

PLANNING COMMISSION
MEETING DOCUMENTS

JANUARY 12, 2010

AGENDA
JEFFERSON COUNTY PLANNING COMMISSION
January 12, 2010

PUBLIC MEETING PROCEDURE:

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

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

The President may limit the presentation time of speakers.

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

PC members may ask questions at any time.

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

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

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

1. Election of Officers.
2. Approval of minutes for December 8, 2009 meeting.
3. Citizen Communications.
4. Request for postponement.
5. Declaration of Violation for Richard Duncan of the Jefferson County Improvement Location Permit Ordinance for no Improvement Location Permit for a shed on property designated as Parcel 51 on Tax Map 21 in the Shepherdstown District as found in Deed Book 997 at Page 571. This violation has been resolved.
6. Declaration of Violation for Robert Armstrong of the Jefferson County Salvage Yard Ordinance for 4 unlicensed/junk vehicles and debris on property designated as Parce 117 on Tax Map 13B of the Harpers Ferry District as found in Deed Book 944 at Page 560.
7. Declaration of Violation for Mark O'Dell of the Jefferson County Improvement Location Permit Ordinance for no Improvement Location Permit for a sign on property designated as Parcel 5 on Tax Map 29 in the Kabletown District.
8. Presentation on the request being made by Potomac Professional Services, LLC for a zoning map amendment and request to the Planning Commission to schedule a public hearing. This property is located at the intersection of Rt. 340 and Bakerton Rd. and is a total of 9.676 acres. District: Harpers Ferry, Map: 9, Parcel: 37. The Shenandoah Professional Center, LLC is the owner.

AGENDA
JEFFERSON COUNTY PLANNING COMMISSION
JANUARY 12, 2010
PAGE 2 OF 2

9. Issuance of the Conditional Use Permit (CUP) for a Telecommunication Facility on 114 acres. The property is located on the east side of Route 24 (Country Club Road) on Golf Course Drive in the Sleepy Hollow Golf and Country Club. Approximately 0.46 miles from the intersection of Route 24 and Route 340, District: Harpers Ferry, Map: 10, Parcel: 6. The Estate of Alice S. Glen/ Stephanie Petway, Verizon Wireless is the owner/developer. (PC File #Z09-02)
 - a) Action on the Staff Report regarding the Verizon Wireless Telecommunication Facility.
 - b) Action on a Conditional Use Permit for Verizon Wireless
10. Final Plat Public Hearing for the SPARC Training Campus, Phase II, Section One (PC File # 07-14R). This phase is to consist of 5 Commercial lots, 1 open space parcel, and a residue lot on 237.67402 acres. The property is located on the south side of Route 13 (Summit Point Road) approximately 0.50 miles west of its intersection with Route 13/9 (Church St.) and west side of Route 1 (Leetown Rd.) The final plat was submitted November 24, 2009. This is a re-subdivision. The original final plat was approved by the Planning Commission on April 22, 2008.
11. Request by Peter Corum of the Twin Oaks Subdivision, LLC for a variance to re-open the file and to extend the expiration date for 1 year to bond and record the Town Run Commons Subdivision (PC file #06-33). This property is located on Route 480, Kearneysville Pike, adjacent to Morgan's Grove Park. (Subdivision Ordinance, Article 8.1d)
12. Director's Report.
13. County Commission Liaison Report.
14. Planning Commission Exchange.
15. Planning Commission discussion, review and vote on 2010 Planning Commission meeting schedule.
16. President's Report.
17. Reports from Legal Counsel and legal advice to PC.
18. Actionable Correspondence.
19. 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

AGENDA
JEFFERSON COUNTY PLANNING COMMISSION
JANUARY 12, 2010
PAGE 2 OF 2

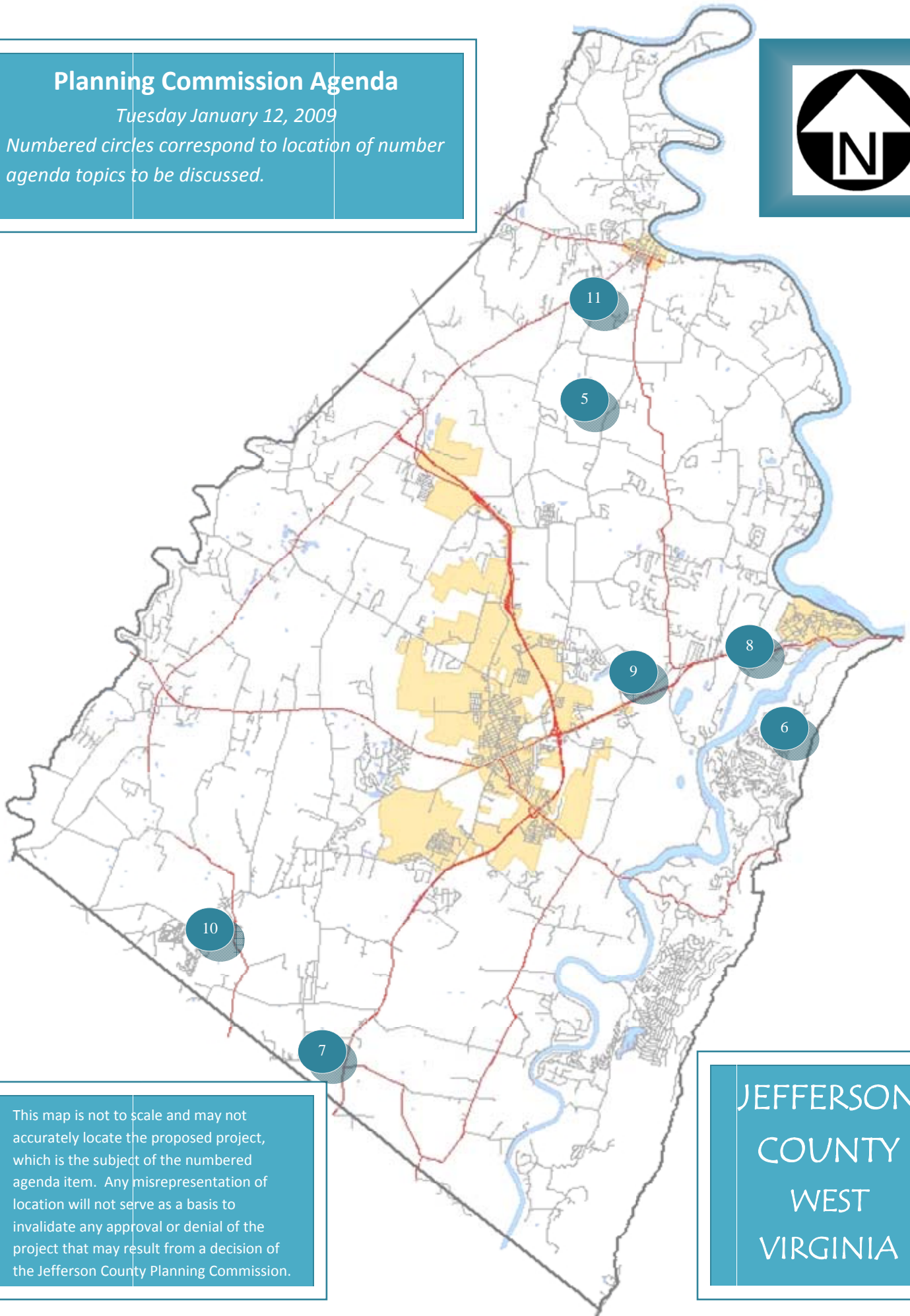
338, Charles Town, WV 25414. Our phone number is (304) 728-3228; our fax number is (304) 728-8126; our email address is planningdepartment@jeffersoncountywv.org and our website is www.jeffersoncountywv.org.

Minutes and video recordings of past meetings and the Comprehensive Plan can be found on our website. The office has a file on each project as well as aerial photos of the county. Minutes and audio recordings of past meetings, Subdivision Regulations, Zoning Ordinance and the Comprehensive Plan are available for review in our office.

Planning Commission Agenda

Tuesday January 12, 2009

Numbered circles correspond to location of number agenda topics to be discussed.



This map is not to scale and may not accurately locate the proposed project, which is the subject of the numbered agenda item. Any misrepresentation of location will not serve as a basis to invalidate any approval or denial of the project that may result from a decision of the Jefferson County Planning Commission.

JEFFERSON
COUNTY
WEST
VIRGINIA

MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
DECEMBER 8, 2009

The Jefferson County Planning Commission met on Tuesday, November 10, 2009, with the following Commission members present: Arnold Dailey, President; John Maxey; Jim Surkamp; John Sidor and Thomas Trumble. Staff members present included Jennifer Brockman, Director of Planning and Zoning; Seth Rivard, Planner; Jennifer Snyder, Zoning Administrator; Jonathon Saunders, County Engineer; and Amy Puetz, Office Assistant.

Ms. Ellen May, Ms. Lynne Deming, and Mr. Robert Reynolds were absent with notification.

Mr. Dailey called the meeting to order at 7:03 PM.

1. Approval of minutes for November 10, 2009. Mr. Trumble moved to approve the minutes with the following corrections as stated by Mr. Maxey:
 - a) Second page, lines 3, 4, and 5. Change sentence to state "Mr. Maxey withdrew his motion with an agreement that staff would investigate establishing a policy regarding sectionalized final plats that are not consistent with the Community Impact Statement.
 - b) Second page, 8th paragraph, line 9 and 10. Change call *to* question to call *the* question.

Mr. Sidor seconded the motion which carried unanimously.

2. Citizen Communications. Mr. Dailey noted e-mail received from Gil Garcia.
3. Request for postponement. None.
4. Declaration of Violation for Richard Duncan of the Jefferson County Improvement Location Permit Ordinance for no Improvement Location Permit for a shed on property. In Mr. Carter's absence, Mr. Sidor moved to postpone discussion on the violation to the January 12, 2010 meeting. Mr. Maxey seconded the motion which carried unanimously.
5. Request by Federal Group, Inc. for a variance to extend the expiration period for the Community Impact Statement for an additional 3 months for the Kensington Townhome Subdivision (PC file #06-41).

Mr. Rivard read from his staff report and recommended approval with the condition that a brick wall, minimum of 4 foot in height, shall be provided within the 3 foot open space shown along the frontage of Lowe Dr. to provide sufficient buffering if a 15 foot setback for the principal structures is allowed and that the extension be limited to April 5, 2010. Mr. Saunders read from his staff report and deferred to the Planner.

Mr. Richard Kline with Alpha Associates was available for questions. Mr. Kline stated that, according to Chapter 8.3, a setback for townhouses on the street side is 15 feet. Mr. Kline

asked that the time extension be granted without contingency on any specific design question. Mr. Maxey asked if the brick wall was included in previous versions to which Mr. Kline stated that it was in the CIS as an owner's option.

Mr. Ryan Perks with Alpha Associates was also available for questions.

Mr. Kenneth Lowe, President of the Federal Group, Inc. and developer of Kensington Townhome subdivision, was also available for questions. Mr. Lowe explained the Williamsburg Matrix design and how the brick wall was incorporated in the design and that the economy may not allow for that option any longer.

Mr. Dailey opened the public hearing. There were no respondents. Mr. Dailey closed the public hearing.

There was discussion between staff and the Commission to clarify staff's reasoning for the condition of the brick wall.

Mr. Maxey moved to approve with the staff recommended motion. Mr. Surkamp seconded the motion which carried 3 for, 2 against (Mr. Sidor and Mr. Dailey).

6. Request by Peter Corum of the Twin Oak Subdivision, LLC for a variance to extend the expiration date for 1 year to bond and record the Town Run Commons Subdivision (PC file #06-33).

Mr. Rivard read from his staff report recommending approval of the variance. Mr. Saunders read from his staff report and deferred to the planner.

Mr. Peter Corum, director of Twin Oaks Subdivision, LLC, approached the Commission and asked for the formal recusal of Mr. Surkamp from hearing and voting on this variance. Mr. Corum was prepared to read a letter to support his request. Mr. Dailey reminded Mr. Corum that without Mr. Surkamp there would not be a quorum. Mr. Surkamp recused himself at the applicant's request and left the room. Mr. Corum returned to his seat without presenting the letter. Mr. Surkamp returned to the meeting. Staff made Mr. Corum aware that the Town Run Commons Subdivision file expires on December 9, 2009 and that, if postponed, a second variance to re-open the file would be necessary. Mr. Dailey afforded Mr. Corum the opportunity to retract his request of Mr. Surkamp's recusal. Mr. Corum stated that he would like to have the variance heard without delay. Mr. Surkamp confirmed that he would remain recused due to the first request of the applicant and again left the room. The variance could not be heard due to a lack of a quorum. Mr. Surkamp returned to the meeting.

7. Motion to recommend to the County Commission the acceptance of the Blue Ridge Mountain Study Grant. Mr. Rivard presented to the Commission details of the grant

MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
NOVEMBER 10, 2009
PAGE 3 of 4

agreement and the planning department's objectives for achieving their part of the agreement. Discussion ensued on the budget that was submitted and any auditing that may be done as a result of the grant. Mr. Sidor motioned to recommend to the County Commission that the contract for the Blue Ridge Mountain Study Grant be signed. Mr. Trumble seconded the motion which carried unanimously.

8. Request for Proposal for Blue Ridge Mountain Study Grant. Ms. Brockman discussed the staff's desire to draft a request for proposal (RFP) to hire the facilitator referenced in the grant contract, even though the total amount is lower than the amount that requires a formal RFP. Additionally, she noted that staff intends to discuss the desire to reallocate funds given by the Blue Ridge Mountain Study Grant to allow the facilitator to play a larger role in the work to be done with the National Fish and Wildlife Foundation Staff. Mr. Maxey voiced his support.
9. Director's Report.
 - a. Follow-up to Blue Ridge Mountain Study Grant. Ms. Brockman discussed her meeting with Joe Hankins of the Freshwater Institute who has a grant from the National Fish and Wildlife Foundation related to Rocky Marsh Run Water quality. Ms. Brockman talked about incorporating information from that grant and from the Blue Ridge Mountain Study Grant onto the County's website in order to provide a framework of public to educate on the public and development community on Chesapeake Bay Water Quality Standards.
 - b. Activity Report. Schedules for the previous two weeks were provided to the Commission.
 - c. Planning Commissioner Training Opportunities. Information for upcoming training opportunities being offered by the City of Ranson was provided to the Commission.

Mr. Dailey called for a recess at 8:23 PM to change the CD. Mr. Dailey called the meeting back to order at 8:26 PM.

- d. Policy/Interpretation Discussions.
 - i. Variances related to time extensions. A memo was presented by Ms. Brockman providing an overview of the provisions of the 1979 Subdivision Ordinance regarding time extensions for various phases of Subdivisions that have approved Community Impact Statements. The memo provided some background information and a discussion of the issues created by these requests but concluded that the time extension requests are limited to a few projects approved under the 1979 Subdivision Ordinance and should continue to be considered on a case by case basis. She also stated that these issues should be less challenging with the new Subdivision Regulations and the wording should be carefully reviewed when these are being amended.

- ii. Final Plat relationship to Community Impact Statements. A memo was presented by Ms. Brockman stating that the 1979 Subdivision Ordinance does not state that the Final Plat needs to conform to the Sketch Plan or any components of the Community Impact Statement (such as proposed phasing). Section 6.3 states that “the continued processing of sectional final plats shall be permitted provided that no more than 24 months lapse between approvals.” This final statement has been the basis for the acceptance of Final Plats including as few as one lot in order to keep a file active. Again, she also stated that these issues should be less challenging with the new Subdivision Regulations and the wording should be carefully reviewed when these are being amended.
- e. Copies of the Zoning Ordinance with the previously remanded amendments included were passed out to the Planning Commission members.
- f. Discussion of necessary revisions to the Subdivision Regulations and discussion of future Zoning Ordinance amendments. Jennifer Snyder gave a summary of the work being done to make necessary amendments and proposed a work session on January 19th for staff and the Planning Commission to discuss revisions. Discussion ensued on changes that take priority.

10. County Commission Liaison Report. None.

11. Planning Commission Exchange. Mr. Maxey handed out a Circuit Court filing related to the Allstadt variance. Mr. Dailey verified that he had just been served with those papers.

12. President’s Report. None.

13. Reports from Legal Counsel and legal advice to PC. Legal Counsel was not present.

14. Actionable Correspondence.

15. Non-Actionable Correspondence.

Mr. Surkamp moved to adjourn. Mr. Maxey seconded the motion, which carried unanimously. A detailed transcript of the meeting may be found on CD # ____. These minutes were prepared by Amy Puetz.

JEFFERSON COUNTY, WEST VIRGINIA

Department of Engineering

116 East Washington Street

P.O. Box 716

Charles Town, West Virginia 25414

Phone: 304-728-3257

Fax: 304-728-3953

Email: enineering@jeffersoncountywv.org

December 8, 2009

VIOLATION NOTICE – DIRECTIVE TO CEASE & DESIST

CERTIFIED MAIL – 7008 1830 0003 3623 6006

 COPY

Robert Armstrong
93 Mountain View Dr.
Harpers Ferry, WV 25425

Dear Mr. Robert Armstrong:

As of December 7, 2009, there still appears to be 4 unlicensed/junk vehicles and debris on your property designated as Parcel 117, on Tax Map 13B of the Harpers Ferry District. This property is recorded in your name(s) in Deed Book 944 at Page 560. This property appears to still qualify as a salvage yard as defined by the Jefferson County Salvage Yard Ordinance.

“Any place which is maintained, operated or used for the storing, keeping, buying, selling or processing of salvage, or for the operation and maintenance of a motor vehicle graveyard, and the term shall include garbage dumps and sanitary landfills. Any collection of three or more junked motor vehicles, or combination of ferrous or nonferrous materials together with one or more junked motor vehicles, or a collection of any salvage contained in an area more than one quarter acre in size, shall be considered a salvage yard.”

Pursuant to Article 5.1 of the Jefferson County Salvage Yard Ordinance, this cease and desist notice is being sent to you as the responsible party(s) for the salvage yard since you are the listed owner. Failure to comply with this directive to cease and desist shall be cause for the Planning Commission at their meeting to be held on **January 12, 2010** to declare the violation a common nuisance. Upon such declaration the Planning Commission shall instruct the Land Development Coordinator to request the assistance of the County Prosecuting Attorney and:

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

OR

- (B) Proceed by criminal warrant or information against the person in violation; or a and b.

JEFFERSON COUNTY, WEST VIRGINIA

Department of Engineering

116 East Washington Street

P.O. Box 716

Charles Town, West Virginia 25414

Phone: 304-728-3257

Fax: 304-728-8126

Email: engineering@jeffersoncountywv.org

December 14, 2009

VIOLATION NOTICE – DIRECTIVE TO CEASE & DESIST
CERTIFIED MAIL – 7007 2680 0002 9266 9189

Mark O'Dell
267 Seitenhorst Lane
Bluemont, VA 20135

Dear Mr. O'Dell:

Pursuant to Article 4, Section 4.2 of the Jefferson County Improvement Location Permit Ordinance this cease and desist notice is being sent to you as the responsible party for no Improvement Location Permit for the sign on your property which is designated as Parcel 5 on Tax Map 29 in the Kabletown District. You are being cited as the responsible party since you are the owner of record as found in Deed Book 968 at Page 97.

Please be advised that failure to obtain an Improvement Location Permit prior to the **January 12, 2009**, meeting of the Jefferson County Planning Commission shall be cause for them to declare you, as the responsible party, and the subject property, buildings and/or structures in violation of the Jefferson County Improvement Location Permit Ordinance. Upon such declaration the Planning Commission shall instruct the land development coordinator to request the assistance of the County Prosecuting Attorney and:

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

OR

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

The penalty for any person who violates any provision of this Ordinance shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than \$100.00 nor more than \$300.00. Each day during which any violation of this Ordinance continues shall constitute a separate offense.

If you have any questions, Please contact the me. The office is open Monday though Friday from 9:00 a.m. to 5:00 p.m.

Sincerely,



D. Mason Carter
Ordinance Compliance Officer

DMC:

FILE



RECEIVED

DEC 22 2009

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

November 24, 2009

Jefferson County Planning and Zoning Department
116 East Washington Street
Charles Town, WV 25414

Attn: Ms. Jennifer M. Brockman, AICP
Director of Planning and Zoning

Re: **Zoning Map Amendment Request**

Dear Ms. Brockman,

Pursuant to the recent election results in association with the proposed adoption of new zoning ordinances and districts, Potomac Professional Services, LLC (Potomac), on behalf the property Owner Shenandoah Professional Center, LLC, would like to formally request a Zoning Map Amendment for the following property within Jefferson County, West Virginia.

Article 12, Map and Text Amendments, of the current Jefferson County Zoning Ordinances requires the following information for any petition for a zoning map amendment.

1. Substantiation for the Request
 - a. Current Zoning: Residential Growth (R-G)
 - b. Requested Zoning: Residential/Light Industrial/Commercial (R-L-G)
 - c. The property is located at the intersection of Rt. 340 and Bakerton Rd and is visible from Rt. 340 heading north and south. The Shenandoah Professional Center, a professional office building, is currently an operational commercial use on the property. The Shenandoah Professional Center was approved as a commercial use under a Conditional Use Permit, approved on January 14, 2003. With public input and concerns, the building was renovated from an 1800's era farmhouse to a historically correct, updated professional office building which is an impressive site along the route from Harpers Ferry to Charles Town.

The undeveloped rear property, referred to on the recorded plat as Lot 2, is currently approved as a single family lot, but with any proposed development would need to adhere to the current entitlement process within Jefferson County.

Through planning for the recent zoning ordinance election, the property was proposed by the County to be rezoned to General Commercial due to its proximity to a high traffic roadway and viable commercial potential. The requested zoning map amendment stays consistent with the intent of the County Commissioners and their vision for the future needs of Jefferson County.

- d. The property is in a location that is beneficial for commercial growth within the County. This proposed zoning amendment would provide the County with a concentrated area of potential commercial development along a major traffic corridor, in lieu of spot development.

2. Tax District, Map and Parcel Number

- a. Harpers Ferry District, TM 9, Parcel 37 & 37.2

3. Deed Book Reference

- a. DB 996, Page 552, Lot 1 and 2

4. Plat or Sketch pursuant to Section 7.4(b)

- a. See attached

5. Tract Size

- a. Lot 1 – 1.491 acres, Lot 2 – 8.185 acres, Total = 9.676 acres

6. Discussion on:

- a. Comprehensive Plan compatibility of the proposed change.

- i. This proposed zoning change from residential to a predominately commercial zone stays consistent with the 2004 Jefferson County Comprehensive Plan in that growth was encouraged in areas where water, sewer, schools, and other public facilities are available, and the encouragement and support of commercial and industrial to provide a diversified and sound local economy.

The location of this property is consistent with the 2004 Comprehensive Plan in all of the aforementioned ways, as well as being adjacent to a major roadway feeding Jefferson County.

- b. Any change of transportation characteristics and neighborhood from when the original ordinance was adopted.

- i. Although this request is believed to be consistent with the current Comprehensive Plan adopted in 2004, the area has undergone significant growth since that time that has increased traffic on primary and secondary roadway systems. The influx of home sales

between 2005 through 2007 was primarily driven from buyers who are commuting to and from the Washington DC/Metropolitan area, thus significantly taxing the major roadway systems, especially the Rt. 340 Corridor running from Maryland to West Virginia. In addition, the recent approval of table games at the Charles Town Race Track is expected to increase traffic even more throughout the region.

This significant growth and impact to the major roadways has emphasized the need to centralize the potential commercial uses on or in close proximity to the major road networks for easy access and increased visibility.

