

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

Email: planningdepartment@jeffersoncountywv.org

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

MEMORANDUM

TO: JEFFERSON COUNTY PLANNING COMMISSION
FROM: JENNIFER BROCKMAN, DIRECTOR OF PLANNING
DATE: APRIL 23, 2010
SUBJECT: APRIL 27, 2010 PLANNING COMMISSION MEETING

Please find attached the following documents for consideration at the April 27, 2010 Planning Commission meeting.

Documents provided:

- April 27, 2010 agenda and map.
1. Approval of the minutes from the April 13, 2010 meeting.
 - Draft minutes for the April 13, 2010 meeting.
 2. Citizen Communications.
 3. A call for postponements.
 4. Postponed from the April 13, 2010 Planning Commission meeting. Request by William R. and Elizabeth G. Howard for a variance to have the Planning Commission accept Howard Farm Turner Road as "County Grade instead of requiring an upgrade of that road for North Hills Subdivision (PC file # 05-22). This property is located on the east side of Route 5 (Shepherd Grade Road) at Howard Farm Road between Cress Creek and Howard Farm Subdivision. This property is designated as Tax District: Shepherdstown, Map: 5, Parcel: 8.3. (Subdivision Regulations Article 8, Section 8.2)

Documents provided:

- Variance application.
 - Staff Memo.
 - Staff Report.
 - Staff Recommended Motion.
5. Request by Paul and Susan Pritchard for a waiver from Section 20.202 and Section 21.103 D of the Subdivision Regulations to allow the use of two entrances for Lot 1 in the Pritchard Minor Subdivision (PC file # 09-25). This property is located south of Shepherdstown between Flowing Springs Road and Shepherdstown Pike. The property fronts Shepherdstown Pike starting at the "Y"

intersection and running SE for about 1600+ feet and is designated as Tax District: Shepherdstown, Map: 17, and Parcel: 15.1.

Documents provided:

- Variance application.
- Staff report.
- Staff Recommended Motion.

6. Response to Paul Rosa's request to initiate an amendment to the Zoning Ordinance for the County Commission to pursue a moratorium for wireless communication towers.

Documents provided:

- Public comment (email) from Guy Chicchirichi.
- Staff Memo concerning amendment and moratorium suggestions.
- Documentation provided by Paul Rosa at the April 13, 2010 meeting.

7. Blue Ridge Mountain Community Plan.

8. Director's Report.

Documents provided:

- Director's Report Agenda.

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

10. County Commission Liaison Report.

11. Planning Commission Exchange.

12. President's Report.

13. Actionable Correspondence.

14. Non-Actionable Correspondence.

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

AGENDA
JEFFERSON COUNTY PLANNING COMMISSION
April 27, 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. Approval of the minutes from the April 13, 2010 meeting.
2. Citizen Communications.
3. A call for postponements.
4. Postponed from the April 13, 2010 Planning Commission meeting. Request by William R. and Elizabeth G. Howard for a variance to have the Planning Commission accept Howard Farm Turner Road as "County Grade instead of requiring an upgrade of that road for North Hills Subdivision (PC file # 05-22). This property is located on the east side of Route 5 (Shepherd Grade Road) at Howard Farm Road between Cress Creek and Howard Farm Subdivision. This property is designated as Tax District: Shepherdstown, Map: 5, Parcel:8.3. (Subdivision Regulations Article 8, Section 8.2)
5. Request by Paul and Susan Pritchard for a waiver from Section 20.202 and Section 21.103 D of the Subdivision Regulations to allow the use of two entrances for Lot 1 in the Pritchard Minor Subdivision (PC file # 09-25). This property is located south of Shepherdstown between Flowing Springs Road and Shepherdstown Pike. The property fronts Shepherdstown Pike starting at the "Y" intersection and running SE for about 1600+ feet and is designated as Tax District: Shepherdstown, Map: 17, and Parcel: 15.1.
6. Response to Paul Rosa's request to initiate an amendment to the Zoning Ordinance for the County Commission to pursue a moratorium for wireless communication towers.
7. Blue Ridge Mountain Community Plan.

