planning and zoning related functions	on-going	None this Quarter				
	Various non-PC and non-BZA Meetings including participation in County Commission; other agencies such as WAC, JCDA, Health Department, PSD, HEPMPO TAC, WIP II Work Group; other Region 9 Meetings as requested; and follow up meetings with applicants and their representatives	on-going	JB - 126 meetings attended; SR - 69 meetings attended; SB - 84 meetings attended				
Special Project	Proposed Subdivision Regulations Amendments		Proposed Am to Articles 20 & 26 re: Add'l minor site plan sq. footage (PC vote 7/26/11; CC 8/18/11; CC PH 9/15/11); Proposed Am to Article 24 combining Submission & Completeness Reviews for Site Plans and Plats (PC PH 7/12/11; PC vote 7/12/11; CC 8/18/11; CC PH 9/15/11)	County Commission PH follow up and possible action meeting 10/6/11; CC voted to have add'l comments to PC staff by 10/20/11; follow up work session 11/3/11	SR, SB, JB	possibly	

1st Quarter Report -- FY 2012 Work Plan County Commission (July - September 2011)

PRIORITY	PROJECTS	TIME FRAMES from FY 11-12 Work Plan	Status or Number Completed (July 11 -- Sept. 11)	Outstanding Tasks	REQUIRED RESOURCES/STAFF	REQUIRED HEARINGS	ANTICIPATED RESULTS
Special Project	Proposed Zoning Ordinance Amendments		<p>Policy Neutral Am. Approved by CC 7/7/11; Am to Article 4A Home Occ./Cottage Ind (PC vote 7/26/11; CC 8/18/11; CC PH 9/15/11); Am to Article 12 (PC PH and vote 7/12/11; CC 8/18/11; PC PH 9/15/11)</p>	<p>County Commission PH follow up and possible action meeting 10/6/11; CC voted to have add'l public and CC comments to PC staff by 10/20/11; follow up work session 11/3/11; Kick-off Roundtable Discussion with recreation providers 10/21/11; drafting new Commercial Zoning categories October/November 2011 for PC review and action</p>	SR, SB, JB	possibly	
Special Project	340 Corridor East Gateway Study	Spring 2011 - January 2012	<p>6/16/11 meeting summary and follow up; preparation for and follow up to 3rd Public Meeting 9/17/11 meeting, including development of 3 land use alternatives based on public input and Traffic Analysis Zones for data analysis; Metro Quest Phase 2 preparation</p>	<p>Trails related meeting with Trail Blazers 10/18/11; MetroQuest Phase 2 open 10/7/11 - 11/11/11; drafting of text and preferred alternative maps; public meeting to chose preferred alternative 12/6/11</p>	SR, SB, JB		
Special Project	340 Corridor South Study	Spring 2012 - Winter 2013	No Work this quarter				

1st Quarter Report -- FY 2012 Work Plan County Commission (July - September 2011)

PRIORITY	PROJECTS	TIME FRAMES from FY 11-12 Work Plan	Status or Number Completed (July 11 -- Sept. 11)	Outstanding Tasks	REQUIRED RESOURCES/STAFF	REQUIRED HEARINGS	ANTICIPATED RESULTS
Special Project	2014 Comprehensive Plan	Fall 2012 - Spring 2014 (18 month); adoption 2014	No Work this quarter				
Special Project	Urban Tree Canopy Plan Adoption		Urban Tree Canopy Draft Plan & Goals Meetings: Shepherdstown (8/18/11), Bolivar (9/6/11); County PC PH (7/26/11)	Scheduled for Recommendation of Approval to CC 10/11/11	JB		
Special Project	Urban Growth Boundaries		Shepherdstown UGB recommended to CC 9/15/11	CC requested letter to Shepherdstown requesting more information for CC signature	JB		
Special Project	Participation in WIP II Meetings held by DEP and follow up Chesapeake Bay activities		WIP II Developed Lands Work Group 8/3/11; Ches. Bay WIP II Summit 8/30/11; speaker at 6th Annual Chesapeake Bay Forum 9/30/11	monthly conference calls	JB		
Special Project	Review and Potential Implementation of Region 9 Model Stormwater Regulations		WIP II meetings (above)		JB, SR, engineering		

1st Quarter Report -- FY 2012 Work Plan County Commission (July - September 2011)

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

BYLAWS OF THE JEFFERSON COUNTY PLANNING COMMISSION

Article I - General

Section 1.1 – References

As used throughout these Bylaws, “Planning Commission” shall refer to the Jefferson County Planning Commission, and “County Commission” shall refer to the County Commission of Jefferson County, both of Jefferson County, West Virginia. The term “item” as used herein shall refer to any matter before the Planning Commission for consideration or discussion, and shall be construed broadly.