If you have any further questions or comments, please contact the undersigned at 1(304) 725-3712, ext. 217.

Sincerely,

POTOMAC PROFESSIONAL SERVICES, LLC

On behalf Owner, Shenandoah Professional Ctr, LLC

A handwritten signature in black ink, appearing to read 'Matthew R. Powell', with a large, stylized flourish at the end.

Matthew R. Powell

Vice President Development

Amy Puetz

From: JCC [info@jeffersoncountywv.org]
Sent: Monday, January 04, 2010 10:17 AM
To: apuetz@jeffersoncountywv.org; cchalmers@jeffersoncountywv.org
Subject: Fw: Comments on PC Agenda 1-12-10

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

From: "gil narro garcia" <gilnarrogarcia@comcast.net>
Sent: 12/31/2009 3:32:29 PM
To: info@jeffersoncountywv.org
Cc: "gil narro garcia" <gilnarrogarcia@comcast.net>
Subject: Comments on PC Agenda 1-12-10

As per your request that concerned citizens respond to agenda items, please read and consider seriously,

Item: "Potomac Professional Services, LLC for a zoning map amendment and request to the Planning Commission to schedule a public hearing."...

This is, on the surface, a very serious request that will lead to the development of land that is adjacent to the Harpers Ferry National Park, at an intersection of Hwy 430 and Bakerton Road that is poised to become a virtual traffic nightmare, given what you have already approved for the Altstadt Farm developers across the Hwy. Their plans are significant, given that they have denuded tens of acres of forest land already.

The "Shenandoah Professional Center" request will add to the destruction of even more aquifer, ground water (the 9.6 acres in question are a prime high watertable area!) and drainage into the Potomac River. The existing professional center is big enough already and does not need another huge office structure to invite even more traffic, 24/7 lights, congestion, and traffic----Right at the entrance to Bakerton Road and the entrance to the Park.

STOP this madness. Whatever you do, you must schedule a hearing at a time that is convenient to citizens and NOT solely to you and the developers. And, that means, that you must given no less than 2 weeks public notice for the hearing. Gil N Garcia/Elk Run Dr.

(off of Bakerton Road)

304-535-2235

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

From: Jefferson County Alerts
To: jeffersoncountycommissionalerts@jeffersoncountywv.org
Sent: Wednesday, December 30, 2009 4:42 PM
Subject: PC Agenda 1-12-10

*****Please do not reply to this email. If you have questions or need assistance, please email or call the County Commission office at 304-728-3284.*****

JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning & Zoning

116 East Washington Street, 2nd Floor

P.O. Box 338

Charles Town, West Virginia 25414

Email: planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

Fax: (304) 728-8126

MEMORANDUM

TO: JEFFERSON COUNTY PLANNING COMMISSION

FROM: SETH RIVARD, COUNTY PLANNER

DATE: JANUARY 8, 2010

SUBJECT: REZONING LOCATED AT NORTHWEST CORNER OF Rt. 340 AND BAKERTON RD

A request for rezoning of two continuous parcels has been received by the Planning Department. The parcels are located at the northwest corner of Rt. 340 and Bakerton Rd (Harpers Ferry District, Tax Map 9 and Parcels 37 and 37.2). The applicant has requested rezoning from Residential Growth (R-G) to Residential/Light Industrial/Commercial (R-L-G). The following is an outline of the process for the requested rezoning.

1. Applicant will attend the January 12, 2010 Planning Commission meeting to present their petition for an amendment to the zoning map.
2. At this time a meeting will be scheduled for a Public Hearing before Planning Commission within 60 days, with a 15 days published notice.
3. One of the following 3 dates shall be chosen to comply with above time constraints:
 - a. February 9, 2010
 - b. February 23, 2010
 - c. March 9, 2010
4. The Planning and Zoning staff will prepare a report to determine if the request is consistent with the adopted comprehensive plan *or* that there have been major change of an economic, physical or social nature within the area of the requested rezoning that were not anticipated when the comprehensive plan was adopted and those changes have substantially altered the basic characteristics of the area.
5. A Public Hearing shall be held by the Planning Commission to obtain public comment. A motion by the Planning Commission with a recommendation to the County Commission based on findings from the staff report and public comment. Such recommendation shall be forwarded to the County Commission.

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

RECEIVED

\$250 + \$50/acre
(114 acres)
total = \$5950

OCT 15 2009

2-09-02

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

APPLICATION FOR CONDITIONAL USE PERMIT

Name of Project: Verizon Wireless Flaming Springs

Have fees been paid? YES NO Amount

Name of Applicant: Verizon Wireless c/o Stephanie Petway, Agent

Address: 380 Oca Mola Dr. Suite 106
Hanover, Maryland 21076

Telephone Number: 240-401-0907

Name of Property Owner: Estate of Alice S. Glenn

Address: ~~Slippery Hill Golf Course P.O. Box 2917~~
~~1800 Golf Course Dr. Charlestown, WV~~

Telephone Number: 304-725-1215

Tax Map Reference - District: Harpers Ferry Map# 10 Parcel# 6

Deed Book # 557 Page# 566

Tract Size 114 acres

Discuss the proposed change in use with respect to compatibility in the Plan?
see Attached

What is the proposed use of the property? Telecommunication Facility

Sketch plat must be provided (refer to 7.4b).

Is the sketch plat pursuant to 7.4b YES NO

Signature of Property Owner: Marshall Glenn, II

X Print Name: Marshall Glenn, II

Date: 7-29-09

209-02

RECEIVED

OCT 15 2009

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

 NETWORK BUILDING
& CONSULTING, LLC

On behalf of Verizon Wireless, this request for Conditional Use Permit approval is submitted to Jefferson County West Virginia to install and operate a wireless telecommunication facility at a property located at 1800 Golf Course Road (Sleepy Hollow Golf Course). The proposed facility will consist of adding 30 feet to an existing 51 feet silo, located on the property; 12 antennas will be mounted within the silo extension. Near the base of the silo, a 12'x20'x10' related equipment shelter along with a backup generator to be located on a separate 10'x 4' concrete pad will be located at the site.

The Verizon antennas will consist of six (6) antennas approximately 96.4"x 14.5"x 9.0" and six antennas approximately 47.4"x 4.1"x 5.9", in size. As shown on the attached plans, the placement of the proposed antennas will be mounted within the proposed 30 feet extension and will not be visible.

The proposed facility will be unmanned and will only require periodic routine maintenance visits by one technician to the site, no more than 4-6 times per year and as required for emergencies. There will no offensive odor emitted by the equipment or antennas. There will no harmful emissions, nor electrical interference from the equipment or antennas.

There will be no adverse impact to the use and development of the subject property or surrounding properties. The size, scale and density of this proposal will not adversely impact the character of the area and as proposed; Verizon has designed this site so that the visual impacts of the antennas and shelter have been minimized.

Verizon Wireless is licensed by the FCC and will operate this facility, in full compliance with federal, state and County ordinances. Verizon Wireless therefore respectfully request approval of this Conditional Use Permit request.

RECEIVED

OCT 15 2009

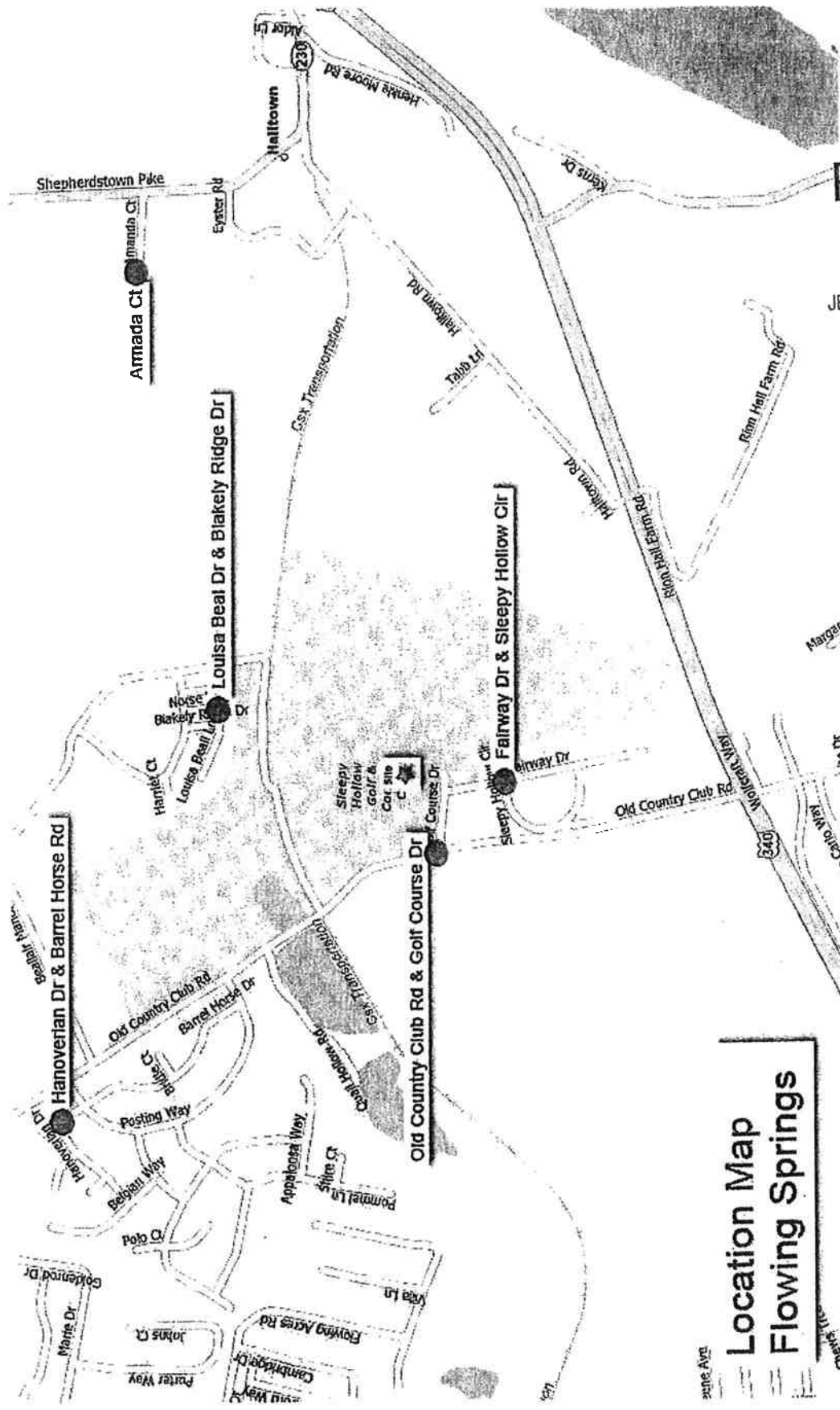
JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

The following items have been included with this request:

- 15 sets of scaled drawings
- 15 sets of photosimulation of the proposed silo
- Copy of Geotechnical Engineering report
- Revised conditional use application with corrected address of property owner(s).
- Narrative outlining Verizon's compliance with Article 4B (Wireless Telecommunication Facility) and list adjacent and confronting property owners.

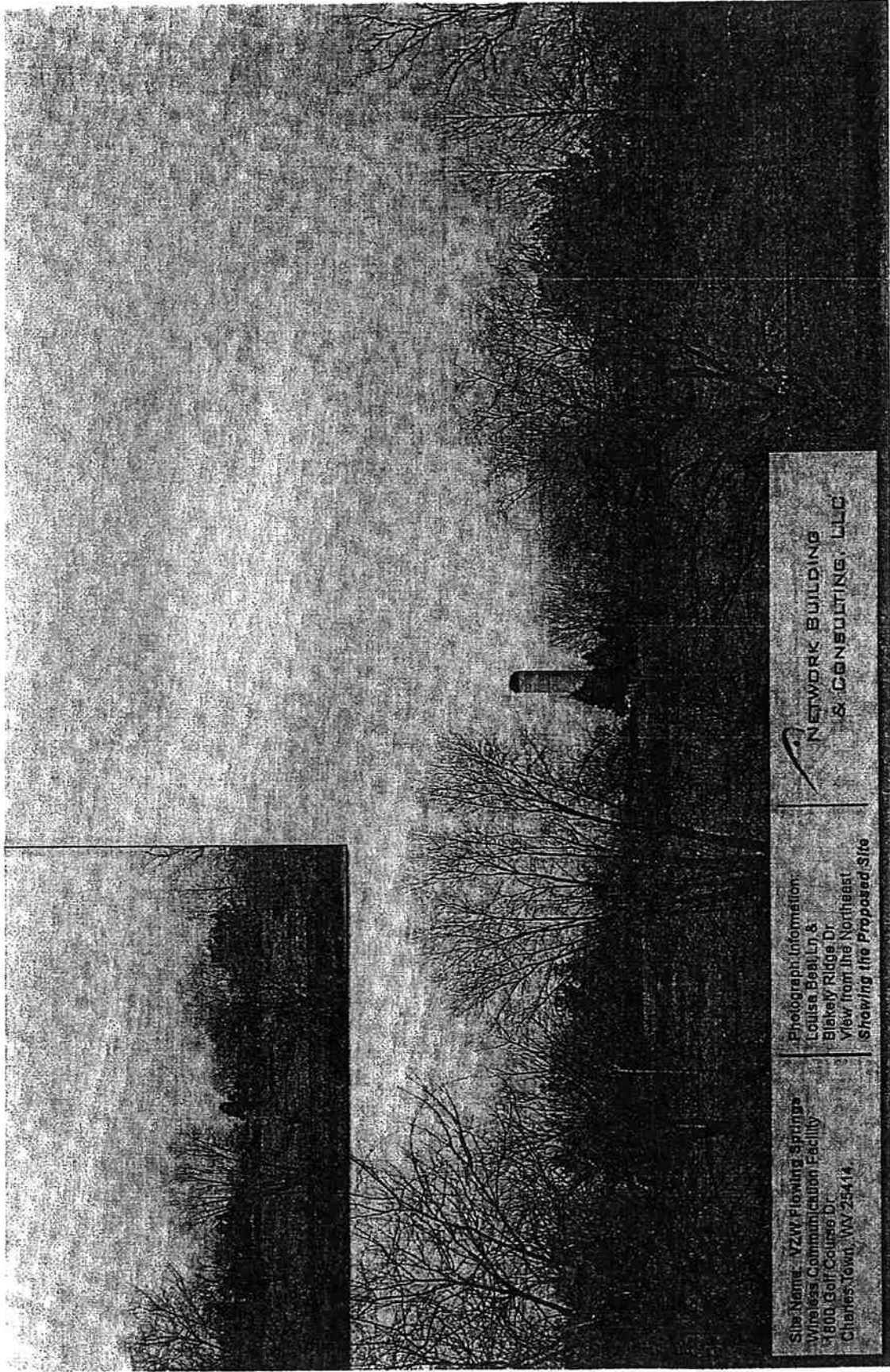
Please contact Stephanie Petway, Agent for Applicant (Verizon Wireless) if there are any questions, concerns or additional information is needed concerning this Conditional Use Permit filing:

Stephanie M. Petway
Network Building & Consulting
7380 Coca Cola Drive
Suite 106
Hanover, MD 21076
240-401-0907 (mobile)
spetway@nbcllc.com




**Location Map
Flowing Springs**

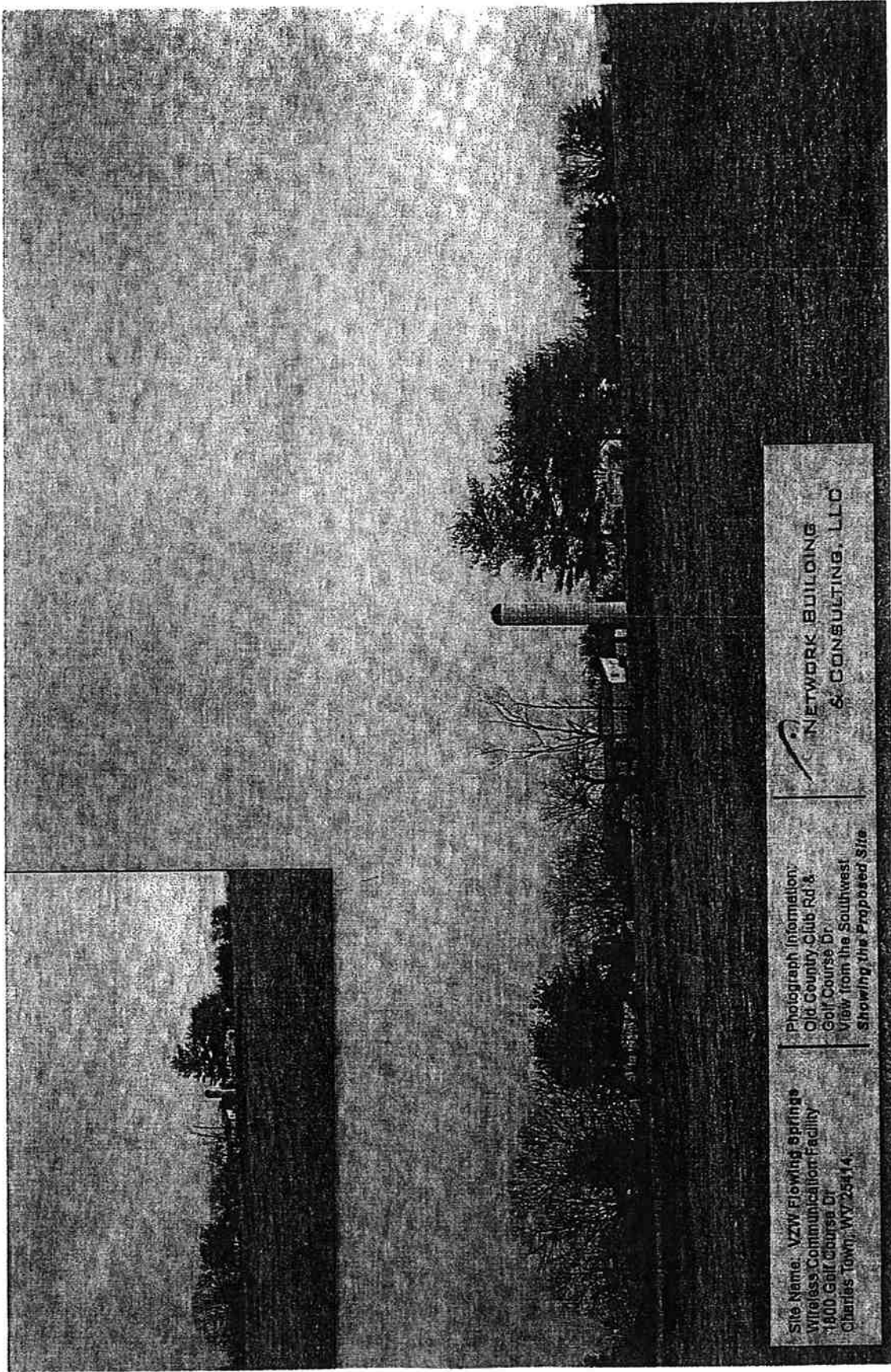
RECEIVED
 AUG 05 2009
 JEFFERSON COUNTY PLANNING
 ZONING & ENGINEERING



Site Name: VZW/Flowing Springs
Wireless Communication Facility
1800 Golf Course Dr.
Charles Town, WV 25414


Photograph Information:
Louisa Beach Ln &
Blakey Ridge Dr.
View from the Northeast
Showing the Proposed Site

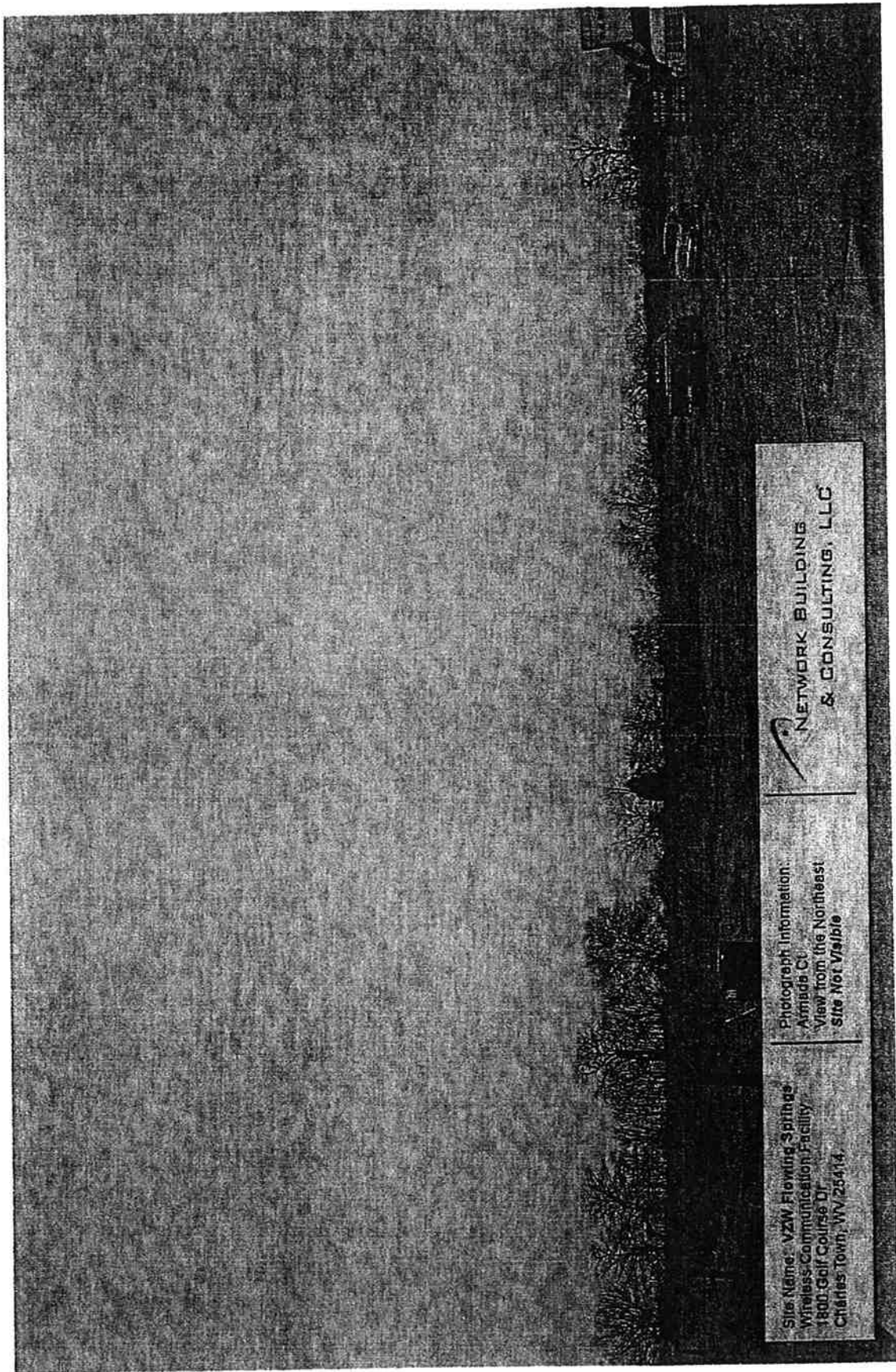
 NETWORK BUILDING
& CONSULTING, LLC



Site Name: VZW Flowing Springs
Wireless Communication Facility
1800 Golf Course Dr
Charles Town, WV 25414

Photograph Information:
Old Country Club Rd &
Golf Course Dr
View from the Southwest
Showing the Proposed Site