AGENDA
JEFFERSON COUNTY PLANNING COMMISSION
APRIL 27, 2010
PAGE 2 OF 2

8. Director's Report.
 - Status of Subdivision Regulation Amendments.
9. Reports from Legal Counsel and legal advice to PC.
10. County Commission Liaison Report.
11. Planning Commission Exchange.
12. President's Report.
13. Actionable Correspondence.
14. Non-Actionable Correspondence.

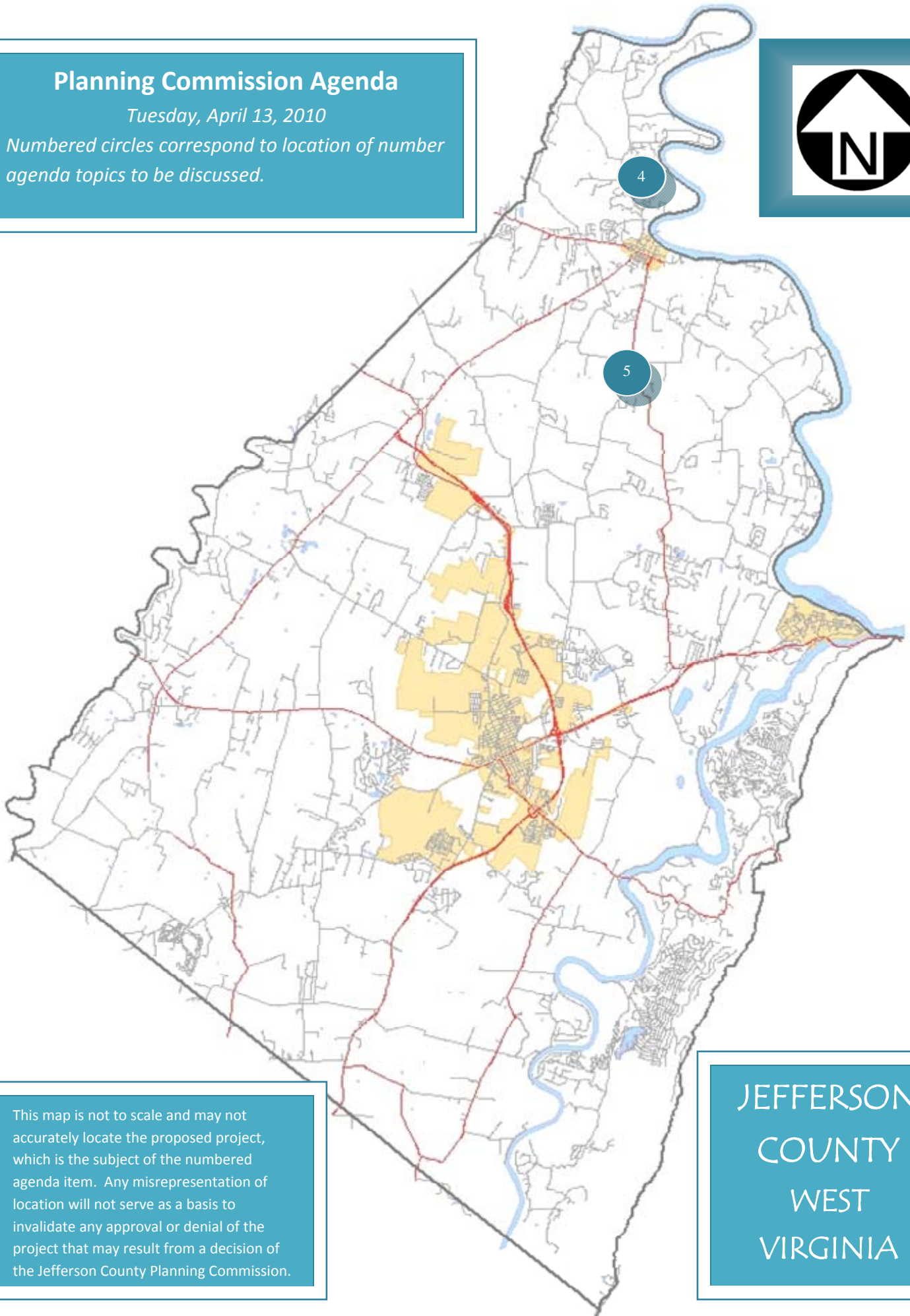
The Planning Commission welcomes written comments at any time. Our office is open Monday through Friday, 9:00 a.m. to 5:00 p.m., and is located at 116 East Washington Street, P.O. Box 338, Charles Town, WV 25414. Our phone number is (304) 728-3228; our fax number is (304) 728-8126; our email address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