Section 1.2 – Authority

These bylaws and its provisions are authorized by W.Va. Code § 8A-2-11, which empowers the Planning Commission, among other things, to “(2) Prescribe rules and regulations pertaining to administration, investigations and hearings[,]” provided that the same are adopted by the County Commission.

Section 1.3 – Severability

The invalidation of any provision or section of these Bylaws shall not invalidate any other provision or section of these Bylaws.

Section 1.4 – Amendments

These Bylaws may be amended at any regular meeting of the Planning Commission by a majority vote of the Planning Commission, and shall take effect upon adoption by the County Commission or at a date certain thereafter.

Article II - Organization

Section 2.1 – Membership

The Planning Commission, by ordinance previously adopted by the County Commission, shall be comprised of nine (9) members appointed by the County Commission pursuant to W.Va. Code § 8A-2-4.

Section 2.2 – Term of office

Upon appointment to the Planning Commission, a member shall serve a term of three years pursuant to W.Va. Code § 8A-2-4(g).

Section 2.3 – Powers and Duties

In addition to the powers and duties provided in these Bylaws, the Planning Commission shall have such other powers and duties as provided by law, including but not limited to W.Va. Code § 8A-2-11.

Section 2.4 – Committees

The Planning Commission may establish one or more committees to which, pursuant to W.Va. Code § 8A-2-11 (15), it may delegate limited powers. Committees shall consist of no less than

three (3) members nor more than five (5) members of the Planning Commission. Appointments to committees shall be made by a majority vote of the Planning Commission.

Article III - Officers

Section 3.1– Elections

At its first regular meeting each January, the Planning Commission shall elect a President, Vice President, and Secretary.

Section 3.2 – President

The President shall preside at all public hearings and meetings held by the Planning Commission. The President may call special meetings of the Planning Commission as necessary, and is empowered to certify by signature or otherwise any official and valid action of the Planning Commission. The President shall also perform such duties and functions as may from time to time be required by the Planning Commission.

Section 3.3 – Vice President

During any absence of the President, the Vice President shall assume the duties and functions of President. The Vice President shall also perform such duties and functions as may from time to time be required by the Planning Commission.

Section 3.4 – Secretary

The Secretary shall perform such duties and functions as may from time to time be required by the Planning Commission.

Section 3.5 – Absence of President and Vice President

In the absence of both the President and Vice President, any present member may call to order a regular or special meeting of the Planning Commission, which shall thereupon immediately empower one or more of its present members to fulfill the duties and functions of President and/or Vice President during said absence.

Section 3.6 – Replacing Officers

In the event of the death, resignation, or removal of an officer of the Planning Commission, the Planning Commission shall thereupon elect one of its members to complete the unexpired term. A three-fifths majority of the total membership of the Planning Commission may, at any regular meeting, remove the President and/or the Vice President from office, provided that a new election to fill the remaining term(s) of office is immediately held.

Article IV - Meetings

Section 4.1 – Regular Meetings

The Planning Commission shall hold regular meetings on the second Tuesdays of each month at 7:00 p.m. in the ground floor meeting room of the Old Charles Town Library, at 200 East Washington Street, Charles Town, West Virginia. Prior notice shall be provided in the event that any regular meeting is held at a different location. An additional regular meeting may be called by the President or by two or more members of the Planning Commission for a specific

agenda item on the fourth Tuesday of each month at 7:00 p.m. at the location noted in this section. Such regular meeting shall be called at least seven (7) days prior to the fourth Tuesday to allow for posting of the agenda. A regular meeting may be postponed or cancelled for appropriate reasons, and in such case prior notice of said postponement or cancellation shall be provided if possible.

Section 4.2 – Special Meetings

A special meeting may be called by the President or by two or more members of the Planning Commission to be held on a different day and/or a different time than regular meetings. Pursuant to W.Va. Code § 8A-2-7, notice for all special meetings shall be in writing, include the date, time and place of the special meeting as well as the purpose of the meeting, and be sent to all members at least two days before the special meeting. A special meeting may be postponed or cancelled for appropriate reasons, and in such case prior notice of said postponement or cancellation shall be provided if possible.

Section 4.3 – Recording of Meetings

All meetings of the Planning Commission shall be recorded, and such recordings shall be maintained and made available, upon request and in accordance with the procedures of the Planning Commission and/or its staff, to the public.