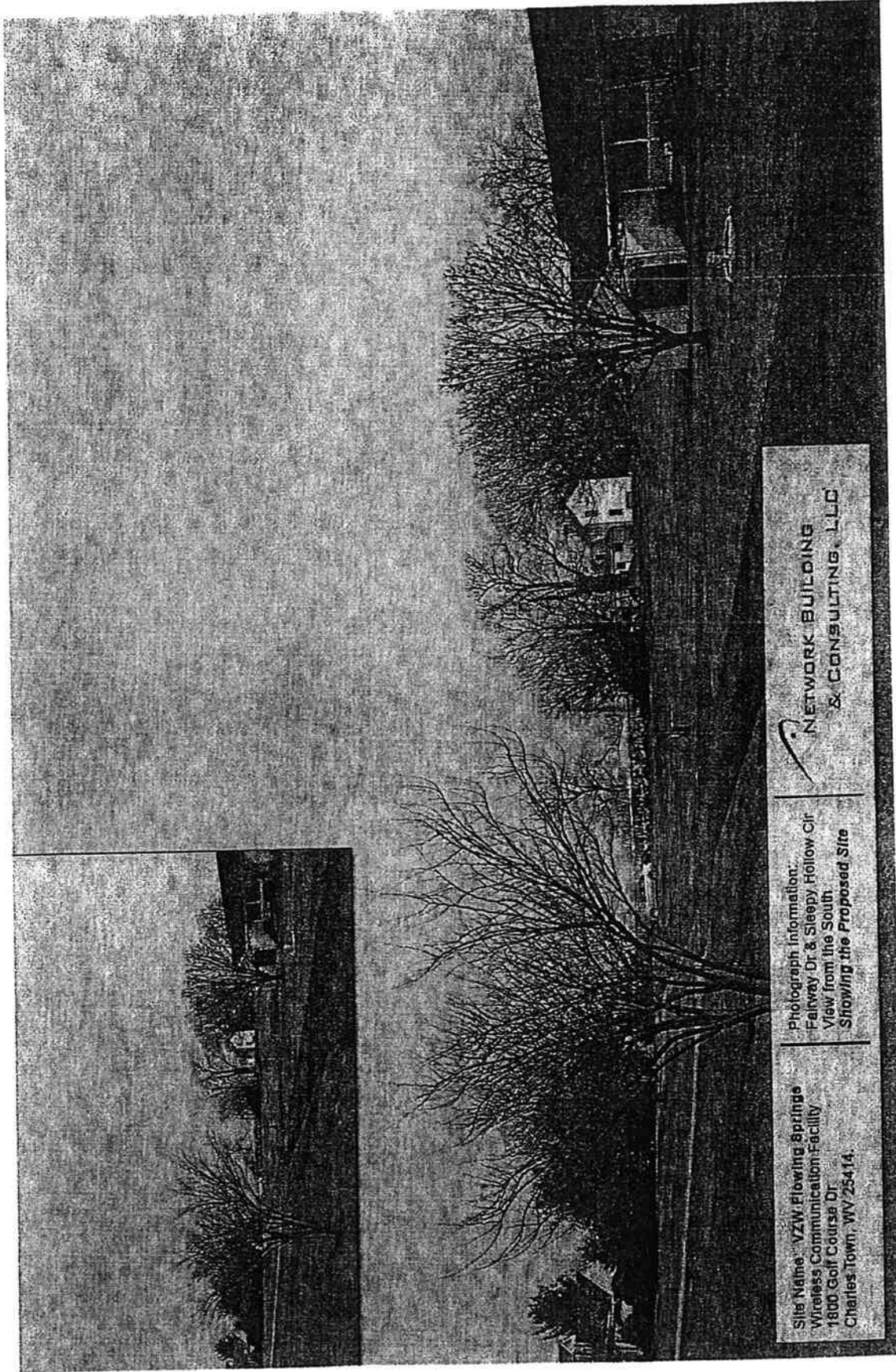
 NETWORK BUILDING
& CONSULTING, LLC

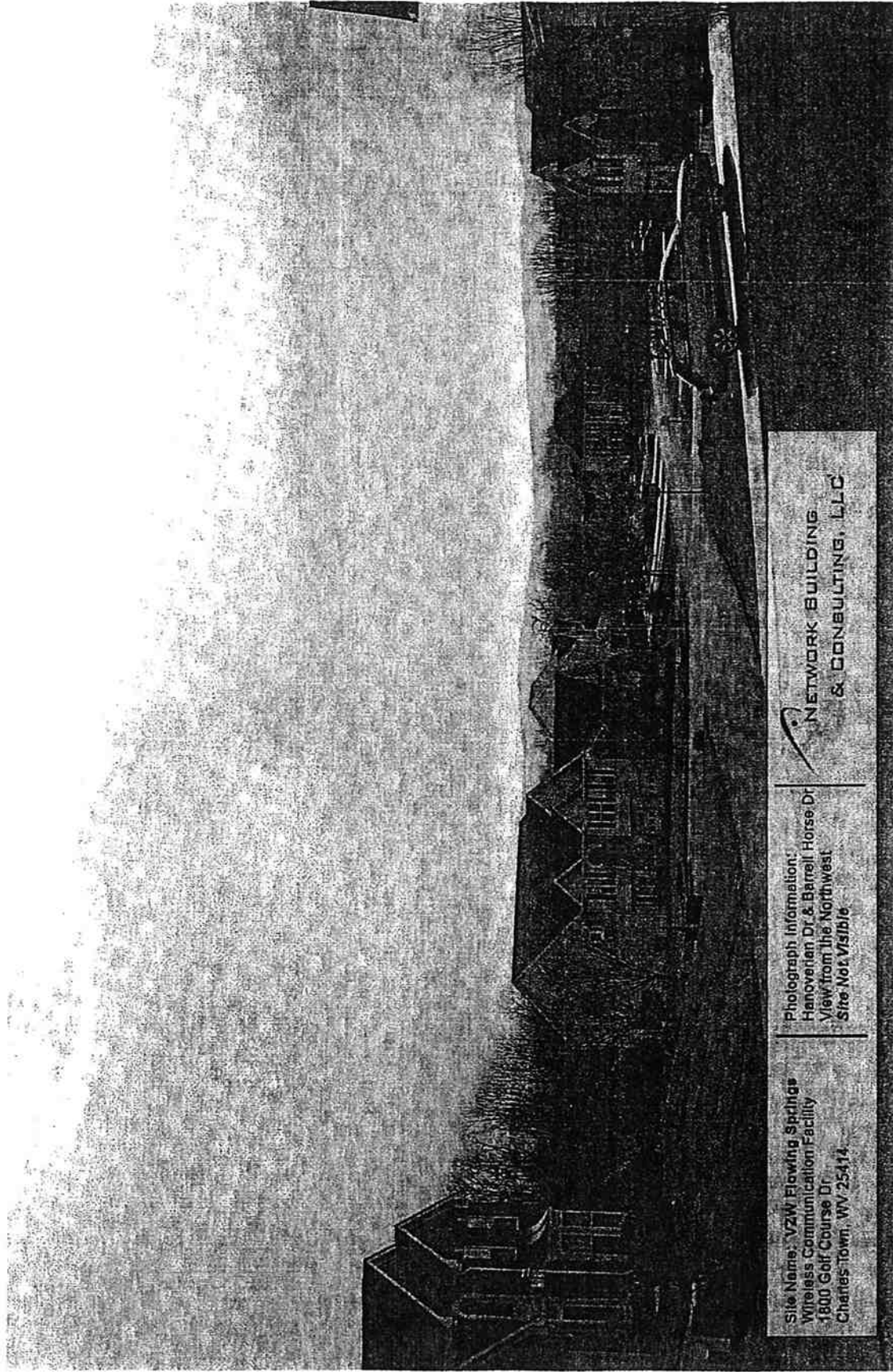


Site Name: VZW Flowing Springs
Wireless Communication Facility
1800 Golf Course Dr
Charles Town, WV 25414

Photograph Information:
Armada Ct
View from the Northeast
Site Not Visible

 NETWORK BUILDING
& CONSULTING, LLC





Site Name: VZW Flowing Springs
Wireless Communication Facility
1600 Golf Course Dr.
Charles Town, WV 25414

Photograph Information:
Hanoverian Dr. & Barrel Horse Dr.
View from the Northwest
Site Not Visible

 NETWORK BUILDING
& CONSULTING, LLC

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OCT 15 2009

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

In accordance with Article 4B Wireless Telecommunication Facilities (Amended by the Act of County Commission, effective July, 1998) of the Jefferson County, West Virginia's Zoning and Land Development Ordinance, the following responses demonstrate the proposed Verizon's Wireless' facility is compliance with Sections 4B.1 through 4B.

Section 4B.1 Site Plans

All general site plan standards are required to meet pursuant to Subdivision and Zoning Ordinance, particularly Section 11.3 of the Subdivision Ordinance. When other provision of any County Ordinance is in conflict with Section 11.3, the provisions Section 11.3 shall be controlling.

Response: The proposed facility shall be in compliance with all applicable sections of the Jefferson County West Virginia's Zoning and Subdivision Ordinance.

Section 4B.2 Fence

An 8 feet fence is required for each site. All wireless telecommunication towers, wireless telecommunication structures and wireless telecommunication facilities shall be enclosed in such fence.

Response: As shown on the attached plans, an eight (8) fence shall be placed around the proposed facility.

Section 4B.3 Setbacks

These setbacks shall apply in all zones. Setbacks shall be modified as part of the Conditional Use Permit process when such progress is required. These setbacks are for new towers only. Setback required in Section 4B.3 (a) can be accommodated on adjacent land by easement provided such land is used for agricultural purposes and provided all other standards are met.

- (a) Any wireless telecommunication tower shall be located at least the length of the height of such tower plus an additional 10 percent to any external property line

Response: N/A

- (b) All portions of wireless telecommunication towers, wireless telecommunications structures and wireless telecommunication facilities (excluding the required fence and guy wires) shall be minimum of 75 feet from the external property line.

Response: N/A.

- (c) Any setback required under 4B.3 can be accommodated by easement on adjacent properties.

Response: N/A

Section 4B.4 - Location

Wireless telecommunication antennas, towers, structures and facilities are permitted by right under certain circumstances and by Conditional Use Permit under other circumstances. In any event all other provisions of this Article shall apply.

- (a) N/A

(1) n/a

(2) n/a

- (c) In the Residential-Growth, Residential/Light Industrial/ Commercial and Village Districts wireless telecommunication antennas, wireless telecommunication equipment shelters and wireless telecommunication facilities are permitted only on or in existing structures and provided that they process successfully through the Development Review System (DRS) as outlined in Article 6 &7. The applicant does not have to process through the LESA Point portion of the process.

- (1) In addition to the support data required in Article 7 the developer shall also address the visual impact of the tower and any associated facilities as it relates to the natural and built environment of the surrounding area. This includes architecture, color, landscaping, lighting, materials, siting, topography, visual screening and height.

Response: The proposed facility will consist of adding 30 feet to an existing 51 feet silo, located on the property; 12 antennas will be mounted within the silo extension. Near the base of the silo, a 12'x20'x10' related equipment shelter along with a backup generator to be located on a separate 10'x 4' concrete pad will be located at the site, and eight feet board on board fenced will enclose the ground equipment from view.

The Verizon antennas will consist of six (6) antennas approximately 96.4"x 14.5"x 9.0" and six antennas approximately 47.4"x 4.1"x 5.9", in size. As shown on the attached plans, the placement of the proposed antennas will be mounted within the proposed 30 feet extension and will not be visible. The 30 feet extension will be designed to match the same material and coloring of the silo. Near the base of the silo, the proposed equipment shelter will match the color of the existing silo. The visual impact of the proposed facility been mitigated to blend with the natural environment of the surrounding area.

There will be no adverse impact to the use and development of the subject property or surrounding properties. The size, scale and density of this proposal will not adversely impact the character of the area and as proposed; Verizon has designed this site so that the visual impacts of the antennas and shelter have been minimized therefore no landscaping has been proposed for the facility.

(2) Standard site plan processing is required if Conditional Use Permit is issued.

Response: Verizon Wireless will submit and comply with all site plan review requirements for the proposed facility, if Conditional Use Permit is issued.

(3) Height of antenna and support structure cannot be higher than thirty (30) feet above existing structures.

Response: As shown on attached plans, an extension, not to extend 30 feet is proposed to be added to the existing silo, to accommodate and conceal Verizon Wireless' antennas.

Section 4B.5 Other Provisions

(a) The owner of the property shall dismantle the tower and all associated structures if not functioning antenna is attached to the towers for eighteen (18) consecutive months and restore the site as nearly as possible to pre-existing conditions

Response: Verizon Wireless, owner of the proposed telecommunication structure shall dismantle the facility (30 feet extension and antennas within silo) and all associated exterior structures, if the proposed facility is not in operation for 18 consecutive months and will restore site to nearly as possible to pre-existing conditions.

- (b) The applicant shall submit documentary evidence with all Federal Aviation Administration and Federal Communications Commission requirements

Response: As mandated by Verizon Wireless' FCC license, all FCC and FAA requirements for the proposed facility will be followed.

- (c) Any portions of the wireless telecommunication towers, structures and facilities that are below treeline and located within 300 feet of the Appalachian Trail shall be camouflaged to minimize the impact from the trail. The Planning Commission shall have final authority over the level of such camouflaging.

Response: Verizon Wireless proposed facility will be located within the silo extension and will not be visible. The proposed facility is not within 300 feet of the Appalachian Trail.

- (d) All towers shall be painted a non-contrasting gray or similar color minimizing its visibility unless otherwise required or requested by the Federal Communication Commission, Federal Aviation Administration, Jefferson County Planning Commission or the Conditional Use Permit.

Response: N/A

- (e) No advertising is permitted anywhere on the wireless telecommunications antennas, wireless telecommunication equipment shelters, wireless telecommunications facilities or wireless telecommunication towers.

Response: No advertising will be placed on the proposed telecommunication facility or related structures.

- (f) The utilization of an existing structure does not require the creation of a separate lot

Response: Verizon Wireless will be utilizing an existing structure (silo) for its facility.

- (g) Upon notification to the Planning Commission Office, operational temporary test towers/antennas may be erected for a period not exceeding 72 hours per parcel.

Response: N/A

- (h) Wireless telecommunication towers, excepting antennas, based within 250 vertical of the Blue Ridge Line shall not rise above the average tree canopy within a 100 foot radius of the proposed site.

The 250 vertical feet shall be measured by drawing a perpendicular line from the site to the Blue Ridge line. [AMENDED BY ACT OF THE COUNTY COMMISSION ON AUGUST 13, 1998]

Response: N/A

Section 4B.6 Vertical Height

The vertical height of any wireless telecommunication facility shall not exceed 199 feet measured on the basis provided by relevant Federal Aviation Administration and/or Federal Communication regulations.

Response: The proposed facility will be 81 feet in vertical height and will not require FAA approval.

SECTION 7.4 (d) SUPPORT DATA

- (1) Name address of owner/ developer:

**Response: Developer: Verizon Wireless
9000 Junction Drive
Annapolis Junction, Maryland 20701**

- (2) Name and address of contact person:

**Response: Stephanie M. Petway, Agent for Verizon Wireless
Network Building and Consulting
7380 Coca Cola Drive, Suite 106
Hanover, Maryland 21076**

- (3) Type of development proposed:
Response: Wireless Telecommunication Facility
- (4) Acreage of original tract and property to be developed:
Response: Original tract: 114 acres
Portion of area to be development by proposed use: 225 square feet
- (5) General description of surface conditions
Response: Surface conditions as described in contours shown on the site plan.
- (6) Soil and drainage characteristics:
Response: Please refer to soil report included with this report.
- (7) General location and description of existing structure:
Response: Existing 51 feet silo on existing Sleepy Hollow Golf Course property.
- (8) General location and description of existing easements or right-of- way
Response: Please refer to the site plan for the location of the 20' access easement and the 15' above ground utility easements on the golf course.
- (9) Existing covenants and restrictions on property.
Response: There are no existing covenants and restriction on property.
- (10) Intended improvements and proposed building location including location of signs.
Response: Please refer to drawings submitted with submission.
- (11) Intended land uses:
Responses: Wireless Telecommunication facility
- (12) Earth work that would alter topography.
Response: All earthwork is minor and will not alter the topography.
- (13) Tentative Development Schedule:
Response: Construction to start Spring-Summer of 2010.

- (14) Extent of conversion of farm land to urban uses.
Response: N/A
- (15) Effected wildlife population.
Response: None
- (16) Ground water and surface water and sewer lines within 1320 feet.
Response: A copy of soils report has been included with this filing, addressing the ground and surface water. Sewer lines within a quarter mile of the development are confined to the residential and public facilities on the golf course and the housing development to the SW of the golf course.
- (17) Distance to fire and emergency services that would serve this site:
Response: Fire and emergency services are supplied by the Independent Fire Company and are approximately 2.5 miles away, located at 200 West 2nd Ave. Ranson, WV, 24538
- (18) Distance to appropriate elementary, middle and high school.
Response: Distances to schools are approximately 2.8 miles or greater.

**Wright Denny Elementary School
209 West Congress Street
Charlestown, WV**

**Charlestown Junior High School
817 High Street
Charlestown, WV**

**Charlestown Middle School
193 High Street
Charlestown, WV**

**Washington High School
300 Washington Patriots Drive
Charlestown, WV**

- (19) Traffic characteristics- type and frequency of traffic; adequacy of existing transportation routes.
Response: The proposed facility will be unmanned and will only require periodic routine maintenance visits by one technician to the site, no more than 4-6 times per year and as required for emergencies. When visits are necessary to the site, the technician will arrive in SUV or small truck, the existing transportation routes will be adequate.
- (20) Demand for school services created by this development.
Response: None
- (21) Proximity and relationship to historic structure or property within two hundred (200) feet.
Response: According the National Register of Historic Places in Jefferson County, there are no historic structures within 200 feet.
- (22) Proximity to recreational facilities.
Response: Proposed wireless telecommunication facility is located on Sleepy Hollow Golf Course property.
- (23) Relationship of the project to the Comprehensive Plan:
Response: Verizon Wireless believes the proposed facility is consistent with the Comprehensive Plan ("Plan"). The location, character and extent of the application should be found in substantial accord with the Plan. By collocating on an existing structure and concealing the antennas from view, there should be little or no impact on existing or future development to the property or its surrounding area. The facility poses no encroachment on any existing easements or services, and the antenna mounting height is the minimum necessary to achieve the site's coverage and capacity goals and needs for the area, without constructing a new facility at the site.

ADJACENT AND CONFRONTING PROPERTY OWNERS

PARCEL 10A

Lot 10- Barry J and Kathy S. Wagner
890 Vistana Circle
Naples, Florida 34119

PARCEL 10

Lot 7- Sleepy Hollow Golf & Country Club, Inc.
P.O. Box 290
Charlestown, WV 25414

Lot 6.1- ^{Bellair} Bellair Homes LLC
5283 Corporate Drive
Suite 300
Frederick, MD 21703

Lot 6.2- William Preston Peacock, Jr.
P.O. Box 134
Charlestown, WV 25414

Lot 4- Bellair Homes, LLC
5283 Corporate Drive
Suite 300
Charlestown, WV 25414 - Frederick MD 21703

Lot 8.6 - William D. Rinker
3735 Chestnut Hill Road
Harper's Ferry WV 25425

PARCEL 11B

Lot 1- Marshall and Laura M. Glenn
P.O. Box 290
Charlestown, WV 25414

Lot 21- James S. Glenn
P.O. Box 290
Charlestown, WVA 25414

Lot 20- Floyd R and Norma J. Wilt
259 Fairway Drive
Charlestown, WV 25414

Lot 22 Clifton N. and Sandra S. Peacher
228 Fairway Drive
Charlestown, WV 25414

209-02

Geotechnical Engineering Study
Flowing Springs Silo/Tower
Charles Town, West Virginia
FTG Job No. F08051

RECEIVED
OCT 15 2009
JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING



Prepared For:

T. L. Barr
Telecom Division Chief
TAI Engineers, Managers, Technical Services
11459 Cronhill Drive, Suite A
Owings Mills, MD 21117

October 24, 2008

T. L. Barr
Telecom Division Chief
TAI Engineers, Managers, Technical Services
11459 Cronhill Drive, Suite A
Owings Mills, MD 21117



Re: Geotechnical Engineering Study
Tower Site Retrofit
Flowing Springs
Charles Town, West Virginia
FTG Job No. F08051

Gentlemen:

Foundation Test Group, Inc. (FTG, Inc.) is pleased to submit this report concerning the subsurface exploration and subsequent geotechnical evaluation for the Retrofit Tower located in Charles Town, West Virginia.

The following report discusses the characteristics of the project and the subsurface exploration procedures, describes existing site and subsurface conditions, and presents evaluations and recommendations relevant to the geotechnical engineering considerations for the project.

The project characteristics formed the basis for our recommendations; therefore, if the project characteristics are different from those outlined herein or are changed during further project development, this Office should be notified as the evaluations and recommendations may no longer be valid.

We wish to advise you that the soil samples will be stored at our Finksburg, MD office for a period of 30 days from the date of this letter. Should you wish the samples to be stored for a longer period of time or to be delivered to you or another party, please advise us in writing prior to the end of the 30-day period. Otherwise, the samples will be discarded at the end of the 30-day period.

FTG, Inc. appreciates having had the opportunity to provide the geotechnical consultation for this project, and we will remain available for further consultation during the various design stages. In order to provide complete professional services, we strongly recommend that inspection of the geotechnical aspects of construction be conducted by FTG, Inc. This will help to verify that the construction operations are performed in accordance with the design assumptions and recommendations of this report and the overall project plans and specifications. Should you have any questions concerning the contents of this report, or require additional consultation, design, inspection, or testing services, please contact our Office at (410)517-0715.

Very truly yours,
for **Foundation Test Group, INC.**

Jeffrey W. Goodwin, P.E.



TABLE OF CONTENTS

LETTER OF TRANSMITTAL.....	i
1.0 PURPOSE AND SCOPE	1
2.0 PROJECT CHARACTERISTICS.....	2
3.0 FIELD EXPLORATION	2
4.0 SUBSURFACE CONDITIONS	3
4.1 Site Geology	3
4.2 Surficial Materials	4
4.3 Natural Soils	4
4.4 Decomposed Rock.....	4
4.5 Groundwater.....	5
5.0 EVALUATIONS AND RECOMMENDATIONS	5
5.1 General Site Preparation	5
5.2 Fill Selection, Placement and Compaction	5
5.3 Foundations.....	6
5.3b Out-Structures.....	8
5.4 Ground-Supported Slabs.....	9
5.5 Groundwater.....	10
6.0 RECOMMENDED ADDITIONAL SERVICES.....	10
7.0 REMARKS.....	11
APPENDIX	



1.0 PURPOSE AND SCOPE

The purpose of this study was to determine the general subsurface conditions at the site and to evaluate those conditions with respect to support of the proposed self supporting tower. More precisely, the scope of the study included the following objectives:

1. To determine the existing subsurface conditions, including the soil and groundwater conditions, within the area of the existing construction.
2. To recommend the appropriate foundation system for the support of the proposed structure along with necessary design criteria.
3. To determine and discuss any likely geotechnical-related design or construction problems.

The evaluations and recommendations presented in this report were developed from an analysis of project characteristics and an interpretation of the general subsurface conditions at the site based on the pit information. The stratification lines indicated on the test pit logs represent the approximate boundaries between soil types. In-situ, however, the transitions may be gradual. Such variations can best be evaluated during construction and, if necessary, any minor design changes can be made at that time.

An evaluation of the site with respect to potential construction problems and recommendations dealing with the earthwork and inspection during construction are also included. The inspection is considered necessary to verify the subsurface conditions and to verify that the soils-related construction phases are performed properly.