Minutes and video recordings of past meetings 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, April 13, 2010

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
APRIL 13, 2010

The Jefferson County Planning Commission met on Tuesday, April 13, 2010, with the following Commission members present: John Maxey, President; Thomas Trumble, Vice President; Morgan Etters, Secretary; Arnold Dailey, Daniel Hayes, Stephen Alemar, Frances Morgan, Kelly Baty and Gene Taylor. Staff members present included Jennifer Brockman, Director of Planning and Zoning; Jennifer Snyder, Zoning Administrator; Jonathon Saunders, County Engineer; Stephen Groh, Assistant Prosecuting Attorney; and Amy Puetz, Office Assistant.

Mr. Maxey called the meeting to order at 7:02 PM.

1. Election of Planning Commission Vice President:

Mr. Taylor nominated Mr. Trumble for Vice President. Mr. Trumble resigned as Secretary to accept the nomination. Mr. Hayes seconded the motion which carried unanimously.

For the position of Secretary, Mr. Trumble nominated Mr. Taylor. Mr. Taylor declined nomination. Mr. Taylor nominated Ms. Etters. There were no other nominations and Ms. Etters was voted in as Secretary unanimously.

2. Approval of minutes for the March 23, 2010 meeting:

Mr. Trumble moved to approve the minutes of the March 23, 2010 Planning Commission meeting. Mr. Alemar seconded the motion which carried 5 for and 2 abstentions (Mr. Hayes and Ms. Etters).

3. Citizens Communication:

Mr. Paul Rosa of the Harpers Ferry Conservancy addressed the Planning Commission in regards to amending the Zoning Ordinance in reference to cell towers. Mr. Rosa suggested that the Zoning Ordinance needed to be amended, before the Subdivision Regulations, to provide submittal requirements, height constraints, and obligations of the telecommunication companies to use existing structures. Mr. Rosa presented documents to support his request including: a letter to Tony Redman dated, December 31, 2007, outlining suggestions of amendments which were subsequently included in the now failed Zoning Ordinance, copies of news articles describing the increased data traffic strain on cell phone networks, and a draft resolution of a Wireless Telecommunications Facilities Moratorium that Mr. Rosa desired to present to the County Commission. Mr. Maxey asked that staff review Mr. Rosa's request and report back to the Planning Commission on the April 27, 2010 meeting.

4. A call for postponements: None.

5. Variance request by William R. and Elizabeth G. Howard and Home Hill Corporation to have Howard Farm Turner Road accepted as "County Grade" instead of requiring an upgrade of that road for the Howard Farm Subdivision (PC File # 91-19) and the North Hills Subdivision (PC file # 05-22).

MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
APRIL 13, 2010
PAGE 2 of 5

Mr. Saunders read from his staff report and recommended approval with the conditions that a stop sign be placed at the intersection of Howard Farm Road and Shepherd Grade Road, and that all brush be removed from the road culvert. Ms. Brockman presented the Planning staff report and also recommended approval. The Planning Commission questioned about current conditions of the road and what standards had not been met according to the 1979 Subdivision Regulations, how the road accesses the subdivisions, and if the decision of the variance would affect future subdivision of the properties.

Mr. Walter Washington, Attorney representing Home Hill Corporation, approached the Planning Commission and explained the history of the road and its approval by a past County Engineer. Mr. Washington explained that, at the request of the County, this road provided the first interconnectivity of subdivisions. He answered questions of the Commission and submitted an addendum to the petition of support (provided in the variance application) with additional signatures previously omitted.

Ms. Frances Morgan joined the meeting at 7:44 PM.

Mr. William Howard, Developer of Howard Farm, made comment and was available for questions. He voiced concern that the road be able to sustain future subdivision possibilities so that further waivers would not be necessary. If the current variance request would not accomplish this, he stated he would not be in support of it.