Section 4.4 – Agendas

An agenda shall be made available at least seven (7) days prior to the start of all regular and special meetings. Items shall be listed on the agenda in such a manner as to sufficiently identify the substance of the item and allow for a vote on the item by the Planning Commission if necessary. The Planning Commission may deviate from an agenda's order if necessary.

Section 4.5 – Quorum

In order to conduct a regular or special meeting, a quorum of the members must be present. A majority of the members of the Planning Commission shall constitute a quorum. No action of the Planning Commission shall be official or valid unless authorized by a majority of members present at a regular or special meeting.

An individual confined to home due to serious illness or injury may attend the Planning Commission meeting via telephone [or other electronic media](#) with prior approval of the President and will count towards a quorum.

Section 4.6 – Procedures for Conducting Meetings

In the absence of state law or of other procedures of the Planning Commission, Roberts Rules of Order, current edition, shall be the parliamentary authority of Planning Commission meetings.

Section 4.7 – Open Governmental Proceedings

All meetings and actions of the Planning Commission shall comply with the requirements of West Virginia's open meetings laws, codified at W.Va. Code § 6-9A-1, et seq.

Section 4.8 – Training

All newly appointed Planning Commission members shall attend a two hour training session within 90 days of their appointment to the Planning Commission. Such training may be provided by the County staff, by an APA approved or recommended organization and/or through a webinar provided by APA or another authorized organization. The focus of this initial training will be to provide an orientation to the roles, responsibilities and duties of a Planning Commission member.

Annually, all PC members shall attend a two hour training session provided by County staff, by an APA approved or recommended organization and/or through a webinar provided by APA or another authorized organization. Staff shall make the Commissions members aware of local training opportunities and/or shall provide access to webinars to provide the Planning Commission members with a variety of training opportunities.

Planning Commission members shall be encouraged to attend local, regional, and/or national on-site or webinar planning training sessions. As the Planning and Zoning budget allows, assistance may be provided for registration for such training.

Section 4.9 - Attendance at Regular Meetings

Regular attendance of all Planning Commission members is critical to the effective functioning of the Planning Commission. Planning Commissioners shall strive to attend all Regular Meetings. Accordingly, if a Commissioner, over a consecutive six month period, misses six Regular Meetings with notice, or four Regular Meetings without notice, the Planning Commission may forward this information to the County Commission with the request that the County Commission consider removal from the Planning Commission due to a lack of interest.

Article V – Consideration of Items

Section 5.1 – Voting

A member must be or have been physically present at a meeting to vote on any item considered at said meeting. However, an individual confined to home due to serious illness or injury may attend the Planning Commission meeting via telephone with prior approval of the President. The individual will count towards a quorum and will have full voting privileges. Voting via proxy is not permitted. Abstention shall not be permitted by a member who is otherwise entitled to vote on an item.

Section 5.2 – Recusal

A member may recuse himself/herself in relation to an item for the reasons set forth herein, in which case such member shall not participate in discussion, consideration or vote on said item. Valid reasons for recusal include (1) having a personal interest in an item, (2) having a contractual, employment, or other relationship with a party involved with an item, (3) being unable to impartially consider an item, or (4) having been absent from part or all of the discussion or consideration of an item. A member recusing himself or herself shall thereupon state the reason for such recusal and leave the meeting, remaining absent for the duration of consideration and/or discussion of the item.

Section 5.3 – Ex Parte Communications

For purposes of these Bylaws, ex parte communications consist of communications regarding the substance of an item that is or will be before the Planning Commission for consideration and/or discussion, when such communications are between one or more members of the Planning Commission and one or more individuals involved with the item. No member of the Planning Commission shall voluntarily and knowingly engage in ex parte communications without the authority of the Planning Commission. In the event that a member of the Planning Commission has engaged in or receives any ex parte communication, said member shall bring the same to the attention of the Planning Commission. Communications with third parties regarding procedural aspects of items do not constitute ex parte communications in the context of these Bylaws.

Section 5.4 – Ex-Officio Member Voting

A member who is also a member of the County Commission is a full voting member of the Planning Commission. However, any such ex-officio member may elect not to vote as a member of the Planning Commission on items which will subsequently require action or consideration by the County Commission.

An ex-officio member may remain at the meeting and participate in discussion on an item on which they elected not to vote under this section.

Chronological Events Regarding the Rezoning of Federal Lands

May 18, 2010

- ❖ Mr. Maxey expressed desire to discuss a petition of rezoning Federal Lands

May 25, 2010

- ❖ Attorney Groh reported that the possibility of rezoning Federal Lands would require research. Mr. Maxey reiterated the importance of the underlying zoning of those properties.