The Appendix contains a summary of the field and laboratory work on which this report is based.



2.0 PROJECT CHARACTERISTICS

The project site is located at the existing 51 ft tall concrete silo, adjacent to the 18th fairway at the above referenced site, as shown on the Project Location Map (Figure 2) in the Appendix.

Based on the information provided by the client, we understand that the structure will be extended to a height of 81 ft. to contain a cellular tower transmitter/receiver, along with associated out-structures, utilities and gravel access roads.

3.0 FIELD EXPLORATION

To determine the general foundation soil types and to develop design parameters, four soil test pits were excavated at the site. The approximate test pit locations are shown on the Test Pit Location Plan (Figure 1) in the Appendix.

Test Pits were excavated to determine the depth to the bottom of the silo footing, dimensions of the footing and the bearing material encountered at footing grade

Representative portions of each soil sample were placed in glass jars and transported to FTG, Inc.'s laboratory. In the laboratory, the samples were visually examined by the Geotechnical Engineer to verify the driller's field classifications. The samples were classified in accordance with the Unified Soil Classification System and the field classifications were revised where necessary. The Unified Soil Classification Symbols appear on the Records of Soil Exploration and the system nomenclature is briefly described in the Appendix.

4.0 SUBSURFACE CONDITIONS

Details of the subsurface conditions encountered at the site are shown on the Records of Soil Exploration. A brief description of the subsurface conditions and pertinent engineering characteristics of the soils are given below.

Strata divisions shown on the Records of Soil Exploration have been estimated based on visual examinations of the recovered pit samples. In the field, strata changes could occur gradually and/or at slightly different levels than indicated.



Also, groundwater conditions indicated on the Records of Soil Exploration are those observed during the period of the subsurface exploration. Fluctuations in groundwater levels could occur seasonally and might also be influenced by changes in grading, runoff and infiltration rates, and other influencing factors.

Generalized subsurface conditions based on the results of the pits are discussed below:

4.1 Site Geology

The Geologic Map of the Berryville, Charlestown, Harpers Ferry, Middleway and Roundway Quadrangles, West Virginia 1990 shows that the project site is located in the of the Eastern Piedmont Region. The surficial soils in the Piedmont region are residual soils that have been derived in place from weathering and chemical decomposition of parent rock materials from the Elbrook Formation.

The project site appears to be located in an area where the parent rock materials are generally limestone. Of the area limestones, the Elbrook Formation has a generally lower incidence of sinkhole activity

4.2 Surficial Materials

The test pits were excavated at four locations around the perimeter of the silo (Figure 1). Topsoil thickness should be expected to vary across the site. Therefore, the topsoil thicknesses noted on the log should not be used to estimate topsoil quantities at the site. At the location, no fill materials were encountered.

4.3 Natural Soils

The natural soils encountered in the test pits were residual soils, typical of the materials common to the project area from a depth below the surficial topsoil to a depth of 3 ft.. The soils encountered at the site typically consisted of silty or sandy Clay (CL) with rock fragments.

4.4 Decomposed Rock

Decomposed rock was not encountered in the test pits.



4.5 Groundwater

Groundwater was not encountered in the test.

A more accurate determination of the hydrostatic water table would require the installation of perforated pipes or piezometers, which could be monitored over an extended period of time. The actual level of the hydrostatic water table should be anticipated to fluctuate throughout the year, depending on variations in precipitation, surface run-off, infiltration, site topography, and drainage.

5.0 EVALUATIONS AND RECOMMENDATIONS

Our findings indicate that the site has anticipated loads for the tower of 3500 psf. As such, a lowered shallow spread footing may be used

The following recommendations have been developed on the basis of the previously described project characteristics and subsurface conditions. If there are any changes to the project characteristics or if different subsurface conditions are encountered during construction, FTG, Inc. should be consulted so that the recommendations of this report can be reviewed.

5.1 General Site Preparation

The initial step in the development of this site should be the controlled removal of topsoil, wet, soft or loose soils; and any other deleterious materials. These operations should be performed in a manner consistent with good erosion and sediment control practices.

After the initial stripping process is completed, areas of the site to receive fill, or areas of the site at-grade where out-structures will be located, should be proofrolled. The proofrolling operations should be performed using a 20-ton, fully-loaded dump truck or another pneumatic-tire vehicle of similar size and weight. The purpose of the proofrolling will be to provide surficial densification and to locate any near-surface pockets of soft or loose soils requiring undercutting. A Geotechnical Engineer or experienced Soils Inspector from our office should witness the proofrolling operations and should determine which areas need further undercutting and/or stabilization.



5.2 Fill Selection, Placement and Compaction

All material to be used as fill or backfill should be inspected, tested and approved by the Geotechnical Engineer. In general, the on-site soils with a Unified Soil Classification of CL or better, which are free from organic and other deleterious components can be re-used as general site fill.

We must point out, however, that using the on-site soils or importing similar materials may present placement and compaction problems for the contractor if the moisture contents of the materials are not carefully controlled or if heavy concentrated wheel loads are applied to the surface of the soils. The fine-grained nature of many of the soils encountered on-site will make them sensitive to heavy dynamic loads and to increases in moisture content beyond their "optimum" value. Traffic from the various equipment may create pumping and a general deterioration of the soils. As a result, the backfill (or at-grade natural material) may have to be removed and properly re-compacted or replaced. It is our recommendation that the contractor be fully advised of these potential problems. Additionally, the contractor should not permit water to pond on the site. Exposed subgrades should be sloped and sealed at all times to facilitate rainfall runoff.

Moisture conditioning (that is, wetting or drying) of the soils should be anticipated to achieve proper compaction. Our experience has been that drying of the soils is required more often than wetting of the soils; therefore, a drier season of the year, such as late spring through early fall, would be the preferable part of the year for fill construction. In any case, the Contractor should be aware that drying of the soils may be required. The moisture contents of the soils should be controlled properly to avoid extensive construction delays. If imported fill material is required, those materials should have Unified Soil Classifications of SM or better.

All fill should be placed in relatively horizontal 8-inch (maximum) loose lifts and should be compacted to a minimum of 95 percent of the Modified Proctor (ASTM D-1557) maximum dry density. Fill materials in landscape and other non-structural areas should be compacted to at least 92 percent of the Modified Proctor maximum dry density if significant subsidence of the fill under its own weight is to be avoided. Field moisture contents should be maintained within 2 percentage points of the optimum moisture content in order to provide adequate compaction.



5.3 Foundations

The existing silo is constructed on a shallow foundation at a depth of 12-inches below exterior grade. The slab itself for the base of the silo appears to be about 29-inches thick, (12-inches below grade, 17-inches above grade). At the existing bottom of footing (slab?) grade, soils capable of carrying a soil bearing pressure of 3,500 psf were encountered.

In order to carry the loads of the extended silo, the footings need to be lowered to a depth of 3.0 ft below grade for frost protection. Underpinning will be required to lower the footings. We recommend that no more than 4 continuous feet of footing be excavated at any given location with no more than 3 pits total open around the perimeter of the silo at any time

Footings should be a minimum of 24 inches wide and be reinforced to prevent shearing. For the silo, an assigned soil bearing pressure of 3,500 psf may be used to design the footing dimensions.

5.3b Out-Structures

Our findings indicate that the proposed out-structures can be supported on a floating slab bearing on firm natural soils, on new-engineered fill placed over natural soils or on a combination thereof. Based on the structural loads provided, the maximum allowable settlement, and the general soil conditions which were encountered, it is our judgment that a net allowable design soil bearing pressure of **2500 psf** will be appropriate for proportioning foundations to be supported on firm, natural soils or on structural fill placed over firm, natural soils.

Based upon the test pit data, we anticipate that suitable natural soils will be encountered approximately 3.0 feet below existing grade.

Foundation excavations should be inspected by a Geotechnical Engineer or experienced Soils Inspector prior to the placement of concrete. The purpose of the inspection would be to verify that the exposed materials will be capable of supporting the design bearing pressure. If soft or loose pockets are encountered in the excavations, the unsuitable materials should be removed and the footings should be located at a lower elevation. Alternatively, the unsuitable materials could be undercut and replaced with either new fill placed and compacted in accordance with the recommendations of Sections 5.1 and 5.2 or with lean (2000 psi) concrete.



Exterior footings in unheated areas should be located at a depth of at least 3.0 ft. below final exterior grades so as to provide adequate protection from frost heave. Spread footings should be at least 18-inch wide and should be reinforced to account for minor variations in the bearing subgrade.

5.4 Ground-Supported Slabs

Floor slabs should be supported on approved, firm natural soils, or re-compacted fill. The slab subgrade should be prepared in accordance with the procedures outlined in Sections 5.1 and 5.2 of this report. In particular, the slab subgrade should be heavily proofrolled to delineate any soft or loose areas requiring undercutting and/or stabilization.

It is recommended that the slab be directly supported on a minimum 4-inch layer of clean granular materials such as washed sand, clean sand and gravel, or screened, crushed stone. These materials will require acquisition from an off-site source. A suitable moisture/vapor barrier (that is, polyethylene sheeting) should also be provided. These procedures will provide a moisture break that will help to prevent capillary rise, dampness of the floor slabs and also help to cure the slab concrete. It is also recommended that construction joints on the slab surface and isolation joints between the slab and structural walls be provided (such that the slab would be ground-supported).

5.5 Groundwater and Drainage

As detailed in Section 4.5 of this report, it is anticipated that groundwater will not cause any anticipated construction problems for shallow structures. Any water infiltration resulting from precipitation, surface run-off, or perched water should be able to be controlled by means of sump pits and pumps. If any conditions are encountered which cannot be handled in such a manner, this office should be consulted.

Adequate drainage should be provided at the site to minimize any increases in the moisture contents of the foundation soils. All pavement or parking areas should be sloped away from the structure to prevent the ponding of water. The site drainage should also be such that run-off onto adjacent properties is controlled properly.



6.0 RECOMMENDED ADDITIONAL SERVICES

Additional soil and foundation engineering, testing, and consulting services recommended for this project are summarized below:

Fill Placement and Compaction: A Geotechnical Engineer or experienced Soils Inspector from our office should witness any required filling operations and should take sufficient in-place density tests to verify that the specified degree of fill compaction is achieved. They should observe and approve borrow materials used and should determine if their existing moisture contents are suitable.

Foundation Excavation Inspection: A Geotechnical Engineer or experienced Soils Inspector from our office should inspect the foundation excavations. They should verify that the drilled extend to a suitable bearing material.

7.0 REMARKS

This report has been prepared to aid in the evaluation of the site for the design of the new structure. It is considered that adequate recommendations have been provided to serve as a basis for design and preparation of plans and specifications. Additional recommendations can be provided as needed.

These analyses and recommendations are, of necessity, based on the information made available to us at the time of the actual writing of the report and the on-site conditions, surface and subsurface, that existed at the time the exploratory pits were drilled. Further assumption has been made that the limited exploratory pits, in relation both to the areal extent of the site and to depth, are representative of conditions across the site.



If subsurface conditions are encountered which differ from those reported herein, this Office should be notified immediately so that the analyses and recommendations can be reviewed and/or revised as necessary. It is also recommended that:

1. We be given the opportunity to review any plans and specifications in order to comment on the interaction of the soil conditions as described herein and the design requirements.
2. A Geotechnical Engineer or experienced Soils Inspector be present at the site during the construction phase to verify installation according to the approved plans and specifications. This is particularly important during excavation, placement, and compaction of fill materials.

Our professional services have been performed, our findings obtained, and our recommendations prepared in accordance with generally accepted engineering principles and practices. This warranty is in lieu of all other warranties either implied or expressed. Foundation Test Group, Inc. assumes no responsibility for interpretations made by others based on work or recommendations made by FTG.



APPENDIX

Figure 1: Test Pit Location Plan

Figure 2: Project Location Map

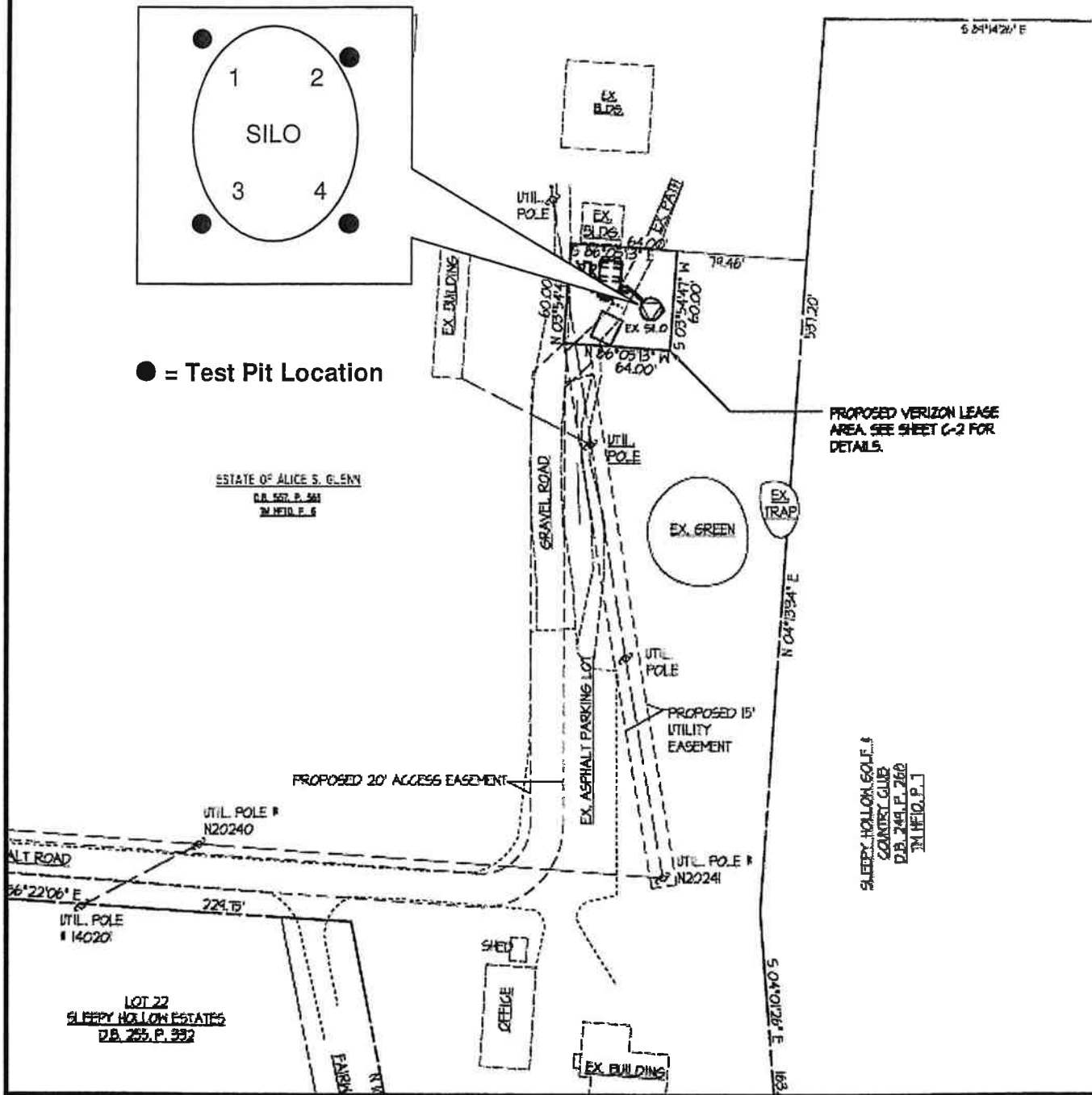
Figure 3: Project Aerial Survey

Description of Soils per ASTM-D2487

Records of Soil Exploration



Test Pit Location Plan



● = Test Pit Location

ESTATE OF ALICE S. GLENY
D.B. 567, P. 541
IN H&O, P. 6

PROPOSED VERIZON LEASE AREA. SEE SHEET G-2 FOR DETAILS.

SLEEPY HOLLOW GOLF & COUNTRY CLUB
D.B. 249, P. 260
IN H&O, P. 1



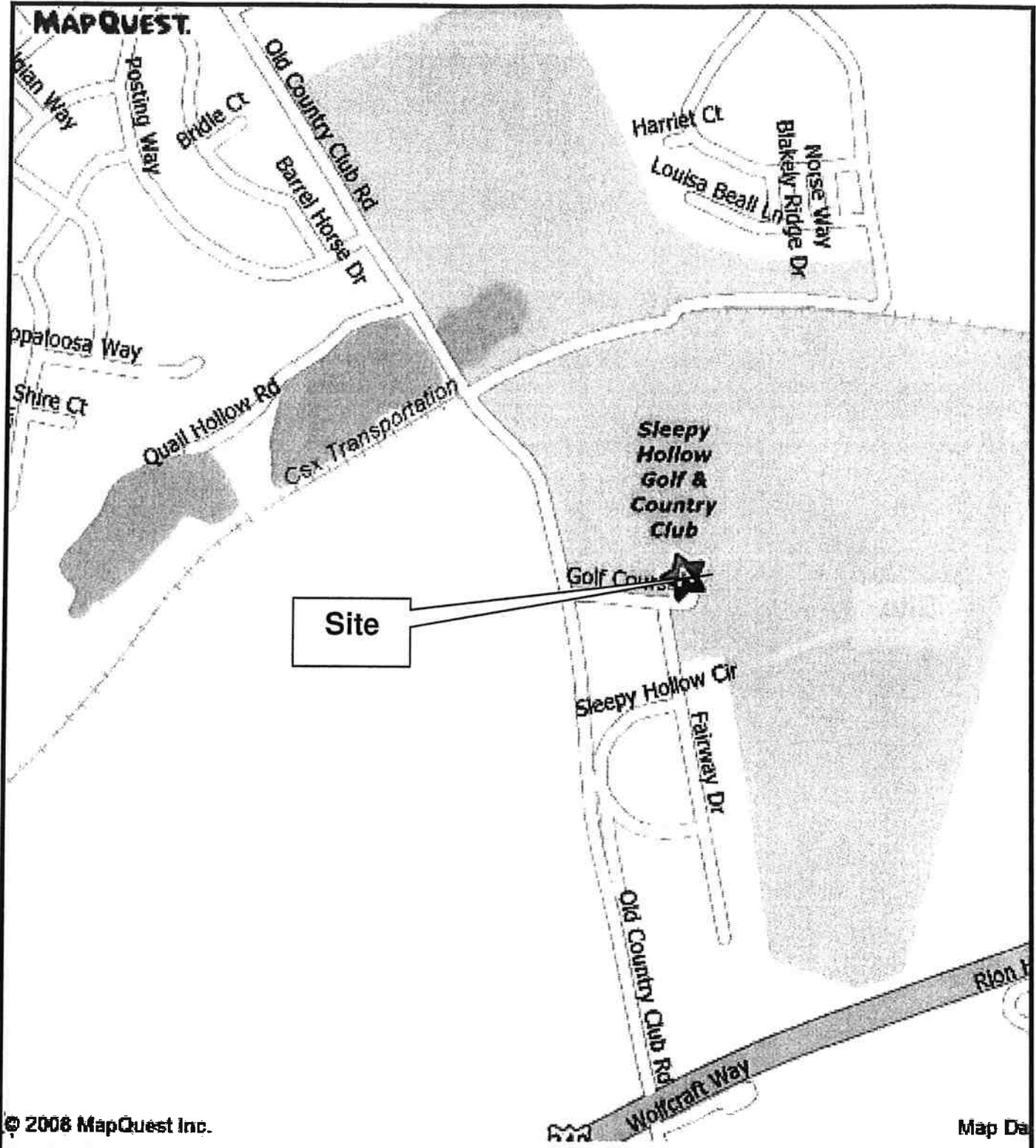
FOUNDATION TEST GROUP

Test Pit Location Plan

Flowing Springs
Site Retrofit Tower
1800 Golf Course Lane
Charles Town, West Virginia
FTG Project No.: F08051

2601 Emory Road, Bldg 1-A, Finksburg, Maryland 21048
Phone: (410)517-0715 • Fax: (410)517-0716

Figure No. : 1



FOUNDATION TEST GROUP

Site Vicinity Map
 Flowing Springs
 Site Retrofit Tower
 1800 Golf Course Lane
 Charles Town, West Virginia
 FTG Project No.: F08051

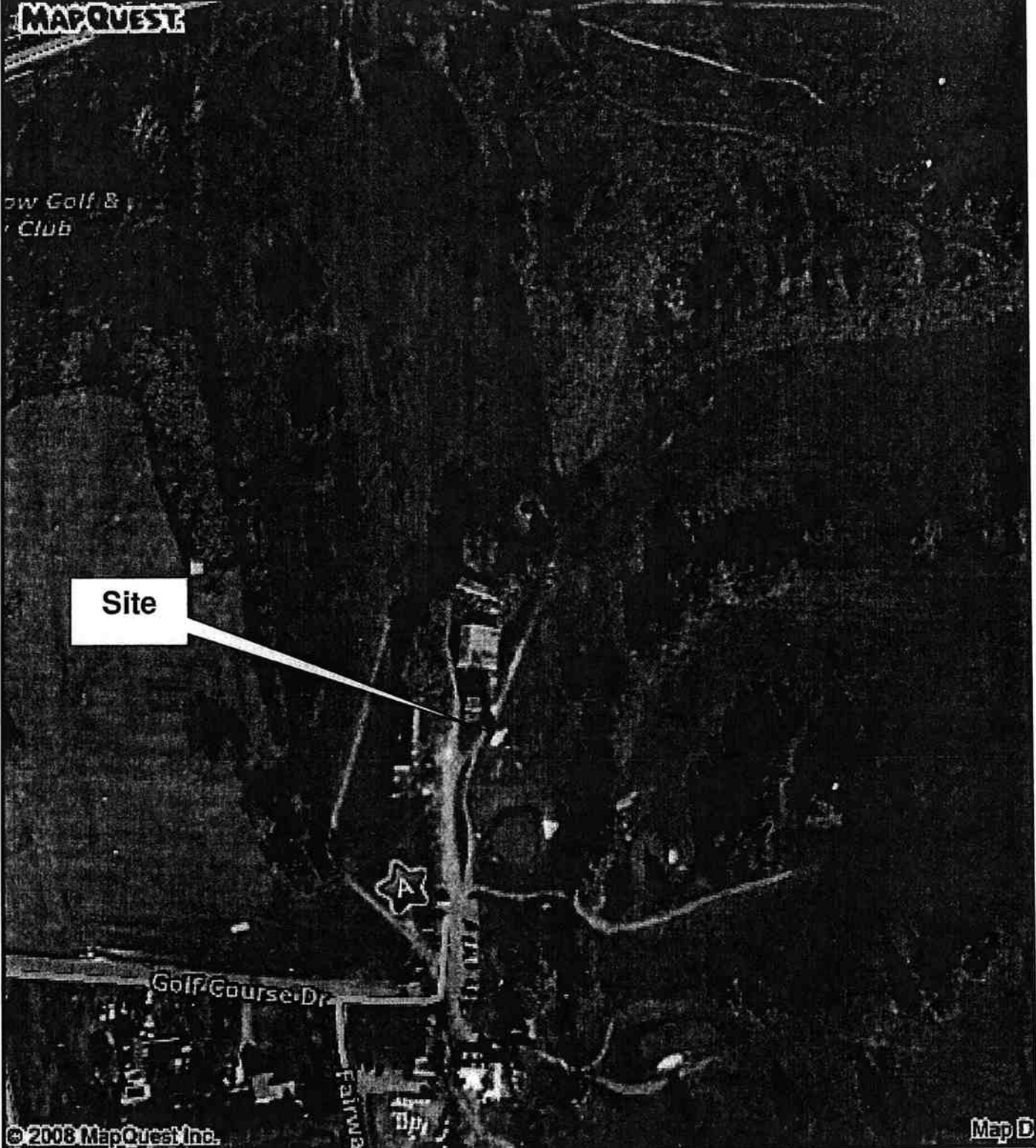
2601 Emory Road, Bldg 1-A, Finksburg, Maryland 21048
 Phone: (410)517-0715 • Fax: (410)517-0716

©Mapquest.com 2008
Figure No. : 2

MAPQUEST

ow Golf &
Club

Site



© 2008 MapQuest Inc.