Mr. Kelly Baty joined the meeting at 7:52 PM.

Mr. Maxey opened the public hearing. Mr. Jack Young, Vice President of the Fernbank Home Owners Association and Chairman of the Home Owners Association's Road Committee, spoke in support of the variance. Mr. Maxey closed the public hearing.

Discussion followed regarding what density would require an upgrade to the road.

Mr. Groh suggested that the applicants consider resubmitting the variance with more specific wording and combining both Home Hill Corporation's request and Mr. Howard's request.

Ms. Morgan moved to deny the variance. Mr. Alemar seconded the motion. Additional discussion ensued. Mr. Maxey moved to table this item until the April 27th meeting. Mr. Hayes seconded the motion. Mr. Maxey withdrew his motion to table and motioned to postpone until April 27, 2010, to allow staff and the applicant to engage in further discussion. Mr. Taylor seconded the motion which carried unanimously.

Mr. Maxey called for a break to allow staff to change the CD at 8:22 PM. Mr. Maxey called the meeting to order at 8:27 PM.

Mr. Maxey asked staff and legal to research and provide a report on the definition of residential local street and interconnected local subdivisions with regard to density limits.

6. Discussion on public input for the Subdivision Regulation Amendments and request for direction:

Ms. Brockman provided a summation of the outcome of the public outreach meetings. A memo regarding the areas of the proposed Subdivision Regulation Amendments that require clarification and a proposed Subdivision Regulation Amendment timeline were provided to the Planning Commission. For the amendments outlined in the memo, specifically Sections 20.302 (C)(2)(a), 24.502, and Appendix B, Section 9.1(B), there was unanimous consent to amend according to staff recommendation. For Sections 20.302(J) and 20.303(G), there was unanimous consent to strike these sections from the Subdivision Regulations.

Ms. Brockman presented a chart of all public comment received during the outreach meetings. Mr. Maxey proposed that any comment with a staff recommendation of “Requires Research or Policy Input” be moved to the column “Postpone to Future Amendments” with the exception of the topics of *Vesting, Definition of Modulation, and Traffic Impact Data*, which should be moved to the “Include Now” column. Ms. Morgan seconded the motion. The motion passed 8 for, 1 opposed (Mr. Dailey). Mr. Dailey stressed his concern about not considering all public comment relating to the Subdivision Regulations now. Mr. Trumble moved to direct staff to organize any public comment listed under “Postponed to Future Amendments” into subject categories with a proposed schedule as to when those items would be considered. Mr. Hayes seconded the motion which carried unanimously.

Each comment was read and considered individually. There was unanimous consent to adopt the staff recommendations for each item except:

- Outdoor Recreation: Defining parking standards. There was unanimous consent to postpone to future amendments.

Mr. Maxey called for a break to allow staff to change the CD at 9:45. Mr. Maxey called the meeting to order at 9:50 PM. Additional exceptions considered were:

- Resubdivision: There was unanimous consent to strike the term *resubdivision* from the Subdivision Regulations.
- Define HOA: There was unanimous consent to add references to the West Virginia State Code in the definitions section of the Subdivision Regulations.
- Spelling of “soil”: There was unanimous consent to correct all typos (not only “soil”) within the Subdivision Regulations.

Mr. Maxey directed staff to present a draft of changes to the amendments at the April 27, 2010 Planning Commission meeting.

7. Request for Endorsement of the Elks Run Watershed Water Quality Improvement Project:

A copy of the proposal for the Elks Run Watershed and a draft letter to Mr. Warren Mickey supporting the project were provided in the agenda packets. Ms. Brockman briefly explained the project. Mr. Hayes motioned to accept the draft letter as written. Mr. Alemar seconded the motion which carried unanimously.

8. Blue Ridge Mountain Community Plan:

Ms. Brockman informed the Planning Commission that a subcommittee had met and recommended Downstream Strategies for the contract. The County Commission would hear this item on Thursday, April 22. Ms. Brockman also explained that a mission statement had been created and has been distributed to the Citizen's Committee by mail.