Aug. 10, 2010

- ❖ Mr. Maxey again expressed interest in petitioning the County Commission to downgrade the underlying zoning of Federal Lands to rural.

Aug. 24, 2010

- ❖ Ms. Brockman stated that almost all Federal Land in Jefferson County is zoned rural with the exception of the Federal Land along the 340 corridor which was zoned before becoming Federal Land. Mr. Maxey asked that Ms. Brockman provide a draft agenda request form to present this issue to the County Commission.

Sept. 14, 2010

- ❖ Ms. Brockman presented a draft County Commission agenda request requesting Zoning Map Amendment for Planning Commission approval. Mr. Maxey also presented a draft Resolution to Petition the Jefferson County Commission to amend the zoning map.
- ❖ Mr. Maxey moved to approve the resolution as drafted. Mr. Trumble seconded the motion which carried unanimously.
- ❖ Staff was directed to amend the agenda request form and attach the approved resolution to submit to the County Commission for the September 23, 2010 meeting. Staff was also directed to notify Ms. Jennifer Mahan, County Clerk of the request.

Sept. 28, 2010

- ❖ There was an update on Petition by Planning Commission to rezone certain Federal Lands on US 340. Ms. Brockman stated that the petition was presented to County Commission and that they would be setting a date for a public hearing.

Oct. 12, 2010

- ❖ Ms. Brockman stated that the County Commission had tentatively scheduled a public hearing for the Federal Lands Rezoning for November 18, 2010 at 7 PM. She presented a letter from County Commission requesting for the Planning Commission to delay or withdraw the petition for the Federal Lands Rezoning until the 340 Corridor Plan had been drafted. Mr. Maxey stated that he felt the Planning Commission should continue to move forward with the petition. Mr. Maxey offered to draft a response for review at the October 26, 2010 meeting.

Chronological Events Regarding the Rezoning of Federal Lands

Oct. 26, 2010

- ❖ Mr. Maxey presented a letter in response to Ms. Lynn Widmyer's, County Commissioner, request to reconsider the Federal Lands Rezoning petition. Mr. Hayes moved to approve the letter as written. Ms. Morgan seconded the motion which carried unanimously.

Nov. 9, 2010

- ❖ Ms. Brockman explained that the County Commission had voted to cancel the public hearing for the rezoning of Federal Lands Petition finding the petition to be inadequate according to the requirements sited in the Jefferson County Zoning Ordinance Section 12.3.
- ❖ Ms. Lynn Widmyer, County Commissioner, expressed concern regarding the timing of the petition and suggested that waiting to submit another petition until the US 340 Study had been completed may be beneficial.
- ❖ Mr. Hayes moved to reconsider the vote of submitting a petition for the Federal Lands Rezoning to the County Commission. There was no second. The motion did not carry.

Dec. 14, 2010

- ❖ Ms. Brockman read the Resolution to Petition the Jefferson County Commission to amend the zoning map (attached) which was approved unanimously on September 14, 2010. Mr. Maxey asked if any member would like to reconsider the vote. Mr. Hayes moved to reconsider. Mr. Trumble seconded the motion. There was discussion on whether the County Commission was required to hold a public hearing because a petition was filed even though they found the petition to be insufficient. Mr. Maxey called to question. The motion carried 5 for and 2 opposed (Mr. Maxey and Ms. Morgan). Mr. Taylor moved to discuss. There was no second.
- ❖ Mr. Hayes moved to withdraw the petition filed on November 2, 2010 to rezone Federal Lands. Mr. Maxey seconded the motion which carried 5 for and 2 opposed (Mr. Baty and Ms. Morgan).
- ❖ Mr. Hayes moved to postpone discussion of this issue to the first regularly scheduled meeting in February. Mr. Trumble seconded the motion. Ms. Morgan offered a friendly amendment to place this item on the agenda for that date. Mr. Trumble and Mr. Hayes accepted the friendly amendment. Mr. Maxey asked that the original petition and the draft petition provided by Mr. Rosa be included with that agenda item. The motion carried unanimously.

Feb. 8, 2011

- ❖ Ms. Brockman reminded the Planning Commission that this item was placed on the agenda as requested at the December 14, 2010 meeting to revisit whether to resubmit a petition to rezone Federal Lands after the original submission was found to be insufficient by the County Commission in December 2010.
- ❖ Mr. Hayes moved to postpone the reconsideration of the resubmission of the petition to rezone Federal Lands indefinitely. Mr. Dailey seconded the motion. Mr. Trumble clarified that this motion in no way takes away a property owners right to request to rezone their land. The motion carried 4 for and 2 against (Ms. Eppers and Mr. Baty).