Map D



FOUNDATION TEST GROUP

Site Aerial Photograph

Flowing Springs
Site Retrofit Tower
1800 Golf Course Lane
Charles Town, West Virginia
FTG Project No.: F08051

2601 Emory Road, Bldg 1-A, Finksburg, Maryland 21048
Phone: (410)517-0715 • Fax: (410)517-0716

©Mapquest.com 2008
Figure No. : 3



FOUNDATION TEST GROUP, INC.

2601 Emory Road, Building 1-A • P.O. Box 242 • Finksburg, Maryland 21048
(410) 517-0715 • FAX (410) 517-0716

Description of Soils – per ASTM D2487

Major Component	Component Type	Component Description	Symbol	Group Name
Coarse-Grained Soils, More than 50% is retained on the No. 200 sieve	Gravels – More than 50% of the coarse fraction is retained on the No. 4 sieve. Coarse = 1" to 3" Medium = 1/2" to 1" Fine = 1/4" to 1/2"	Clean Gravels <5% Passing No. 200 sieve	GW	Well Graded Gravel
			GP	Poorly Graded Gravel
		Gravels with fines, >12% Passing the No. 200 sieve	GM	Silty Gravel
			GC	Clayey Gravel
	Sands – More than 50% of the coarse fraction passes the No. 4 sieve. Coarse = No. 10 to No. 4 Medium = No. 10 to No. 40 Fine = No. 40 to No. 200	Clean Sands <5% Passing No. 200 sieve	SW	Well Graded Sand
			SP	Poorly Graded Sand
		Sands with fines, >12% Passing the No. 200 sieve	SM	Silty Sand
			SC	Clayey Sand
Fine Grained Soils, More than 50% passes the No. 200 sieve	Silts and Clays Liquid Limit is less than 50 Low to medium plasticity	Inorganic	ML	Silt
			CL	Lean Clay
		Organic	OL	Organic silt
				Organic Clay
	Silts and Clays Liquid Limit of 50 or greater Medium to high plasticity	Inorganic	MH	Elastic Silt
			CH	Fat Clay
		Organic	OH	Organic Silt
				Organic Clay
Highly Organic Soils	Primarily Organic matter, dark color, organic odor		PT	Peat

Proportions of Soil Components

Component Form	Description	Approximate percent by weight
Noun	Sand, Gravel, Silt, Clay, etc.	50% or more
Adjective	Sandy, silty, clayey, etc.	35% to 49%
Some	Some sand, some silt, etc.	12% to 34%
Trace	Trace sand, trace mica, etc.	1% to 11%
With	With sand, with mica, etc.	Presence only

Particle Size Identification

Particle Size	Particle dimension
Boulder	12" diameter or more
Cobble	3" to 12" diameter
Gravel	1/4" to 3" diameter
Sand	0.005" to 1/4" diameter
Silt/Clay (fines)	Cannot see particle

Cohesive Soils

Field Description	No. of SPT Blows/ft	Consistency
Easily Molded in Hands	0 – 3	Very Soft
Easily penetrated several inches by thumb	4 – 5	Soft
Penetrated by thumb with moderate effort	6 – 10	Medium
Penetrated by thumb with great effort	11 – 30	Stiff
Indented by thumb only with great effort	Greater than 30	Hard

Granular Soils

No. of SPT Blows/ft	Relative Density
0 – 4	Very Loose
5 – 10	Loose
11 – 30	Medium Dense
31 – 50	Dense
Greater than 50	Very Dense

Other Definitions:

- **Fill:** Encountered soils that were placed by man. Fill soils may be controlled (engineered structural fill) or uncontrolled fills that may contain rubble and/or debris.
- **Saprolite:** Soil material derived from the in-place chemical and physical weathering of the parent rock material. May contain relic structure. Also called residual soils. Occurs in Piedmont soils, found west of the fall line.
- **Disintegrated Rock:** Residual soil material with rock-like properties, very dense, N = 60 to 51/0".
- **Karst:** Descriptive term which denotes the potential for solutioning of the limestone rock and the development of sinkholes.
- **Alluvium:** Recently deposited soils placed by water action, typically stream or river floodplain soils.
- **Groundwater Level:** Depth within borehole where water is encountered either during drilling, or after a set period of time to allow groundwater conditions to reach equilibrium.
- **Caved Depth:** Depth at which borehole collapsed after removal of augers/casing. Indicative of loose soils and/or groundwater conditions.

**FOUNDATION TEST GROUP, INC.**

2601 Emory Road, Building 1-A, P.O. Box 242
Finksburg, Maryland 21048
(410) 517-0715 FAX (410) 517-0716

Daily Report**No.: 1****Date: 10/20/08**

Project: <u>Flowing Spirings</u>	FTG Representative: <u>J. Beever</u>
Project No.: <u>F08051</u>	Client: <u>TAI</u>
Location: <u>Charlestown, WV</u>	Weather/Temp.: <u>Sunny 75</u>

Test Pit 1:

0-4" topsoil
4"-24" Sandy Clay (CL) with rock fragments
Bottom of footing at 12" below grade
Footing projection 4" outside of silo wall
No water encountered

Test Pit 2:

0-4" topsoil
4"-36" Sandy Clay (CL) with rock fragments
Bottom of footing at 12" below grade
Footing projection 4" outside of silo wall
No water encountered

Test Pit 3:

0-4" topsoil
4"-24" Sandy Clay (CL) with rock fragments
Bottom of footing at 12" below grade
Footing projection 4" outside of silo wall
No water encountered

Test Pit 4:

0-4" topsoil
4"-24" Sandy Clay (CL) with rock fragments
Bottom of footing at 12" below grade
Footing projection 4" outside of silo wall
No water encountered

Staff Report
 Jefferson County Planning Commission Meeting
 January 12, 2009

Verizon Wireless Flowing Spring Telecommunication Facility File # Z09-02

Item #6: Request by Verizon Wireless for a Conditional Use Permit for a wireless telecommunication facility to reside within an existing silo located on Sleepy Hollow Golf Course & Country Club. Zoning Ordinance, Article 4B, Section 4B.4(c).

APPLICANT:	Verizon Wireless
OWNER:	Estate of Alice S. Glen, Marshall Glenn, II
DEVELOPER:	Verizon Wireless
SURVEYOR/ENGINEER:	TAI Engineering
PROPERTY LOCATION:	The property is located on the east side of County Club Rd. (Rt. 24) on Golf Course Dr. in Sleepy Hollow Golf Course & Country Club. It is approx. 0.46 miles from the intersection of Route 24 and Route 340.
LEGAL DESCRIPTION:	District: Harpers Ferry; Map: 10; Parcels: 6
ZONING DISTRICT:	Residential Growth
SURROUNDING PROPERTIES:	North: RG South: R-LI-C/RG East: R-LI-C/RG West: RG
LOT AREA:	Site area: 3,840 sq. ft.; Total acreage: 114 acres

Staff Report
Jefferson County Planning Commission Meeting
January 12, 2009

Verizon Wireless Flowing Spring Telecommunication Facility File # Z09-02

The proposed project will add 30 feet to an existing silo located on the Sleepy Hollow Golf Course. Twelve antennas will be mounted on the tower inside the silo extension. The locating of a wireless telecommunication facility within an existing structure is a requirement of Zoning Ordinance Section 4B.4(c).

Per Article 4B of the Zoning Ordinance, the first step in the Condition Use Permit (CUP) process for telecommunication facilities in the Residential Growth district is a neighborhood compatibility meeting (NCM). This meeting was scheduled for December 2, 2009. It was advertised in the Spirit of Jefferson on November 19, 2009. The site was posted by November 12, 2009, and the adjoiningers were notified via mail around November 9, 2009.

At 10:00 a.m. on December 2, 2009, in the Charles Town Library Meeting Room located at 200 East Washington Street in Charles Town, the following were in attendance at the Neighborhood Compatibility Meeting: Jennifer Snyder, Zoning Administrator; Marshall Glenn, Site Property Owner; Stephanie Petway, Verizon Wireless Agent; Tom Barr, TAI Engineer; and Luke Neiswander, Verizon Wireless Representative. There was no public in attendance. No written comment was received. The meeting was adjourned at 10:21 a.m.

Staff is requesting the approval of this staff report detailing no unresolved issues between the public and the developer regarding the proposed telecommunication facility.

Per Section 7.6(f) of the Zoning Ordinance, if no issues raised at the NCM are left unresolved, no public hearing is required.

Verizon Wireless has submitted a completed CUP application and paid all appropriate fees. A NCM meeting was held as required and no unresolved issues remained outstanding. The sketch plan submitted for the permit application approval phase appears to meet all requirements set forth in Article 4B of the Zoning Ordinance. Technical requirements will be addressed during the site plan review phase if the CUP is issued. This type of development is an appropriate and encouraged reuse of an existing structure and does not provide additional burden on county infrastructure or resources.

Staff recommends approval of the Conditional Use Permit application for the proposed telecommunication facility.

Engineer's Report

Planning Commission Meeting

January 12, 2010

- Agenda item #1. Election of Officers.
- Agenda item #2. Approval of minutes.
- Agenda item #3. Citizen Communications.
- Agenda item #4. Request for postponement.
- Agenda item #5. Declaration of Violation for Richard Duncan of the Jefferson County Improvement Location Permit Ordinance.

A violation of the Improvement Location Permit Ordinance is an ordinance compliance issue. The county engineer defers to the Ordinance Compliance Officer for a recommendation.

- Agenda item #6. Declaration of Violation for Robert Armstrong of the Jefferson County Salvage yard Ordinance.

A violation of the Jefferson County Salvage Yard Ordinance is an ordinance compliance issue. The county engineer defers to the Ordinance Compliance Officer for a recommendation.

- Agenda item #7. Presentation on the request being made by Potomac Professional Services, LLC for a zoning map amendment and request to the Planning Commission to schedule a public hearing.

To amend a zoning map is a zoning issue. The county engineer defers to the Zoning Administrator for a recommendation.

- Agenda item #8. Issuance of the Conditional Use Permit (CUP) for a Telecommunication Facility on 114 acres.

a) Action on the Staff Report regarding the Verizon Wireless Telecommunication Facility.

b) Action on a Conditional Use Permit for Verizon Wireless

Items pertaining to the Conditional Use Permit is a zoning and planning issue. The county engineer defers to the Zoning Administrator on a recommendation.

Agenda item #9. Final Plat Public Hearing for the SPARC Training Campus, Phase II, Section One (PC File # 07-14R).

The SPARC Training Campus Final Plat meets the engineering aspects of the Subdivision Ordinance. The County Engineer recommends approval of this Final Plat.

Agenda item #10. Request by Peter Corum of the Twin Oaks Subdivision, LLC for a variance to re-open the file and to extend the expiration date for 1 year to bond and record the Town Run Commons Subdivision (PC file #06-33).

To re-open the file and to extend the expiration date for 1 year to bond is a planning issue. The county engineer defers to the county planner on a recommendation.

Agenda item #11. Director's Report.

Agenda item #12. County Commission Liaison Report.

Agenda item #13. Planning Commission Exchange.

Agenda item #14. Planning Commission discussion, review and vote on 2010 Planning Commission meeting schedule.

Agenda item #15. President's Report.

Agenda item #16. Reports from Legal Counsel and legal advice to PC.

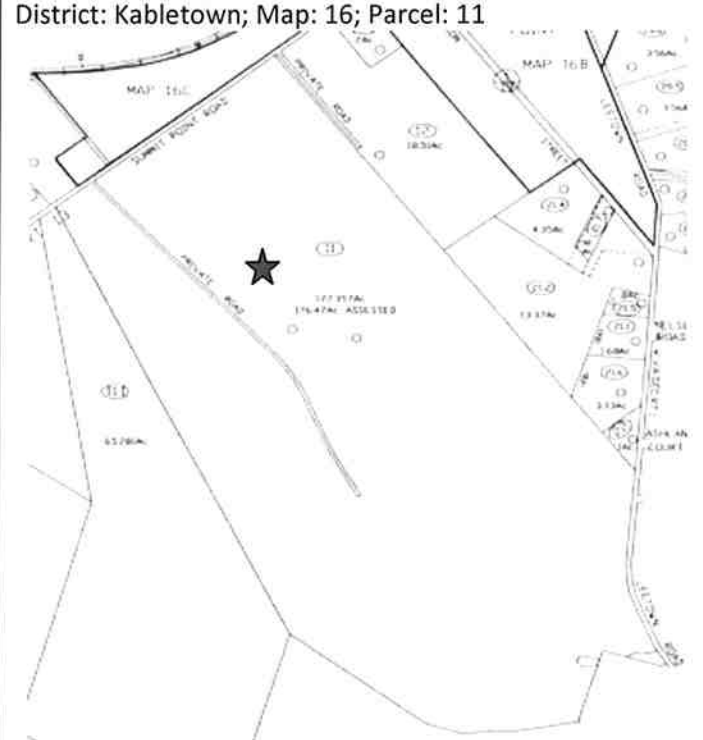
Agenda item #17. Actionable Correspondence.

Agenda item #18. Non-Actionable Correspondence.

Staff Report
 Jefferson County Planning Commission Meeting
 January 12, 2009

SPARC Training Campus, Phase II, Sec. One Subdivision PC File # 07-14R

Item #9: Final Plat Public Hearing for the SPARC Training Campus, Phase II, Sec. One Subdivision (PC File #07-14R). This phase is to consist of 5 commercial lots, 1 open space parcel and a residue lot of 155.93134 acres.

APPLICANT:	SPARC, L.L.C.
OWNER:	The William H. Scott Inter Vivos Trust, SPARC, L.L.C.
DEVELOPER:	SPARC, L.L.C.
SURVEYOR/ENGINEER:	W. H. Gordon Associates, Inc.
PROPERTY LOCATION:	The property is located on the south side of County Route 13 (Summit Point Road) approximately 1,000 feet southwest of County Route 1/19 (Thomson Street).
LEGAL DESCRIPTION:	District: Kabletown; Map: 16; Parcel: 11 
ZONING DISTRICT:	2002 Zoning Map Designation: Rural
SURROUNDING PROPERTIES:	2002 Zoning Map North: V South: R East: R West: R
LOT AREA:	+/- 237 AC
APPROVED DENSITY:	15 Commercial Lots; 2 Open Space Lots; 1 Residue Lot

Staff Report
 Jefferson County Planning Commission Meeting
 January 12, 2009

PERMIT APPROVALS:	
Health Department	Permit No.: SDA 190607-44 (11/16/07)
Dept. of Highways	Permit No.: 5-07-0595, 5-07-0596 (06/22/07) 5-07-1079, 5-07-1080, 5-07-1081 (11/06/07)
APPROVALS:	
CIS	Submitted: 05/27/07 Staff Review: 06/15/07 County Planner Approval: 08/02/07 County Engineer Approval: 08/02/07 PC Approval: 08/28/07
Preliminary Plat	Submitted: 09/21/07 Staff Review: 10/19/07 County Planner Approval: 01/08/08 County Engineer Approval: 01/09/08
Site Plan	N/A
Final Plat	Submitted: 03/04/08 County Planner Approval: 03/24/08 County Engineer Approval: 03/25/08 PC Approval: 04/22/08 Expires On: 07/21/08 Extended to: 02/21/09
Variance History (See PC minutes below)	12/11/07: Granted with conditions to permit Lot 7 to have direct access to Leetown Road. 08/12/08: Granted 6-month extension to bond and record; new expiration date 02/21/09. 02/24/09: Granted 12 month extension to bond and record; new expiration date 02/24/10.
OTHER APPROVALS:	None required

Applicant has an approved Final Plat for 15 lots, 2 open space parcels and a residue lot of 3.049 acres. The request is to have the approved, but not bonded and recorded, Final Plat divided into phases. This phase and Final Plat would consist of 5 lots, 1 open space lot and a residue of 155.93134 acres.

Final Plat complies with the approved CIS and Preliminary Plat. Staff recommends approval.

**A Motion Recommending Approval of a
Final Plat for SPARC Training Campus, Phase II, Section 1 Subdivision
January 12, 2009**

Whereas, the following facts relate to the processing of a SPARC, L.L.C. application known as SPARC Training Campus, Phase II, Section 1 Subdivision (PC File(s) #07-14R):

1. SPARC Training Campus, Phase II, Section 1 Subdivision is proposed to include 5 commercial lots, 1 open space and a residue lot of 155.93 acres;
2. The Community Impact Statement for the SPARC Training Campus Subdivision, approved on August 28, 2007, is slated to expire on February 24, 2010 in accordance with the provisions of the Jefferson County Subdivision Ordinance, effective July 18, 1979, as amended (1979 Subdivision Ordinance) Article 6, Section 6.3;
3. The requirements of aforementioned expiration is that the project be advanced through the Final Plat Public Hearing;
4. The SPARC Training Campus Preliminary Plat was approved by the Engineering and Planning staff on January 9, 2008;
5. The SPARC Training Campus, Phase II, Section 1 Final Plat was submitted on November 24, 2009 and approved by Staff on January 7, 2010;
6. Article 6, Section 6.1 of the 1979 Subdivision Ordinance requires the Planning Commission take action regarding approval of a Final Plat within 60 days of submission;
7. The final plat public hearing is scheduled for January 12, 2010; and

Whereas, SPARC, L.L.C. has requested Planning Commission approval for SPARC Training Campus, Phase II, Section 1 Final Plat; and

Whereas, the Final Plat complies with the requirements in accordance with the provisions of the Jefferson County Subdivision Ordinance, effective July 18, 1979, as amended; and

Now therefore be it moved, that the Jefferson County Planning Commission _____ the Final Plat for SPARC Training Campus, Phase II, Section 1 Final Plat (PC File(s) #07-14R).

Approved this __ day of _____

By vote of the Jefferson County Planning Commission

By a vote of _ Yes _ No

Arnie Dailey, Commission President

RECEIVED

JEFFERSON COUNTY PLANNING COMMISSION

NOV 17 2009

VARIANCE REQUEST

JEFFERSON COUNTY PLANNING, ZONING AND ENGINEERING

I/We request a variance from the provisions of the Jefferson County Subdivision and/or Salvage Yard Ordinance.

RECEIVED

Property Owner(s):

TWIN OAK SUBDIVISION, LLC

Address:

40 PETER CORUM

DEC 11 2009

PO Box 536, SHILOH, MISSOURI

JEFFERSON COUNTY PLANNING, ZONING AND ENGINEERING

Phone Number:

(304) 283-2467

Location of Property:

Rt 480, KEBENEYSVILLE PIKE

ADJACENT TO MORGAN'S GROVE PARK

Lot Size:

13.68 ACRES

Deed Book Reference:

Deed Book Number _____, Page Number _____

Tax Map Reference:

District SHILOH, Map 913, Parcel 26.1, 26.2, 26.3, 26.4

Zoning District:

RURAL / CUP

Section of Ordinance:

8.1 D - PAGE 38 / 90 DAYS TO BOND

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

REQUESTING ANOTHER (SECOND) 1 YEAR EXTENSION TO RETURN & BOND OUR PROJECT, TWIN OAK COMMUNITY.

ADDENDUM -> RETURN TO OPEN AND/OR REOPEN FILE DUE TO THE INABILITY OF THE PLANNING COMMISSION TO ACT AT THEIR LAST MEETING. PLEASE SEE LETTER DATED 12/09/09.

12/11/09

[Signature]

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.

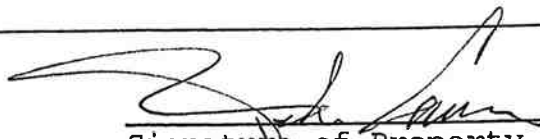
Please note variances to the Subdivision Ordinance must comply with Article 17 of the Ordinance; and, variances from the Salvage Yard Ordinance must comply with Article 6 of the Ordinance. To justify your variance request, please address the following items:

1. The request is not contrary to the public interest. Community Center
WILL PROVIDE ^{LIVE-} WORK HOUSING, YEAR-ROUND HOME GROWN,
HOME MADE STORE & COMMUNITY KITCHEN.

2. A literal enforcement of this Ordinance will result in unnecessary hardship. _____
YES, LOSS OF YARDING AND COMMUNITY BENEFIT ON
WORK FORCE HOUSING

3. The request is not the result of a self-imposed hardship.
TOWN OF SHEPHERDSTOWN HAS A SEWER MORATORIUM
WHILE THEY BUILD NEW CAPACITY.

4. The spirit of this Ordinance will be observed and substantial justice done. _____
YES, RECORDING & ZONING ~~EXTENSION~~ WILL PROTECT ALL
PARCELS



Signature of Property Owner

Signature of Property Owner

For official use only: Amount of fees paid _____

Date of meeting/public hearing _____

Official/Administrative body _____

Posting requirements _____

Advertising dates _____

Official Signature and Seal _____

Effective 6/72 Subdivision Ordinance - 8/94 Salvage Yard Ordinance



RECEIVED
NOV 17 2009
JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

CORPORATION OF SHEPHERDSTOWN

104 NORTH KING STREET
P.O. Box 248
SHEPHERDSTOWN, WEST VIRGINIA 25443-0248
TEL: (304)876-2312
FAX: (304) 876-1473

To: Peter Corum
8516 Shepherdstown Pike
P.O. Box 536
Shepherdstown, WV, 25443

Date: November 16, 2009

Subject: Town Run Commons

Dear Mr. Corum,

The Corporation of Shepherdstown is currently under a moratorium as far as sewer connections are concerned. This moratorium was placed on us by the West Virginia Department of Environmental Protection in the most recent NPDES permit issued. The Corporation of Shepherdstown is in the process of renovating and expanding the present Wastewater Treatment Plant. At the present moment, we are about 95% complete in final design. We will soon be advertising this project for bids and will ultimately go into the construction phase.

We are looking forward to serving the needs of your project. We are moving ahead as fast as possible with this needed project in order to serve the area with public sewer and meet the new Chesapeake Bay requirements.

Any questions can be directed to Frank Welch at 304-876-3322.