9. Director's Report:

- a) Activity Report. A copy of staff's schedule was provided in the agenda packets.
- b) Pre-proposal Conference Memos. Copies of all memos sent since the last Planning Commission meeting were provided in agenda packets.
- c) Reports Generated. Ms. Brockman explained that staff had been tasked with generating a report of subdivisions approved within the last year for the WV Department of Environmental Protection and a report to the Jefferson County Public Service District of the subdivisions which they have committed to serve. The Commission asked to see the reports from previous years.
- d) WV Department of Highways access permits concerns. Ms. Brockman explained the difficulties of obtaining access permits from the Department of Highways and how it has been affecting projects processing through the Planning and Zoning Department. Ms. Brockman suggested discussing this topic at a future meeting to which there was unanimous consent.
- e) Status of Land Development Fees. Ms. Brockman notified the Planning Commission of a County Commission Workshop that was to be held April 22, 2010 at 1:30 PM. Ms. Brockman reported that the EDA appeared before the County Commission to have the development fees waived for a minor subdivision that they would be submitting and that a request had been made to waive all land development and building fees for any property owned by the County, which County Commission planned to discuss at the workshop on fees.
- f) Status of Zoning Map Update. Ms. Brockman described the joint effort of the Planning and Zoning Department and the Addressing Department to improve the zoning map.

10. Reports from Legal Counsel and legal advice to Planning Commission:

- a) Mr. Groh explained the Order of Recusal from the Alstadt's (James Gibson) case that was provided in the agenda packets.
- b) Mr. Groh reported plans to meet with Ms. Brockman to discuss the 595 Senate bill which relates to the extension of active applications in on January 1, 2010.
- c) Mr. Groh informed the Planning Commission of the result of two Board of Zoning Appeals cases, the Jane Rissler, Patricia Rissler, Susan Rissler-Sheely, Mary Macelwee, Richard Latterell, and Sherry Craig vs. The Jefferson County Board of

MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
APRIL 13, 2010
PAGE 5 of 5

- Appeals case and the Jefferson Orchard vs. the Jefferson County Board of Appeals case.
- d) Amendment to Planning Commission Bylaws. Mr. Groh presented the draft amendment to the Planning Commission Bylaws. Mr. Maxey moved to recommend to County Commission to amend the bylaws as drafted by Mr. Groh to which there was unanimous consent.

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

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

13. **President's Report:** None.

14. **Actionable Correspondence:** None.

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

Mr. Taylor moved to adjourn at 10:44 PM. Mr. Trumble seconded the motion, which carried unanimously. A detailed transcript of the meeting may be found on CD #____. These minutes were prepared by Amy Puetz, Office Assistant.

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

HOME HILL CORPORATION

By: _____

[Handwritten Signature]
VICE PRESIDENT &
SECRETARY

Signature of Property Owner

[Handwritten Signature]
Signature of Property Owner

For official use only: Amount of fees paid _____

Date of meeting/publc hearing _____

Official/Administrative body _____

Posting requirements _____

Advertising dates _____

Official Signatures and Seal _____

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

Variance/Determination Request
Cress Creek, North Hills Section Bond
Howard Farm/Turner Road Upgrade
Article 8, Section 8.2
February 15, 2010

Brief Description of the Request

Home Hill Corporation and William and Elizabeth Howard are requesting the Commission to uphold the approval determination made by the county engineer, John Laughland, P.E. regarding Howard Farms/Turner Road in 2001, when the Jefferson County Engineering Department and the County Commission released the bond for the Fernbank Subdivision. This determination made allowances for geotechnical data and conditions in the field at that time. The purpose of the request is to allow a variance from any individual standard required in Article 8, Section 8.2 of the Subdivision Ordinance that may not meet the current technical standards and to accept the road as 'County Grade'.