Thank you,

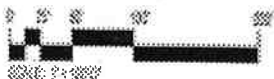
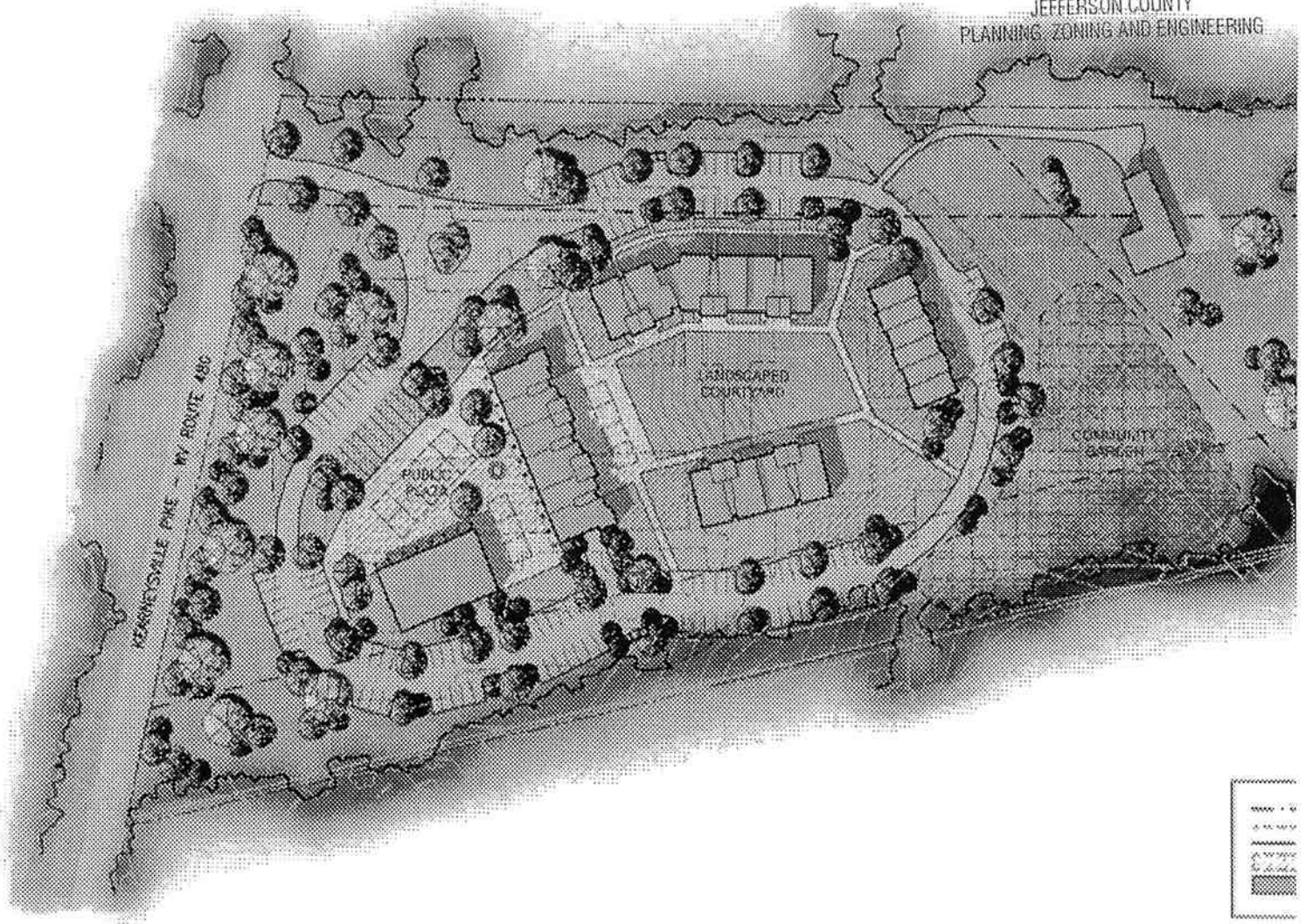
Frank Welch

Frank Welch
Director of Public Works

RECEIVED

NOV 17 2009

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING



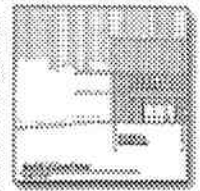
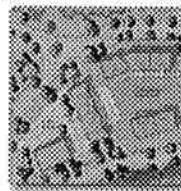
PROPOSED SITE PLAN OVERLAYED OVER CONDITIONAL USE PERMIT (CUP) SITE PLAN

MAY 3, 2007
03673 Town Run Commons

1" = 100'

Town Run
COMMONS

- Home
- Directions
- Community Plan
- News Items
- Contact



Peter S Corum
Twin Oaks Subdivision, LLC
dba Town Run Commons
PO Box 1499
Shepherdstown, WV 25443

December 9, 2009

Jefferson County Planning Commission
104 E Washington Street
Charles Town, WV 25414

Hand Delivered

Re: Request to keep Twin Oaks Subdivision, LLC dba Town Run Commons file open

To whom it may concern:

We formally request that our file remain open and be placed on the agenda for the next regularly scheduled meeting. Staff can again comment on our request for a variance to extend the time to record and bond final plat. Closing the file due to the inability of the planning commission to act will cause undue and unnecessary hardship on the applicant.

Sincerely,

A handwritten signature in black ink, appearing to read 'Peter S Corum', is written over a faint dotted line.

Peter S Corum
Partner

Peter S Corum
Twin Oaks Subdivision, LLC
dba Town Run Commons
PO Box 1499
Shepherdstown, WV 25443

RECEIVED

DEC 09 2009

JEFFERSON COUNTY
PLANNING ZONING AND ENGINEERING

December 9, 2009

Jefferson County Planning Commission
104 E Washington Street
Charles Town, WV 25414

Hand Delivered

Re: Request to keep Twin Oaks Subdivision, LLC dba Town Run Commons file open

To whom it may concern:

We formally request that our file remain open and be placed on the agenda for the next regularly scheduled meeting. Staff can again comment on our request for a variance to extend the time to record and bond final plat. Closing the file due to the inability of the planning commission to act will cause undue and unnecessary hardship on the applicant.

Sincerely,



Peter S Corum
Partner

Staff Report
 Jefferson County Planning Commission Meeting
 January 12, 2010

Town Run Commons Subdivision PC File # 06-33

Item #10: Request by Peter Corum of Twin Oaks Subdivision, LLC for a variance to extend the expiration date for 1 year to bond and record the Town Run Commons Subdivision (PC file #06-33). (Subdivision Ordinance, Article 8.1.d.)

APPLICANT:	Peter Corum
OWNER:	Same as above
DEVELOPER:	Same as above
SURVEYOR/ENGINEER:	William H. Gordon and Associates
PROPERTY LOCATION:	This property is located on Route 480, Kearneysville Pike, adjacent to Morgan's Grove Park.
LEGAL DESCRIPTION:	District: Shepherdstown; Map: 13; Parcel(s): 26.1, 26.2, 26.3 and 26.4
ZONING DISTRICT:	Current 2002 Zoning Map: Rural
SURROUNDING PROPERTIES:	Current 2002 Zoning Map North: Park South: Rural East: Rural West: RG
LOT AREA:	Site area: 13.68 acres
PROPOSED DENSITY:	32 Res. Units; 1 Existing Res. Home; 10,000 Sq. Ft. Commercial and up to 10,000 Sq. Ft. Flex Commercial

Staff Report
 Jefferson County Planning Commission Meeting
 January 12, 2010

Town Run Commons Subdivision PC File # 06-33

PERMIT APPROVALS:	
Health Department	Permit No.:
Dept. of Highways	Permit No.:
APPROVALS:	
Community Impact Statement (CIS) <i>PC File #06-33</i>	Submitted: 10/29/06 Staff Review Mtg.: 11/3/06 County Engineer Approval: 03/22/07 County Planner Approval: 03/19/07 PC Approval: 04/24/07 Expires on: 11/03/08; Extended to: 02/17/2009; 12/09/09
Preliminary Plat	Submitted: 11/30/07 Staff Review Mtg.: 12/10/07 Approved: 08/06/08
Site Plan	N/A
Final Plat	Submitted: 8/8/08 Public Hearing and Approval: 10/14/08
Variance History	08/26/08 PC granted a 3 month variance for Final Plat approval from 11/03/08 to 02/17/09. 12/09/08 – PC granted a 12 month variance from 12/09/08 to 12/09/09
OTHER APPROVALS:	

The request by Town Run Commons was postponed at the December 8, 2009 Planning Commission to the January 12, 2010 Planning Commission due to a lack of quorum. Due to the postponement, the file has now closed. In order for the December 8, 2009 variance to proceed the file needs to be reopened. As for the previous variance request, Staff's recommendation shall remain the same.

At the December 8 meeting the applicant requested that a Planning Commission member recuse himself due to a conflict of interest. That conflict of interest was never made known, as the commission member did recuse himself based on the request from the applicant. At that point the applicant was made aware that there was no longer a quorum and that the variance could not be heard by the Planning Commission. Further, the applicant was made aware that the file for his project would expire on December 9, 2009. The applicant stated he would like to have the variance heard without delay. The Planning Commissioner once again stated that he would continue to recuse himself based on the previous request by the applicant. Without a quorum the variance could not be heard and due to timing, the file expired.

The applicant is requesting that the file for Town Run Commons be reopened. In this instance Planning Staff will not review this request based on the four variance criteria outlined in the Zoning Ordinance and listed below for the variance to extend the expiration date for 1 year to bond and record. Planning Staff is deferring to the Legal Department in light of the fact that there was no quorum due to the applicants request for a recusal of a member at the meeting and how that in turn impacts reopening the file.

Staff Report
Jefferson County Planning Commission Meeting
January 12, 2010

Town Run Commons is a subdivision near Shepherdstown that received Final Plat approval in October 2008. A variance was granted by the Planning Commission in August of 2008 to extend the CIS from November 2008 to February 2009. This variance was to allow time for the Final Plat to receive approval. In December 2008 the applicant requested a 12 month variance for bonding and recording the approved Final Plat. The reasoning provided at that time was the “financial situation of the economy” and that one of the lending agencies for affordable housing, WV Housing Development Fund, temporarily suspended financing. This variance was granted from December 9, 2008 to December 9, 2009. The applicant is now requesting an additional 12 month variance until December 9, 2010 for bonding and recording the Final Plat. The stated reason for the variance is based on the fact that Shepherdstown is under a moratorium for sewer connections. As such this development is not allowed to provide public sewer for the site until the plant expansion is finished. A letter from Frank Welch, Director of Public Works for Shepherdstown, has submitted a letter with the variance application stating that final design of the plant is nearly complete the proposed plant and bids will be sent out shortly.

The request is not contrary to the public interest.

The request for a variance to extend the time limit to bond and record the Final Plat is not contrary to the public interest. In view of the fact that the applicant intends to continue the development as approved by the Planning Commission, no change has occurred to the site which would negatively impact the public interest.

The proposed development would provide affordable housing and make available an additional real estate market for current and new residents of Jefferson County. In addition, work force housing could allow for the residents of the development to work near their place of residency, since there is a limited commercial component of the proposed subdivision.

Granting a variance would allow the applicant to connect to a properly designed sewer treatment plant that complies with the Chesapeake Bay standards. Further, it allows the proposed development to be absorbed into the treatment plant at a more appropriate time when the plant is upgraded to account for this development. That would be to the benefit of the public.

A literal enforcement of this Ordinance will result in unnecessary hardship.

A literal enforcement of the ordinance would require the applicant to bond and record the Final Plat within 90 days of December 9, 2009. The proposed improvement to the sewer plant will not be completed at that time. The developer would have an approved Final Plat, but could do nothing with it. There would be a capital outlay on the project which could not be started for some time.

The request is not the result of a self-imposed hardship.

The stated reason for the variance is the moratorium at the Shepherdstown plant. This is clearly outside of the applicants control and is not a self-imposed hardship.

The spirit of this Ordinance will be observed and substantial justice done.

Since the variance is only for a time extension and not a variance of the site layout, the spirit of the ordinance will be observed. Staff finds substantial justice would be done in granting additional time to the process due to unforeseen factor that were involved in this particular case.

Recommendation

Staff Report
Jefferson County Planning Commission Meeting
January 12, 2010

Staff recommends granting the variance. This variance is for a time extension and not a variance to the site layout and by that standard the level of examination should be held in different spheres. This time extension would provide for the continuation of this development as approved by the Planning Commission. Staff recognizes that while the first variance for bonding recording may have been based on financial institutions' restricting lending, particularly on affordable housing project, the second request is for a situation outside the control of the developer, but is a condition that can be resolved once capacity is proved at the Shepherdstown plant. The economy is imprecise as to when it may recover; sewer plant upgrades have more specific time frames.

**A Motion Recommending Approval of a
Variance for Town Run Commons Subdivision
January 12, 2010**

Whereas, the following facts relate to the processing of a Twin Oaks Subdivision application known as Town Run Commons Subdivision (PC File(s) #06-33):

1. Town Run Commons Subdivision is proposed to include 32 residential units, 1 existing residential home, 10,000 sq. ft. commercial and up to 10,000 sq. ft. flex commercial on 13.68 acres;
2. The Final Plat for the Town Run Commons Subdivision was approved on October 14, 2008.
3. A Final Plat shall be bonded and recorded within 90 days in accordance with the provisions of the Jefferson County Subdivision Ordinance, effective July 18, 1979, as amended (1979 Subdivision Ordinance) Article 8.1, Section d;
4. A 12 month variance was granted on December 9, 2008 from Article 8.1, Section d;

Whereas, Twin Oaks Subdivision has requested a variance to extend the file expiration date for a period of 12 months, from December 9, 2009, to December 9, 2010;

Whereas, Twin Oaks Subdivision has further requested that the file which closed on December 9, 2009 to be reopened;

Whereas, the following findings shall have been made in regards to the request in accordance with the provisions of Article 17, Section 17.1 of the 1979 Subdivision Ordinance:

1. The request is not contrary to the public interest;
2. A literal enforcement of this Ordinance will result in unnecessary hardship;
3. The request is not the result of a self-imposed hardship; and
4. The spirit of this Ordinance will be observed and substantial justice done.

Now therefore be it moved, that the Jefferson County Planning Commission _____ the requested variance for Twin Oaks Subdivision and reopen the file (PC File(s) #06-33) and provided that the extension granted be limited to December 9, 2010.

Approved this ___ day of _____, 2010
By vote of the Jefferson County Planning Commission
By a vote of _ Yes and _ No

Arnie Dailey, Commission President

Christine Chalmers

To: PLANNING COMMISSION
Subject: FW: Weekly Calendar

MONDAY, DECEMBER 21, 2009

9:30 am – 11:30 am JENNIE, JENNIFER & SETH – MEETING / RE: SUBDIVISION REGULATIONS
NOON JENNIE, JENNIFER & SETH – WORKING LUNCH WITH ROGER
2:30 pm – 4:30 pm JENNIE, JENNIFER & SETH – MEETING / RE: SUBDIVISION REGULATIONS

TUESDAY, DECEMBER 22, 2009

9:30 am – 10:30 am JENNIE, JENNIFER & SETH – MEETING / RE: SUBDIVISION REGULATIONS
11:00 am JENNIE, JENNIFER & SETH – MEETING WITH PAUL RACO / RE: REVIEW PLAT
1:00 pm – 4:00 pm JENNIE, JENNIFER & SETH – MEETING / RE: SUBDIVISION REGULATIONS

WEDNESDAY, DECEMBER 23, 2009

9:30 am – 10:30 am STAFF MEETING

THURSDAY, DECEMBER 24, 2009

CHRISTMAS EVE HOLIDAY – OFFICES CLOSED

FRIDAY, DECEMBER 25, 2009

CHRISTMAS HOLIDAY - OFFICES CLOSED

Christine Chalmers

To: PLANNING COMMISSION
Subject: FW: Weekly Calendar

MONDAY, DECEMBER 28, 2009

TUESDAY, DECEMBER 29, 2009

WEDNESDAY, DECEMBER 30, 2009

11:00 am SETH – MEETING WITH JONATHAN / RE: STASIS & SUMMIT POINT

THURSDAY, DECEMBER 31, 2009

NEW YEAR'S EVE HOLIDAY – OFFICES CLOSED (RE:WEATHER)

FRIDAY, JANUARY 1, 2010

NEW YEAR'S HOLIDAY - OFFICES CLOSED

Christine Chalmers

To: PLANNING COMMISSION
Subject: FW: Weekly Calendar

MONDAY, JANUARY 4, 2010

TUESDAY, JANUARY 5, 2010

10:00 am JENNIE – DEPARTMENT HEAD MEETING WITH COUNTY COMMISSION
RE: WORK PLAN FORMATS / LOCATION: HUNTER HOUSE
1:30 pm – 4:00 pm JENNIE, JENNIFER & SETH – MEETING WITH ROGER / SUBDIVISION REGULATIONS
7:00 pm SETH – MEETING IN MARTINSBURG / RE: WATERSHED

WEDNESDAY, JANUARY 6, 2010

9:15 am - 10:15 am STAFF MEETING
10:15 am JENNIE – MEETING WITH WINSTON THREADGILL

OFFICE MANAGER INTERVIEWS WITH JENNIE

11:00 am JULIE QUODALA
2:00 pm LAKISHA MAY
3:00 pm KAREN CAMINILI
4:00 pm LIZ CAULKINS / TELEPHONE INTERVIEW

THURSDAY, JANUARY 7, 2010

9:00 am COUNTY COMMISSION MEETING
11:30 am JENNIE – COUNTY COMMISSION

2:00 pm – 4:00 pm JENNIE, JENNIFER & SETH – MEETING WITH ROGER / SUBDIVISION REGULATIONS

FRIDAY, JANUARY 8, 2010

OFFICE MANAGER INTERVIEWS WITH JENNIE

10:00 am VICKI YOUNG
11:00 am KIMBERLY HOWARD
2:00 pm JENNILEE HARTMAN
3:00 pm DIANE HAUSER / TELEPHONE INTERVIEW

1:00 pm – 2:15 pm SETH - CHEASAPEAKE BAY WEBINAR
1:30 pm SETH – BOARD OF HEALTH MEETING (WITH TODD)

Christine Chalmers

To: PLANNING COMMISSION
Subject: FW: Weekly Calendar

MONDAY, JANUARY 11, 2010

10:00 am – NOON JENNIFER & SETH – MEETING / RE: SUBDIVISION REGULATIONS

2:00 pm – 4:00 pm JENNIE, JENNIFER & SETH – MEETING /RE: SUBDIVISION REGULATIONS

TUESDAY, JANUARY 12, 2010

10:00 am – NOON JENNIE, JENNIFER & SETH – MEETING / RE: SUBDIVISION REGULATIONS

1:30 pm JENNIE – MEETING WITH ALAINA HARTMAN

2:30 pm JENNIE – MEETING WITH PAUL RACO

3:00 pm – 6:00 pm JENNIE – WORK PLAN

7:00 pm PLANNING COMMISSION MEETING

WEDNESDAY, JANUARY 13, 2010

9:15 am - 10:15 am STAFF MEETING

ALL DAY JENNIE – LEADERSHIP JEFFERSON MEETING

THURSDAY, JANUARY 14, 2010

9:00 am COUNTY COMMISSION MEETING

1:30 pm JENNIE – COUNTY COMMISSION – STAFF REPORT

2:00 pm – 4:00 pm JENNIE – WORK PLAN

FRIDAY, JANUARY 15, 2010

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

DR. JAMES GIBSON, DDS and
BARBARA GIBSON
Plaintiffs,

v.

Civil Action No.: 09-C-364

THE JEFFERSON COUNTY
PLANNING COMMISSION,
A Public Body,
Defendant.

SUMMONS

To the above named Defendant:
Arnold Daily, President
Jefferson County Planning Commission

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon J. Michael Cassell, plaintiff's attorney, Campbell Miller Zimmerman whose address is 201 N. George Street, Suite 202, Charles Town, West Virginia, 25414, an Answer, including any related counterclaim you may have, to the complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Spura E. Peters

CLERK OF COURT

By: *Ashtyn Wimer, Deputy*

Dated: 9/24/09

COPY

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

**DR. JAMES GIBSON and
BARBARA GIBSON**
Plaintiffs,

v.

Civil Action No.: 09-C-364

**THE JEFFERSON COUNTY
PLANNING COMMISSION,
A Public Body,**
Defendant.

COMPLAINT

COME NOW, Dr. James Gibson and Barbara Gibson, Plaintiffs, to file their Complaint to seek a Writ of Certiorari for review and reversal of the illegal and erroneous Decision of the Jefferson County Planning Commission announced August 25, 2009, and for other relief as stated herein.

1. Dr. James Gibson and Barbara Gibson (hereinafter Gibson) are residents of Jefferson County and own real estate located in Jefferson County at the corner of Millville Road and US Route 340 known as the Allstadt's Corner Subdivision, Parcel 39.1, Tax Map 9, Harpers Ferry District.

2. The Jefferson County Planning Commission (hereinafter the Commission) is the appointed Planning Commission in Jefferson County charged with the authority to regulate the subdivision of land and perform other functions pursuant to West Virginia Law.

3. Venue is proper in this Court.
4. This Court has subject matter jurisdiction and personal jurisdiction over the parties in this Civil Action.
5. Gibson properly filed and processed a residential subdivision known as Allstadt's Corner. The Commission approved the Final Plat for Allstadt's Corner on July 14, 2009.
6. During the Public Hearing, prior to Final Plat Approval for Allstadt's Corner, various persons testified that the Harpers Ferry National Park or various private entities acting on behalf of the Park were interested in negotiating the acquisition for the Allstadt's Corner Property to augment the Harpers Ferry National Park.
7. The Commission directed a question to Dr. Gibson regarding the status of negotiations between Gibson and various private entities during the Final Plat Public Hearing.
8. The Commission encouraged Gibson to negotiate with the private entities above-described in a effort to facilitate the acquisition of Allstadt's Corner by those entities on behalf of the National Park.
9. At the Public Hearing, Gibson informed the Commission that he had received a telephone call from a representative of a private entity acting on behalf of the National Park, but the private entity had failed to communicate any further with him regarding any proposal or negotiation for acquisition for Allstadt's Corner.

10. At the Public Hearing on the Final Plat of Allstadt's Corner various members of the Commission invited further negotiation and expressed a willingness to facilitate the negotiations

11. A uniformed representative of the Harpers Ferry National Park attended the Public Hearing on the Final Plat for Allstadt's Corner to represent the interest of the Park.

12. The Harpers Ferry National Park and the private entities that represent the Park's interests all oppose the development of the Allstadt's Corner Subdivision.

13. At the Final Plat Public Hearing on July 14, 2009, the Commission voted unanimously to approve the Final Plat of Allstadt's Corner.

14. At the Public Hearing on July 14, 2009, several members of the Commission indicated that it would be in the public interest to facilitate the negotiations between Gibson and various other private entities and/or the National Park to explore the acquisition of Allstadt's Corner by said private entities and/or the National Park.

15. After approval of the Final Plat, Gibson properly filed a Variance Request for an Extension of Time within which to record and bond the Final Plat for Allstadt's Corner (attached and incorporated herein as Exhibit A) which the Commission erroneously denied on August 25, 2009.

16. Gibson sought an extension of time beyond the ninety (90) days provided in Section 8.1(d), Subdivision Ordinance, to maintain the status quo to allow for negotiations with various private entities seeking the acquisition of Allstadt's Corner for the National Park.

17. Gibson's Request for an Extension of Time was in part based upon the support of various Commissioners who stated on the record at the Final Plat Public Hearing that the negotiation between Gibson and the private parties representing the National Park would be of great benefit to the County and would address several worthy public policy goals stated in the Comprehensive Plan and the Subdivision Ordinance.

18. Gibson caused no delays and there was no self imposed hardship which caused Gibson to request the Extension of Time within which to record and bond the Final Plat for Allstadt's Corner.

19. Upon information, the Commission erroneously concluded that the Extension of Time filed by Gibson should be denied as a result of a self imposed hardship even though there was no evidence of any self imposed hardship.

20. The Request for Extension of Time is in the public interest to facilitate the continued negotiation for the acquisition of Allstadt's Corner by the National Park or others acting on the Parks behalf.

21. A literal enforcement of Section 8.1(d), Subdivision Ordinance will result in an unnecessary hardship if Gibson is required to record and bond the Final Plat for the Allstadt's Corner Subdivision.

22. The recordation of a Final Plat for Allstadt's Corner may have a negative impact on the continued negotiations between Gibson and the National Park or entities acting on behalf of the Park.

23. The Request for Extension of Time filed by Gibson observes the spirit of the Subdivision Ordinance and will cause substantial justice to be done for the reasons above-described.