Factual Background

Cress Creek and Howard Farm are two contiguous residential developments north of Shepherdstown on Shepherd Grade Road. A map is attached. The developer of Cress Creek, which also includes a golf course and country club, is Home Hill Corporation (hereinafter "Home Hill"). Cress Creek has been developed in four successive sections beginning in 1988: Meadow Ridge, South Hills, Fernbank and North Hills. The owners/developers of Howard Farm are William and Elizabeth Howard (hereinafter "Howards"). Howard Farm as originally platted in 1992, consisted of 7 lots ranging in size from 3.50 to 8.40 acres and a 93.05 acre residue parcel; the Howards currently retain a 57.79 acre residue parcel. When first developed, Howard Farm subdivision included a gravel road, originally called Turner Lane, built to County standards for a subdivision of its size as platted. The road has been re-named Howard Farm Road.

In order to develop the Fernbank section of Home Hill in the mid-1990s, the Planning Commission required Home Hill to provide either a monumented roadway for Fernbank or a secondary means of egress to Shepherd Grade Road because the number of lots exceeded the limits that allowed a single entrance. The planned final build-out for Fernbank Subdivision was 118 lots. To meet this requirement Home Hill and the Howards entered into an agreement in 1996 (hereinafter "the 1996 Agreement") to allow Howard Farm Road to serve as the second entrance point. The agreement called for the upgrade of the road bed to a paved surface and spelled out the responsibilities of each party for the construction and maintenance of Howard Farm Road and a "connector road" to be built connecting it to the Fernbank Subdivision roads. At that time, the Commission was encouraging the use of joint agreements by developers for road projects. It is believed this reciprocal right of way agreement was the first such agreement to be approved by the Commission. The connectivity provided between these two subdivisions is still one of the only such arrangements in Jefferson County outside of the municipalities.

Under the terms of the agreement, the Howards were responsible for the cost of upgrading Howard Farm Road (still called Turner Lane in the agreement) “[i]n accordance with all rules, regulations, or requirements of the Jefferson County Subdivision Ordinance.” Home Hill was responsible for construction of the connector road to the Fernbank subdivision roads, also in accordance with the ordinance. Home Hill was to pay for “all excavation, grading, drainage, stone base and one-half of the cost of the asphalt paving” for both Howard Farm Road and the connector road; Howards were to pay the remaining one-half cost of the asphalt paving for both. (The cost of improving an existing storm water management pond on Howard Farm was to be shared equally by the parties up to \$15,000).

The construction bond approved by the Planning Commission for the Fernbank Subdivision of Cress Creek incorporated the requirements of the 1996 Agreement. The Howards engaged Cogar Excavating to widen and dress the Howard Farm roadbed. PCI Engineering was engaged to install the paving. Triad Engineering oversaw the project. County Engineer John Laughland inspected the work for the Planning Commission. William Howard was present on site for each of Mr. Laughland’s visits. Mr. Laughland was present on site for the auguring of the roadbed by Triad. Mr. Laughland made allowances in the field for several site features, including storm water management, preservation of existing walnut trees and an existing three-board horse fence on the property of one of the Howard Farm lot owners which fronts approximately 1,800 feet along the road.

In a Project Inspection Report dated December 1, 1999, Mr. Laughland included the following “findings”:

The road in Howard Farm has been paved (20' plus). Depth varies from 4" to 6".
Need copies of geotech reports on subgrade or base coarse and assessment of existing road bed. Need letter from utility as to water & sewer lines. All roads are to grade. Need geotech data. (See attached Exhibit 1)

A Project Inspection Report dated June 29, 2000 by Mr. Laughland showed that he had inspected the road paving and included the following finding.

The top coat paving has been completed. Remaining work consists of signing & ditch corrections along the road and related to the sink hole (?). (See attached Exhibit 2)

On March 6, 2001, Mr. Laughland issued a final inspection report with the finding “OK.” At the bottom of the report he checked the box “Approved as Constructed.” Based on this final report, the County released the construction bond for the Fernbank Subdivision. (See attached Exhibit 3)

In October, 2003, Douglas Kinnet and his wife, the owners of one of the lots in the Howard Farm Subdivision, submitted a minor subdivision application to the Planning Commission to allow them to subdivide their lot as permitted under the revised Howard Farm covenants. Roger Goodwin, who had replaced John Laughland as County Engineer, requested as-built road specifications for Howard Farm Road. This was the first indication to either the Howards or Home Hill that any issues might exist with regard to Howard Farm Road. The Kinnets did not pursue their application at that time.

In 2005, another Howard Farm lot owner, Phillip Musslewhite and his wife, applied to the Planning Commission for a variance to allow them to further subdivide their property. Anticipating that Howard Farm Road would become an issue again, on Oct. 26, 2005, the Howards submitted to the County Engineer an as built certification prepared by Alpha Engineering along with additional Geotech data provided by Triad Engineering.

On October 28, 2005, Roger Goodwin submitted a memo to Paul Raco, then Director of Planning, that Howard Farm Road as built did not meet current county design standards. Mr. Raco notified the Howards of this by memo dated October 31, 2005. The findings of Mr. Goodwin's letter were: (1) the width of the existing right of way meets County standards; (2) approximately 1600 ft. of the 2700 ft. roadway "has a vertical alignment that is less than the minimum allowable grade;" (3) there is "no information with regard to the ditchlines;" and (4) the pavement section of the roadway does not meet County standards and recommends "placing a 1" depth of asphalt wearing course on the existing roadway."

At this time, Home Hill was developing its plans for the final phase of Cress Creek, the North Hills subdivision, consisting of 20 lots adjacent to the Fernbank subdivision. Access to North Hills would be through the Fernbank subdivision roads and would also rely on Howard Farm Road as an alternative exit. The Planning Commission approved the North Hills Community Impact Statement on July 26, 2005. During the planning review process, the issues outlined in Mr. Goodwin's October 28, 2005 memo relating to Howard Farm Road were raised. (In order to avoid complicating Home Hill's application process, Howards asked the Musslewhites to withdraw their variance application, which they did in January, 2007.)

Home Hill reached an agreement with the Planning Commission Staff to include the improvements necessary to bring Howard Farm Road into compliance with county standards in the bond requirements for the North Hills Subdivision. The North Hills final plat was approved in July, 2007, conditioned on a construction bond which included roughly \$55,000 for work necessary to bring Howard Farm Road (designated in the bond estimate as "Turner Lane") into compliance with county requirements as per Mr. Goodwin's October 28, 2005 letter. In August, 2008, Home Hill contracted with Dewberry & Davis, LLC, to prepare "red line" drawings of the improvements which would be required.

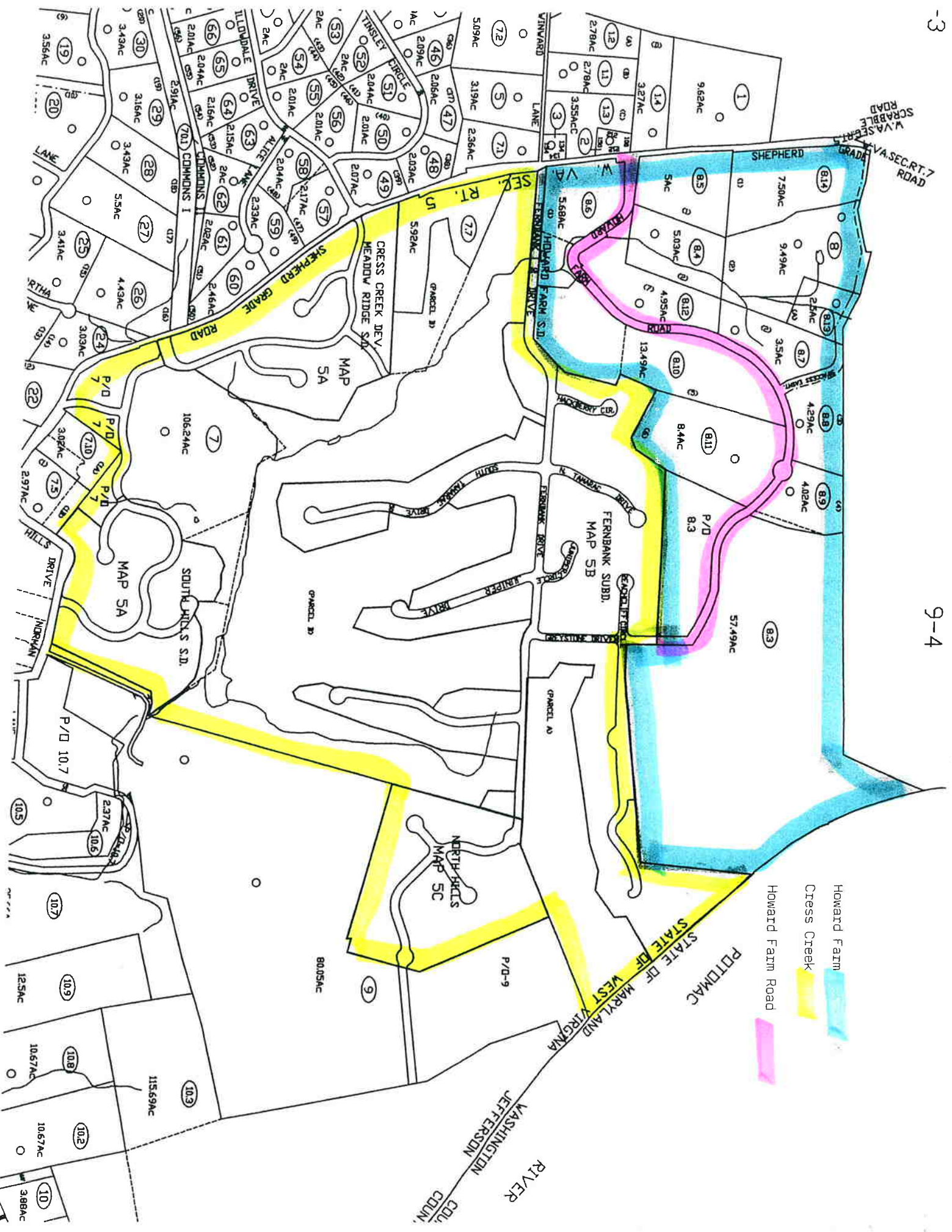
All other requirements of Home Hill's bond for the North Hills Subdivision have now been met. The only requirement remaining is the work necessary to bring Howard Farm Road into county requirements as outlined in the October 28, 2005 letter from Roger Goodwin and as shown on the "red line" drawings.