24. The Commission has not transmitted to Gibson Findings of Fact and Conclusions of Law or Minutes pertaining to the erroneous denial of the Request for Extension of Time and all statements in this Complaint pertaining to the Decision are stated upon information.

25. Gibson's request was for an extension of time for twelve (12) months to record and bond the Final Plat for Allstadt's Corner.

26. Upon information, Gibson believes that the Commission discussed and considered an extension of time of less than twelve (12) months, but the Commission did not discuss a Motion for Approval of an Extension of Time of less than twelve (12) months at the meeting conducted on August 25, 2009.

27. Upon information, Gibson believes that the Commission has the authority to grant an Extension of Time in this matter for less than twelve (12) months according to law.

COUNT I

28. Gibson incorporates all preceding paragraphs of this Complaint.

29. Gibson is an aggrieved party as described in Section 8A-9-1, et seq., West Virginia Code as Amended.

30. Gibson respectfully requests that this Court conduct a Show Cause Hearing and cause a Writ of Certiorari to be issued to the Defendant to require the Defendant to file with this Court a Certified Record for review of the Commissions deliberations on July 14, 2009, and August 25, 2009, pursuant to Section 8A-9-1, et seq., West Virginia Code.

31. For all the reasons above-described, Gibson asserts that the Defendant acted without a substantial factual basis, committed errors of law, and acted beyond its jurisdiction when the Commission denied Gibson's Request for Extension of Time on August 25, 2009.

32. Gibson requests that this Court review and reverse the erroneous decision made by the Commission on August 25, 2009.

COUNT II

33. Gibson incorporates all preceding paragraphs of this Complaint.

34. Upon information, Gibson believes that the Commission or the staff of the Commission intends to take *ultra vires* action to terminate Gibson's rights to the Subdivision known as Allstadt's Corner without authorization pursuant to the Jefferson County Subdivision Ordinance, Section 8.1(d).

35. The Jefferson County Subdivision Ordinance does not contain a self-executing remedy in Section 8.1(d). The Commission or the staff of the Commission has no authority to take any action to terminate Gibson's right to the Subdivision known as Allstadt's Corner.

36. Other provisions in the Subdivision Ordinance which describe specific time requirements contain self executing remedies, for example: Section 6.1(a)(19), which mandates the approval of a Final Plat if the Planning Commission fails to take action within sixty (60) days after Final Plat Application and Section 6.3, which requires the closure of an Application and file where a Final Plat Hearing is not conducted within twenty-four (24) months after the date of the pre-application conference.

37. Upon information, Gibson believes that the Planning Commission or the staff of the Planning Commission will cause Gibson to suffer a forfeiture of all of his rights pertaining to the Allstadt's Subdivision without the legal authority to do so as above-described.

38. Gibson requests that this Court review and reverse any action taken by the Commission or Staff which operates as a termination or forfeiture of Gibson's rights pertaining to the Allstadt's Corner Subdivision.

39. Any action taken by the Commission or Staff which operates as a forfeiture or termination of Gibson's rights pertaining to Allstadt's Corner constitutes an unlawful and inequitable deprivation of Gibson's property rights in violation of Article 3, Section 9 and 10, West Virginia Constitution.

COUNT III

40. Gibson incorporates all preceding paragraphs of this Complaint

41. Gibson requests Declaratory Relief pursuant to Section 55-13-1 et seq., West Virginia Code as Amended to determine the rights and responsibilities of the parties in this matter pursuant to Section 8.1(d), and other relevant Sections of the Jefferson County Subdivision Ordinance.

42. Gibson further requests that this Court render all relief necessary to resolve all legal questions arising between the parties which are fairly raised by any claims contained in this Complaint.

43. Gibson requests that this Court consider the unauthorized forfeiture of Gibson's property rights in the Allstadt's Subdivision to be violation of Article 3, Section 9, West Virginia Constitution which prohibits the government from taking or damaging private property without just compensation.

44. Gibson further requests that this Court consider the unauthorized forfeiture of his rights in the Allstadt's Subdivision to be a violation of Article 3, Section 10 of the West Virginia Constitution which provides that no person shall be deprived of life, liberty, or property without Due Process of Law and the judgment of his peers.

45. The time limitation contained in Section 8.1(d), Subdivision Ordinance is arbitrary and capricious and serves no public policy goal which would support the public health, safety and welfare and is therefore invalid.

WHEREFORE, Gibson respectfully requests the following relief:

1. That this Court issue an Order to the Jefferson County Planning Commission to Show Cause why a Writ of Certiorari should not be issued and to set the matter in a timely fashion therefore pursuant to law.
2. That this Court issue a Writ of Certiorari to require the Defendant to certify the Record of both the Denial of the Request for Extension of Time on August 25, 2009 and the Final Plat Approval on July 14, 2009.
3. That this Court render Declaratory Relief as above-described pursuant to Section 55-13-1 et. seq., West Virginia Code.
4. That this Court conducts a full and fair review of all proceedings in matters pertaining to the Allstadt's Corner Subdivision as above-described.
5. That this Court issues an Order to REVERSE and VACATE the Denial of the Request for an Extension of Time filed by Gibson.
6. That this Court issue an Order to GRANT the Extension of Time filed by Gibson.
7. That this Court award Gibson his expenses, costs, and attorney's fees in this matter.

And for such other and further relief as to this Court may seem meet and proper

so to do.

Dr James Gibson
DR. JAMES GIBSON


J. Michael Cassell
J. Michael Cassell, Esq.
Campbell Miller Zimmerman, PC
201 N. George Street, 2nd Floor
Charles Town, West Virginia 25414
304-725-5325/telephone
304-724-8009/facsimile

STATE OF West Virginia
COUNTY OF Telford

The foregoing instrument was acknowledged before me this 24th day of September, 2009, by
Dr. James Gibson, DDS and that all matters contained therein are true to the best of his knowledge and where
they are stated upon information, he believes them to be true.

Debra M. Moses
NOTARY-

My Commission Expires: September 30, 2012

AFFIX  OFFICIAL SEAL
Notary Public, State Of West Virginia
DEBRA M. MOSES
111 Secretariat Lane
Martinsburg, WV 25401
My Commission Expires Sept. 30, 2012

RECEIVED

JEFFERSON COUNTY PLANNING COMMISSION

AUG 04 2009

VARIANCE REQUEST

JEFFERSON COUNTY PLANNING,
ZONING & ENGINEERING

I/We request a variance from the provisions of the Jefferson County Subdivision and/or Salvage Yard Ordinance.

Property Owner (s): James and Barbara Gibson (Allstadts Corner Subdivision)

Address: 201 Needwood Farm Lane
Harpers Ferry, WV 25425

Phone Number: 304/267-6059

Location of Property: Southeast Corner at the Intersection of Rte 340 and Rte 27
(Millville Road) at the Bottom of Allstadt's Hill

Lot Size: 12.967

Deed Book Reference: Deed Book Number 913 Page Number 643

Tax Map Reference: District Harpers Ferry Map 9 Parcel 39.1

Zoning District: Residential Growth

Section of Ordinance: 8.1 (d)

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

See Attached

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.

Mailed for 08/25/09 PC mtg. - JH

Please note variances to the Subdivision Ordinance must comply with Article 17 of the Ordinance; and, variances from the Salvage Yard Ordinance must comply with Article 6 of the Ordinance. To justify your variance request, please address the following items:

1. The request is not contrary to the public interest. _____

See Attached

2. A literal enforcement of this ordinance will result in unnecessary hardship. _____

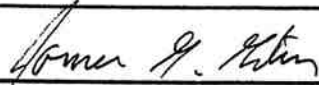
See Attached

3. The request is not the result of a self-imposed hardship. _____

See Attached

4. The spirit of this Ordinance will be observed and substantial justice done. _____

See Attached



Signature of Property Owner



Signature of Property Owner

For official use only: Amount of fees paid _____

Date of meeting/pubic hearing _____

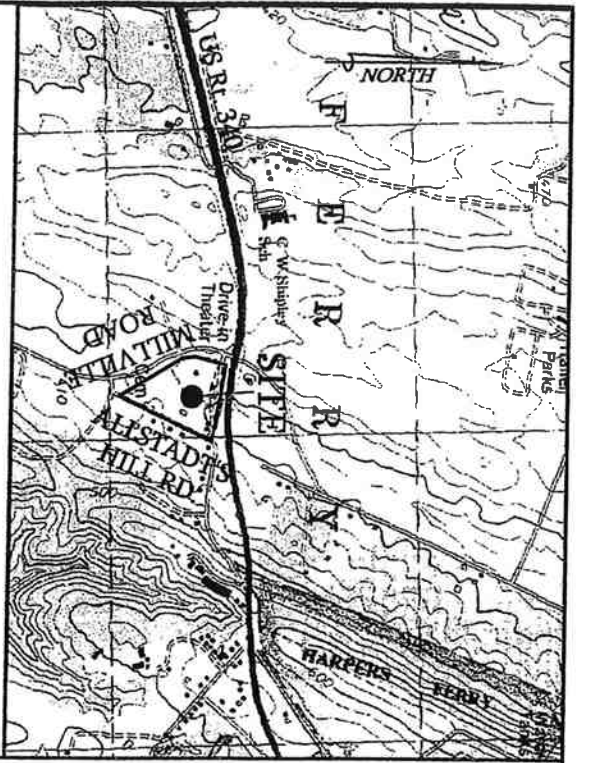
Official/Administrative body _____

Posting requirements _____

Advertising dates _____

Official Signatures and Seal _____

Effective 6/72 Subdivision Ordinance - 8/94 Salvage Yard Ordinance



Location Inset

Scale: 1" = 2000'

Phase I, Lots 1-12 & 27-31 (Residue)
Allstadt's Corner

Harpers Ferry District
 Jefferson County, West Virginia

HFD M9 P39.1 D.B. 913 PG. 643

February 26, 2009

Prepared By:



Dewberry & Davis, LLC

401 S. FAIRFAX BOULEVARD, SUITE 3

RANSON, WV 25438-1611

PHONE: 304.725.4572

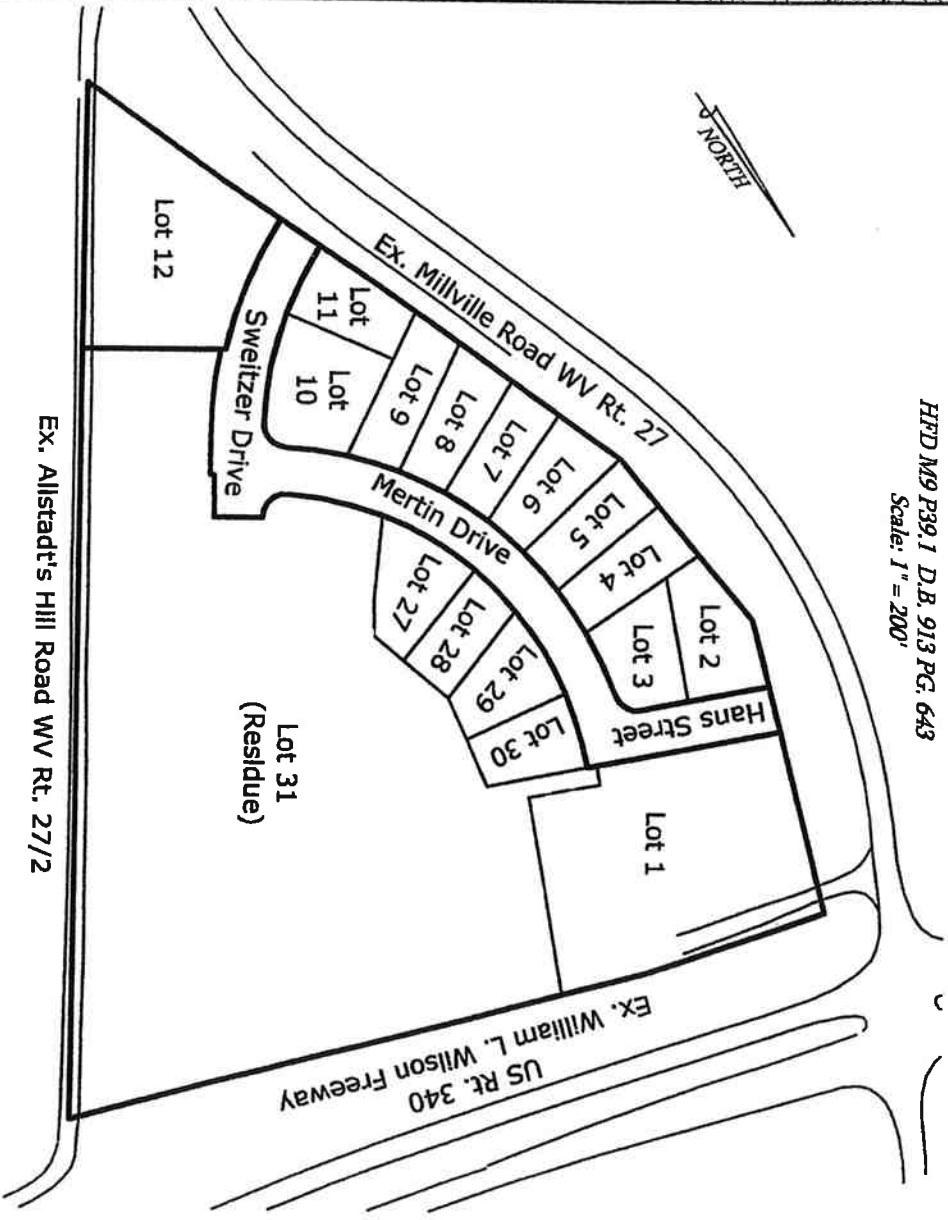
FAX: 304.725.6896

WWW.DEWBERRY.COM

Subdivision Inset

HFD M9 P39.1 D.B. 913 PG. 643

Scale: 1" = 200'



Allstadts Corner Subdivision
Extension Request
Jefferson County Subdivision Ordinance
Article 8, Section 8.1 (d)
August 4, 2009

BRIEF DESCRIPTION OF THE VARIANCE REQUEST

Article 8, Section 8.1 (d) requires that a subdivision be bonded and recorded within 90 days after the Planning Commission's approval. The Planning Commission approved the Allstadts Corner Subdivision on July 14, 2009. Accordingly, the 90th day for the Allstadt's Corner Subdivision is October 12, 2009. The purpose of this request is to seek an extension of the 90 days to bond and record Allstadts Corner. The applicant is requesting an additional 12 months to bond and record this subdivision.

The primary purpose of this request is to allow additional time for the owner to have discussions with the Park Service as requested by various members of the public at the Final Plat Public Hearing. Along with the allowance of more time for the various parties to discuss the possibility of acquiring and preserving the property, the owner believes that there are several other reasons that justify this request.

The 90 day requirement has been in the Jefferson County Subdivision Ordinance for many years. This provision was written into the ordinance at a time when the costs of required subdivision improvements were at a level much lower than current costs. The required amount of the bond for the construction for Allstadts Corner, including the requisite 15% contingency costs, is \$860,534.00. The short time period that the ordinance allows for bonding is also complicated by the amount of time that it now takes to obtain a Letter of Credit from a lender in order to secure the construction bond. As one can guess, during these troubled economic times, banks are much more cautious in making lending decisions. As such, there are many more administrative approvals needed at various levels of a lending institution in order to obtain a Letter of Credit.

Additionally, the Planning Commission and Staff have already recognized the need for more time to make bonding arrangements and have consistently and routinely extended the bonding requirement for a minimum of 6 months beyond the required 90 day period. The applicant's request in this case is for a year because of the extenuating and unique circumstances associated with the interest raised at the public hearing to acquire and preserve this property as outlined in this request.

The extenuating circumstance in this case is probably the most important reason for granting the requested extension. Specifically, the owner would like the additional time in order to discuss the possibility of conveying the property to either the Harpers Ferry National Park, or another interested third party preservationist group, since this interest was expressed at the Final Plat Public Hearing. At that hearing, Mr. Dennis Frye, Harpers Ferry National Park Historian, indicated that the Park and the Journey Through Hallowed Ground Partnership are both interested in obtaining this property. However, Mr. Frye indicated that it would take time in order to make those types of decisions and arrangements. It would be much easier for a preservation group or the National Park Service to acquire the property prior to the owner making bonding arrangements and recording the Final Plat.

Therefore, the Applicant would respectfully ask for an additional 12 months to bond and record the Allstadts Corner Subdivision. This would extend the date until October 12, 2010. If the Commission feels that less time may be appropriate, the owner has no problem if the Commission wants to extend the time period for an additional 9 months for a total of one year from the date of the Planning Commission's approval (July 14, 2010).

Allstadts Corner Subdivision
Justification for the Variance Request
Jefferson County Subdivision Ordinance
Article 8, Section 8.1 (d)
August 4, 2009

1. The request is not contrary to the public interest.

The request is actually in response to the public testimony at the Final Plat Public Hearing. It appears that the public's interest in this property at this point is for it to be purchased and preserved by the National Park Service or other preservationist group. If the Planning Commission grants the applicant more time to bond and record the final plat, it will give the owner time to entertain these discussions. It will also keep the overall cost down if indeed the property conveys to Harpers Ferry National Park or an interested third party as discussed at the Public Hearing. The cost associated with the bond includes the cost of the letter of credit which is one to two percent of the construction bond amount (\$860,534.00). If the subdivision is bonded and recorded, it will also take additional time and resources to eliminate the lots and release the bond so that the land can be satisfactorily conveyed to the federal government without any encumbrances. All of these costs add to the price of the land and ultimately would pass on to the taxpayers (or nonprofit group) in the form of an increased selling price.

2. A literal enforcement of this ordinance will result in unnecessary hardship.

The hardship that was raised at the Public Hearing was the reality that there was no time left for the owner and the Park Service or other interested groups to have meaningful dialog regarding the transferring and preservation of the property. If the project is bonded and recorded, it will make those discussions more difficult and costly to resolve.

In addition to the hardship of not enough time to have meaningful discussions with the Park service, there is also uncertainty and confusion regarding the new Subdivision Ordinance and how it interfaces with the LESA (current) Zoning Ordinance. If this request is denied, the project will either be forced to bond and record without time to talk to the Park Service and interested groups, or will otherwise have to deal with the uncertainty of how the new subdivision process will affect the project in general. This would cause a large amount of funds being expended to go through the design and processing of a new proposal even though this project was unanimously found to be in compliance with the existing Subdivision Ordinance.

Article 8, Section 8.1 (d) was written quite some time ago when routine bonding of a subdivision could be completed within 90 days. Now, it is virtually impossible to complete the bonding process within 90 days. In addition to the extremely large amount of current bonds, there are also many more approvals necessary within lending institutions due to the banking crisis and recession. None of this was envisioned when the 90 days was written into the ordinance. Even 8A in the West Virginia State Code, as amended, envisioned a more time consuming process when it made the vesting period five years from the date of a significant governmental action.

The Planning Commission and Staff have already recognized the need for more time for an applicant time to bond and record. The Commission has routinely granted extensions of time for bonding and recording subdivisions. These extensions have been for a minimum of 6 months. In this case, the special circumstances warrant an additional amount of time to conduct talks with the National Park Service.

More recently, members of the Commission have also recognized that the current market and economic climate have indeed placed owners, bankers and developers in a unique hardship position. This situation could not have been anticipated or avoided by the owner.

3. The request is not the result of a self-imposed hardship.

There are several reasons for this request, none of which can be attributed to the applicant. As the Commission heard at the Final Plat Public Hearing, the National Park Service is just now in a position to facilitate negotiations regarding the acquisition of the Allstadts Corner property. Mr. Dennis Frye's testimony is evidence that the process will take time to complete if indeed the Park Service is interested in acquiring the land or facilitating in the transfer of land.

In addition to allowing more time for the Park Service negotiations, the Commission should also recognize that the ordinance is outdated and it did not envision bonds in excess of \$800,000.00 when the 90 day provision was written. The owner has no control over the outdated ordinance standard.

Finally, the applicant has no control over the fact that there is heightened scrutiny in banks due to the banking industry's collapse and subsequent recession. As indicated in the last response, neither the market nor the economic downturn can be attributed to the owner in this particular case.

4. The spirit of this Ordinance will be observed and substantial justice done.

The purpose of the 90 day bonding provision is to provide ample time for the owner to obtain security for the construction bond and record the final plat. The provision was not written to hamper or discourage a subdivision that duly met the standards of all of Jefferson County's Ordinances and earned the Planning Commission's unanimous approval. Instead, the provision was written so that the owner was given time to explore the options available regarding the security for a bond and to record a final plat. In this case, other options were presented at the Final Plat approval stage which warrants study and discussion. These items are not typically associated with the average subdivision. Specifically, the newly presented option of negotiating and transferring the property to the Harpers Ferry National Park clearly seems like an option that everyone wants an opportunity to study and pursue.

Based on the above, substantial justice would be to grant Alstadts Corner an extension until October 12, 2010 in order for the owner to speak with the Park Service and other interested historical groups regarding the acquisition of the property prior to the bonding and recordation of the subdivision.

In the Circuit Court of Jefferson County, West Virginia

JAMES GIBSON and
BARBARA GIBSON,
Plaintiffs

COPY

Civil Action 09-C-364

THE JEFFERSON COUNTY PLANNING COMMISSION,
Defendant

Opposition to Certiorari and Motion to Dismiss

COMES NOW THE JEFFERSON COUNTY PLANNING COMMISSION by the undersigned who respectfully Opposes the Issuance of a Writ of Certiorari and Moves this Court to Dismiss the Complaint filed in this action. In support thereof the Planning Commission states:

Count I: Court should decline to issue Writ of Certiorari

1. The respondent is a public body created by the governing body of Jefferson County pursuant to authority granted under WV Code §8A-1-1 et seq.
2. The Legislature authorized the creation of planning commissions as part of a comprehensive repeal and reauthorization of land use law when is enacted said §8A.
3. The plaintiffs in this matter are the owner of certain real property found within the bounds of Jefferson County, West Virginia. Said property is colloquially identified as "Allstadts Corner."
4. The plaintiffs claim to be "aggrieved parties" land owners within the meaning of §8A (complaint paragraph 29)
5. The plaintiffs filed the instant action on September 24th 2009 before formal written findings of the Planning Commission were adopted but did not serve the petition until on or about December 4th 2009, well after written finding were adopted by the Planning Commission.
6. The Planning Commission approved the final plat for said development and no further regulatory steps were required for recordation of said final plat other than posting of the appropriate bond by the plaintiffs.
7. The Planning Commission did nothing to prevent the posting of bond within the frame established 90 day time frame from approval of the final plat.

8. Said 90 day bonding requirement was in effect during the entire lengthy sub-division process under which the plaintiffs chose to develop their real property.
9. The public purpose of said bond is to provide surety to Jefferson County government in the event a developer fails to complete common elements required by the terms of an approved final plat. The bond is set in an amount reasonably calculated to satisfy the estimated cost associated with installing various common elements that required by the approved final plat such as grading, roadways, drainage areas, culvert, sidewalks curbing and other such common engineering elements required by the final plat for public health safety.
10. Instead of posting the bond and recording the proposed subdivision within time period permitted as of right, the plaintiffs applied for an additional one year variance from the 90 (ninety) day requirement to post a construction bond required by Ordinance.
11. When the variance was denied, the plaintiffs freely and voluntarily chose not to post the required bond and, thus, knowingly (and inexplicably) abandoned the proposed subdivision.
12. The law provides that the Planning Commission, as the expert body assigned by law to review planning issues, enjoys a presumption of correctness. Maplewood Estates HOA v. Putnam County Planning Commission, 218 W.Va. 719 (2006)
13. Furthermore, this Court must apply an extremely deferential standard of review to factual findings of the Planning Commission and may reverse a factual finding only when "plainly wrong." Maplewood Estates HOA v. Putnam County Planning Commission, 218 W.Va. 719 (2006)
14. The West Virginia Supreme Court of Appeals explained the "plainly wrong" standard as "a deferential one, which presumes an administrative tribunal's actions are valid as long as the decision is supported by substantial evidence. . . 'such evidence that a reasonable mind might accept as adequate to support a conclusion'" In re: Queen, 196 W.Va.442, 446 (1997).
15. The Court further explained that "neither this Court nor the circuit court may supplant a factual finding of [the Planning Commission] merely by identifying an alternative conclusion that could be supported by the evidence." Id.
16. The only review this Court can lawfully conduct is as to the existence of "substantial evidence" to support the Planning Commission's decision to deny the variance request.
17. The statute and the ordinance places the burden of proof to justify a variance upon the party requesting the variance. See §17.1 of the Jefferson County Subdivision Ordinance and see generally WV Code §8A-7-11(which applies to the Zoning Ordinance not expressly the subdivision ordinance)
18. §17.1 of the Sub-division Ordinance sets forth the requirements which an applicant must meet to obtain a variance. Accordingly, the Planning Commission may grant a variance only when it is determined that:
 - a. "The request is not contrary to the public interest;
 - b. A literal enforcement of the ordinance will result in an unnecessary hardship;
 - c. The request is not the result of a self-imposed hardship, and;

d. The spirit of the Ordinance will be observed and substantial justice done.”

19. The Planning Commission (orally at the August 25th hearing and in subsequent written findings) denied the request for a variance because the plaintiffs did not meet the burden to establish all four of the requirements necessary for a variance.
20. Specifically, the Planning Commission determined that the plaintiffs did not demonstrate that the requested variance was in the public interest.¹
21. Sufficient evidence was presented and considered by the Planning Commission to support the findings.
22. The hearing on the variance took place on August 25th, 2009 with the plaintiffs’ representative stating, inter alia, they had the “money in hand to pay for the bond” but wanted to extend the 90 bonding period by an addition year, a five-fold increase, to allow time for third parties to attempt to purchase the property for supposed incorporation into the park system.
23. Said bond is a considerable expense but the plaintiffs stated on the record at the variance hearing they had “cash in hand” to pay the bond and the issue was not the cost of the bond. Plaintiffs’ claim of “unnecessary hardship” must fail because of their own admission that they have ample resources to cover any costs of posting the bond.
24. The respondent did not produce any written document nor produce any person or organization at the hearing to support their assertions in support of a theoretical purchase of the property by the NPS. The plaintiffs did not deny that they intentionally caused the subject property not to be included in the Park Service growth boundary.
25. Posting of the bond and recording the final play would not prevent the Park Service from purchasing the property but it was argued that it would increase the costs of such a land purchase. However, it was argued by members of the public that the delay of development was itself a ploy to allow land values to increase and increase the price of the land. In either case, the Planning Commission is not required to grant a variance because it would increase profit for a landowner.
26. Several members of the public appeared and opposed the variance claiming that the plaintiffs’ assertion of “negotiation” was essentially a sham to allow a delay in completing the development until the local real estate market values increase. The public testimony also claimed that the plaintiffs intentionally chose not to include

¹ The Direct language from the approved order is as follows; “Based upon the all evidence presented at the hearing, which is incorporated herein by reference, the Planning Commission passed the following motion to deny the variance: “If it is in the public interest on the grounds there might be a purchase to preserve historic sites, what is lacking is proof of that. What is lacking is a document backing up that assertion.” Said motion to deny the variance was duly seconded and passed by a majority vote of the Planning Commission. The applicants failed to demonstrate their request for variance was not contrary to the public interest.”

the subject property within the Park Service boundary which now prevents the Park Service from purchasing the property.

27. The public testimony reasonably supported the Planning Commission's denial of the variance on the grounds that the plaintiffs did not convince the Commission the delay was in the public interest. Thus, the factual findings of the Planning Commission must be upheld by this Court.

Counts II and III fail to state a cause of action and should be Dismissed

28. Counts II and III attempt to assert a mixed group of potential causes of actions all of which fail to state a claim upon which relief can be granted and should be dismissed. Since the allegations are intertwined the Planning Commission will attempt to disaggregate the claims and address them individually.

Statute Provides A Single Remedy For Aggrieved Parties Under §8A

29. WV Code Section provides a single remedy for aggrieved parties dissatisfied with decisions of the Planning Commission created under §8A; the sole remedy provided is petition for Writ of Certiorari pursuant to §8A-9-1 et seq.
30. Wherefore, plaintiffs attempt to turn a single recitation of facts into at least three different causes of action exceeds relief expressly provided by the legislature in §8A. The plaintiffs are by statute permitted the sole remedy a petition for writ of certiorari, Counts II and III should be dismissed because (though they are a confusing cluster of claims) whatever cause of action(s) they may attempt to assert, Counts II and III do not request a writ of certiorari. Thus, the additional counts fail to state a cause of action upon which relief may be granted because they exceed the remedy provided in the statute.
31. Assuming plaintiffs are permitted to exceed the single statutory remedy permitted under §8A, Count II and III fail to state a claim upon which relief can be granted and should be dismissed on other grounds as well.

No Facts Alleged To Support Claim That 90 Day Deadline Is "Arbitrary"

32. Plaintiffs claim the 90 day bonding requirement is "arbitrary" but asserts no facts to support the same. The plaintiffs assert that the 90 day is "arbitrary" without explaining how every other developer who recorded subdivision managed to comply with posting a bond within the established time frames. In fact, the plaintiffs themselves have, in the past on other parcels, complied with the 90 day requirement. The instant complaint makes no factual allegations in support of the bare bones assertion in paragraph 45.
33. A bare conclusory claim that said deadline is "arbitrary" fails pursuant to the standard set forth by the West Virginia Supreme Court of Appeals which upheld the dismissal of a land use complaint because it contained only "conclusory allegations" unsupported by any specific factual assertions explaining how land use law as

“arbitrary.” Par Mar v. City of Parkersburg, 183 WVa 706(1990)(complaint properly dismissed because all reasonable inferences must be taken in favor of an ordinance’s validity and a complaint cannot survive a motion to dismiss when a complaint makes only “conclusory allegations without any material factual allegations in support thereof.”) See also, Town of Stonewood v. Bell, 165 WVa 653 (1980)(“a person challenging the validity of a zoning ordinance must show by clear and convincing evidence it does not bear a substantial relationship to public health safety morals or general welfare.”)

Counts II And III Improperly Request Relief Based Upon Pure Speculation

34. In addition, Counts II and III fail to state a cause of action because they rest wholly upon speculation. Plaintiffs assert “Gibson *believes* that the Commission or the staff of the Commission *intends to take Ultra Vires action* to terminate Gibsons rights to the subdivision” Paragraph 34. Further, in Paragraph 37, the plaintiffs again demonstrate Counts II and III are based upon speculation about future actions stating “*Gibson believes [defendant] will cause* Gibson to suffer a forfeiture.”
35. A complaint cannot be based upon mere speculation See Generally, Hill v. Stowers, 224 WVa 51 (2009)(Claim to injury from losing an election properly dismissed, in part, because “proof of damages cannot be sustained by mere speculation”)
36. The Planning Commission cannot meaningfully defend against allegations about what a plaintiff “believes” a defendant “intends” or what a plaintiff “believes” the defendant “will cause.”²
37. Counts II and III based upon what the plaintiffs speculate might happen are, at best, pre-mature and fail to state a justiciable cause of action. The Court cannot examine a record of a potential event which has not occurred, nor can the Commission rebut or dispute such speculative claims of injury.

Counts II and III wrongly claim a “property right” in unrecorded plat

38. In addition, Counts II and III wrongly claim a “property right” when the plaintiffs voluntarily chose not to record the final plat that had been approved by the Commission.
39. Posting of the bond by the plaintiffs would have allowed recordation of the final plat and provided the plaintiffs with vested property rights in the subdivision. Plaintiffs freely and voluntarily chose to take no action to secure their potential property rights in the approved final plat.
40. The Planning Commission did nothing to prevent the plaintiffs from timely bonding and recordation of said plat. The complaint does not make a single factual allegation

² The standard course of action would be to attempt a course of action and then if denied, complain of an actual demonstrable injury. This way actual evidence can be presented as to what occurred and why. In this case, the plaintiffs would have to post a bond to record the final plat and this expense is exactly what that plaintiffs do not want to incur. The plaintiffs want this court to relieve them of the obligation of posting the expensive bond required of all subdivisions. The plaintiffs want the benefit of a recorded plat without the expense of a bond, a bond intended to protect the public from developers who cannot afford to pay to finish a project.

as to how the Planning Commission prevented the plaintiffs from posting the required bond and recording their plat within the 90 days.

41. WV Code §8A-5-12 expressly addresses vested property rights and states that a vested property right ***“is only applicable under the terms and conditions of the approved land development plan and plat. Failure to abide by the terms of the approved land development plan and plat with result in forfeiture of the right.”***
42. The Ordinance and the final plat required posting of the bond and recordation within 90 days. Plaintiffs chose not to post the bond and not to record within 90 days. Thus, they forfeited any claim to a vested property right in the proposed subdivision under the terms of §8A-5-12.
43. In the context of causes of action with rely upon speculation, a claim of a “property right” --not supported by law and undercut by plaintiffs decision not to record the proposed subdivision-- fails to state a claim for which relief may be granted.

90 Day Time Limit Is Valid Whether Or Not It Is “Self-Executing”

44. The plaintiffs erroneously claim that the 90 day bonding requirement is “not self-executing” and thus, somehow, become an invalid deadline.
45. The language of §8A-5-12 undercuts to the spurious claim that the 90 day time limit is “not self-executing.” Clearly, forfeiture of potential property right (as set forth in the forgoing section) serves to “execute” the 90 day time limit imposed under the Ordinance and by the terms of the final plat.
46. Furthermore, no case law is cited by the plaintiffs to justify their claim that a “non-self executing” deadline is somehow unenforceable.
47. §8A-9-1 requires that an aggrieve party file a petition for writ of certiorari within thirty days. The section does not go on to state what happens if a party does not file within the deadline. It does not need to; the implication is obvious: file within 30 days or you are forever barred from so filing. Based on the “non-self executing” argument of the plaintiffs the 30 day appeal period is also somehow not enforceable either. It fails the straight face test to argue any civil deadline is not self-enforcing.
48. Again the “self-executing” argument in the context of a purely speculative claims of what might happened in the future, fails to state a claim for which relief may be granted.

Plaintiffs Make Some Claims Against Wrong Party

49. In addition to the other fatal deficiencies in Counts II and III, the plaintiffs have also failed to sue the property party. The Planning Commission is the body against which suit has been filed and the Planning Commission is not the employer of any “staff.”
50. The employees of the Jefferson County Planning and Zoning Department are not employees of the Planning Commission. The Planning Commission acts only through its rulings or variances or other official actions and it exercises no command and control over any employee of the County Commission or anyone else outside of this context. (To the extent that the Planning Commission can issue rulings to which others must follow no more makes such people “employees” of the

Planning Commission, to hold otherwise would make parties to every action at law "employees" of the Circuit Court).

51. To the extent Counts II and III complain of potential future actions of officials who are not employees of the Planning Commission, said counts should be dismissed as against the improper party, the Planning Commission.
52. In the event the foregoing Motion to Dismiss is denied in whole or in part, the Planning Commission reserves the right to file such formal answer as the RCP may require and reserves the right to assert any and all further defenses and objections as the rule allows in said answer.

WHEREFORE, the Planning Commission respectfully requests that this Court decline to issue a Writ of Certiorari as claimed in Count I. Further, the Planning Commission respectfully requests that this Court DISMISS Counts II and III for the reasons set forth herein and provide such other relief as the Court deems just and equitable.

Respectfully submitted,

JEFFERSON COUNTY PLANNING COMMISSION by counsel

 COPY

Stephen V. Groh,
Assistant Prosecuting Attorney
P.O. Box 729
Charles Town, WV 25414
WV Bar #6831

Certificate of Service

I Certify that on this _____ day of December, 2009 I caused a true and accurate copy of the foregoing to be hand-delivered/mailed first class mail postage prepaid to the offices of plaintiffs counsel, J.Michael Cassell, Esquire 201 N. George St. Charles Town, WV 25414

Jeff. Co planning
Commission

RECEIVED
IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

SUNNYSIDE, LLC
Plaintiff,

2009 DEC 16 PM 3:31

DEC 17 2009

JEFFERSON COUNTY
CIRCUIT CLERK RECEIVED JEFFERSON COUNTY
CIRCUIT COURT

v.

CIVIL ACTION NO. 09-C-260

DEC 22 2009

JEFFERSON COUNTY
PLANNING COMMISSION

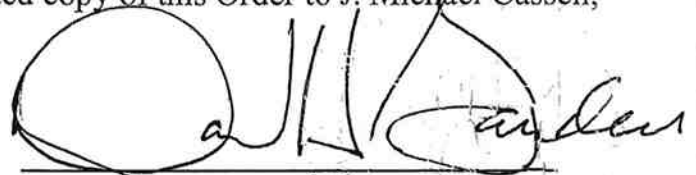
Jefferson County Commission

ORDER OF VOLUNTARY DISMISSAL

THIS MATTER came on this 16th day of December, 2009, upon the
Complaint filed herein and pursuant to Rule 41, Rules of Civil Procedure, it is hereby
ADJUDGED and ORDERED that this matter is dismissed without prejudice as
no service has been perfected and the Plaintiff wishes to voluntarily dismiss this Civil
Action pursuant to the Rules.


The Clerk shall place this matter among the causes ended.

The Clerk shall transmit an attested copy of this Order to J. Michael Cassell,
counsel for the Plaintiff.



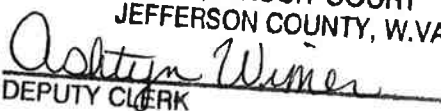
Hon. David H. Sanders
Judge of the Circuit Court of
Jefferson County, West Virginia

Prepared by:


J. Michael Cassell, Esq. (WVSB# 670)
Campbell Miller Zimmerman
201 N. George Street, 2nd Floor
Charles Town, West Virginia 254143
304-725-5325/telephone
304-724-8009/facsimile

A TRUE COPY
ATTEST:

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

BY 
DEPUTY CLERK

3cc
- J. Cassell
- Jeff Co.
- planning
- commission
- Pros. Atty/
- S. Grove
12/18/09
AW

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 and fourth 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. 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, 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 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.

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.

Article V – Consideration of Items

Section 5.1 – Voting

A member must be physically present at a meeting to vote on any item considered at said meeting. Voting via telephone or 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.

Regular Board Meeting Agenda
January 4, 2010
JCPSD Office 7:00PM
340 Edmond Road, Suite A
Kearneysville

The Board Will Discuss and May Take Action on the Following Items:

- Public Comments

Old Business:

- Review Minutes of December 7 Regular Board Meeting
- Consider Approval of Mandatory Sewer Connection Rule
 - **J Cummins read several options – PSD could compel hookup if owner could not provide proof of approved septic that had been properly maintained or within 300' of line. Commissioners had number of questions about wording, especially reference to “standards”. Commission approved sending document to Dept of Health for comment before proceeding.**
- Consider Approval of the Revised Joint Applications to West Virginia Infrastructure and Jobs Development Council with Jefferson Utilities Incorporated for Mountain Water Project
 - **Draft proposal just received earlier in the day; therefore, inadequate time to review. John (Pentree) indicated delay was due to JUI rate case which impacted the financial modeling, especially debt service. Project will cost 14.5M and recommendation is 50% grants & 50% loan. As the Infrastructure rarely gives more than 2M there will be need to find funds from other sources (small city block grants, pending “green” monies and other sources). Mountain water system needs 150,000 gallons to serve 356 existing customers. Debt service to be covered by users and \$12 surcharge from all JUI customers. John Maxey challenged the cost of pumping across the river compared to cost of wells on mountain side. John (Pentree) indicated his professional opinion was this was not an option. When system completed, will be owned by PSD.**

New Business:

- Discussion of any Expenses over Budget
 - **Joe brought this portion of the agenda moved up so public could understand the financial difficulties that PSD is facing. They have moved \$50,000 from a reserve fund to offset the monthly deficits they are experiencing. They are \$41,000 down in revenues for the month.**
- Disbursements
- Approve Transfer of \$128.45 from Cavaland Security Deposit Account into Cavaland Operating for Security Deposit Refunds
- Approve Transfer of \$4,321.22 from Sewer Security Deposit Account into Sewer Operating for Security Deposit Refunds
- Election of Officers: **Joe Hankins, Chair, Pete Appignani, treasurer, Jim Cummins, secretary**
- Consider Approval of 2010 Holiday Schedule
- To consider and act upon on a proposed Supplemental Resolution relating to the issuance of the Refunding Sewerage System Bond Anticipation Notes, Series 2010

- Jim C read the resolution which will extend \$750,000 loan payment an additional 6 months. These funds are for engineering, etc for Flowing Springs plant. MVN bank has been working with PSD for this extension.
- Consider Acceptance of the Golder Report for Mountain Water Project Review Draft
 - Brent from Golder presented his draft report which had the scope of investigating if the valley water system has adequate supply and recharge to support the mountain water system, (Alternative sources were not part of the scope.) Brent found the valley system to be adequate and based his research on USGC and other data. Jim C indicated he felt the investigation was not adequate and expressed his concern that the funds and scope provided were not sufficient to do an analysis he was comfortable with. He added that the vulnerabilities of the water supply was not even reviewed. Joe H questioned if there had been any review of the impact of changing weather patterns, increased impervious surfaces from development. No.
 - Two speakers from Elk Run Watershed group took issue with many details of the report and have significant concerns on the impact this project might have on their water supply.

Left the meeting at 10:30pm

- Discussion and Next Steps on Glen Haven Meeting held on December 16
- Discussion and Next Steps on Mountain Water Systems Meeting held on December 17
- Discuss WV Funding Stakeholder Group February 2nd Meeting
- Discuss Federal Leadership Committee's meeting Tuesday, January 5 at 7pm, Holiday Inn Martinsburg to discuss Draft Chesapeake Bay Strategy
- Discuss Filing Comments on Federal Leadership Committee's Draft Chesapeake Bay Strategy due 1/9/2010
- General Manager Report
- Consider Engagement of Outside Professional Financial and Accounting Support for the District
- Consider RFP for Inspection Engineering Firms
- Consider Letter from PSD to PSC for Exemption Meter for Lawn Sprinkler for Deerfield Customer
- Odor Control Report and Proposal from Siemens
- Correspondence
- Public Comments

Discuss Litigation, Personnel Matters, and Contract Negotiations:

- Petition to Intervene in Charles Town's Certificate and Municipal Appeal Cases
- Discuss Charles Town rate ordinance and Certificate Application for Tusawilla
- Update on Kevin Wilt PSC Case
- Discuss Uniwest Overpayment
- Consideration of Easements and Real Property Acquisition for Flowing Springs Wastewater project
- City of Martinsburg NPDES Permit Appeal before WV EQB
- Update on PSC review of Agreement with Jefferson Utilities for Mountain Water Project
- Update on PSC General Investigation into Berkeley County Capital Improvement Fees
- Reopening Flowing Springs certificate application at PSC
- Clarification of PSD Rate Case

December

Public Service District: Sewer (Metered)

- Residential – 1911 Customers
 - November 2008 – 1896 Customers
- Commercial – 134 Customers
 - November 2008 – 131 Customers
- Public Authority – 9 Customers
 - November 2008 – 9 Customers
- Industrial – 8 Customers
 - November 2008 – 8 Customers
- EDU's – 12,436,300 Gallons Billed in November (4500 avg gal/customer/mo) = 2764 EDU's
- 1 New Homes in December (1 EDU's)

January 4, 2010
PSD Agenda

- 0 New Commercial in December (0 EDU's)

Public Service District: Sewer (Unmetered)

- Residential – 76 Customers
- Commercial – 0 Customers

Public Service District: Water

- Glen Haven – 73 Customers
- Cavaland – 39 Customers

Next Meeting:

- Monday, February 1, 2010 at 7:00PM –
Jefferson County PSD Office, 340 Edmond Road, Suite A, Kearneysville

JEFFERSON COUNTY, WEST VIRGINIA

Department of Planning & Zoning

104 East Washington Street

P.O. Box 338

Charles Town, West Virginia 25414

Email: planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

Fax: (304) 728-8126

Dear Commissioners,

Below is a holiday schedule for 2010. The date of the scheduled PC meeting that falls within the same week as a holiday is listed in red. For your convenience and consideration some alternative dates are shown in green.

JEFFERSON COUNTY COMMISSION HOLIDAY SCHEDULE 2010

NEW YEAR'S DAY	FRIDAY, JANUARY 1, 2010
MARTIN LUTHER	MONDAY, JANUARY 18, 2010
PRESIDENT'S DAY	MONDAY, FEBRUARY, 15, 2010
PRIMARY ELECTION	TUESDAY, MAY 11, 2010 -- PC meeting 5/11/10 Alt. date 5/4/10 or 5/18/10
MEMORIAL DAY	MONDAY, MAY 31, 2010
WEST VIRGINIA DAY	MONDAY, JUNE 21, 2010 -- PC meeting 6/22/10 Meeting could still be held this day.
INDEPENDENCE DAY	MONDAY, JULY 5, 2010
LABOR DAY	MONDAY, SEPTEMBER 6, 2010
COLUMBUS DAY	MONDAY, OCTOBER 11, 2010 - PC meeting 10/12/10 Meeting could still be held this day.
ELECTION DAY	TUESDAY, NOVEMBER 2, 2010
VETERAN'S DAY	THURSDAY, NOVEMBER 11, 2010
THANKSGIVING	THURSDAY, NOVEMBER 25, 2010 -- PC meeting 11/23/10 FRIDAY, NOVEMBER 26, 2010- Meeting could still be held 11/23/10. Meeting has been cancelled in the past. Alternative dates would be 11/16/10 or 12/7/10.
CHRISTMAS EVE	FRIDAY, DECEMBER 24, 2010
NEW YEAR'S EVE	FRIDAY, DECEMBER 31, 2010 -- PC meeting 12/28/10 Meeting could still be held 12/28/10. Meeting has been cancelled in the past. Alternative date would be 12/21/10.

IN ADDITION TO THE DAYS LISTED ABOVE, THE COMMISSION WILL OBSERVE AS HOLIDAYS, ANY NATIONAL, STATE OR OTHER ELECTION DAY THROUGHOUT THE COUNTY, AND ALL DAYS

WHICH MAY BE APPOINTED OR RECOMMENDED BY THE GOVERNOR, OF THIS STATE, OR THE PRESIDENT OF THE UNITED STATES, AS DAYS OF THANKSGIVING, OR FOR THE GENERAL CESSATION OF BUSINESS, ANY DAY OR PART THEROF DESIGNATED BY THE GOVERNOR AS TIME OFF, WITHOUT CHARGE AGAINST ACCRUED ANNUAL LEAVE, FOR STATE EMPLOYEES STATEWIDE MAY ALSO BE TIME OFF FOR COUNTY EMPLOYEES IF THE COUNTY COMMISSION ELECTS TO DESIGNATE THE DAY OR PART THEREOF AS TIME OFF, WITHOUT CHARGE AGAINST ACCRUED ANNUAL LEAVE FOR COUNTY EMPLOYEES, ANY ENTIRE OR PART STATE WIDE DAY OFF DESIGNATED BY THE GOVERNOR MAY, FOR ALL COURTS, BE TREATED AS IF IT WERE A LEGAL HOLIDAY, AS PROVIDED FOR IN 2-2-1 OF THE WEST VIRGINIA CODE, AS AMENDED.