As justification for the request all of the affected parties: Home Hill; the Howards; and the lot owners within the Howard Farms Subdivision believe that the road functionally meets the intent of the Subdivision Ordinance and that strict compliance would cause more problems within the subdivision than it would fix. Attached are photographs showing the existing road. The existing Howard Farm Road is a well established road that is in good condition. There is no deterioration in the road surface. There is no problem with drainage or flooding. The recommended upgrading would diminish the rural character of the road. In particular, it would require the removal of a number of roadside walnut trees and other landscape features. These were features that former County Engineer John Laughland specifically worked with the Howards to preserve when the road was improved during the 1999-2001 construction.

Most importantly, the people who use the road every day – the owners of Howard Farm Subdivision lots – oppose the upgrading. They do not want to see the rural character of the road altered. They do not want the inconvenience that the construction would cause. The owners of one of the lots in Howard Farm, G.T. and Susie Schramm, would be especially inconvenienced. They raise horses on their 8 acre lot and the construction would require the temporary removal and replacement of an 1800 foot long three-board wooden horse fence that runs the length of their frontage on Howard Road. The estimated \$20,000 cost of replacing this fence is not included in the existing bond. It would also cause a significant disruption to their horse operation.

In summary, all of the parties relied on the representations of County Engineer John Laughland that the improvements to Howard Farm Road made during 1999-2001 were in accordance with county standards. Mr. Laughland inspected the work in progress for the Planning Commission. He was on site when the auguring of the roadbed was done by Triad Engineering. In consultation with Bill Howard, he made allowances in the field for several site features, including storm water management, the preservation of existing walnut trees and an existing three board horse fence that fronts along the road for some 1,800 feet. On the March 6, 2001, final inspection report, Mr. Laughland checked the box marked “Approved as Constructed.” As a result of this final inspection report, Home Hill’s construction bond for the Fernbank Subdivision was released.

Accordingly, for these reasons, Home Hill and the Howards request that the Commission grant its request. After several meetings with Mr. Roger Goodwin, P.E., Chief County Engineer, the applicant believes that Mr. Goodwin, P.E., Chief County Engineer supports the request and is in favor of the requested resolution.



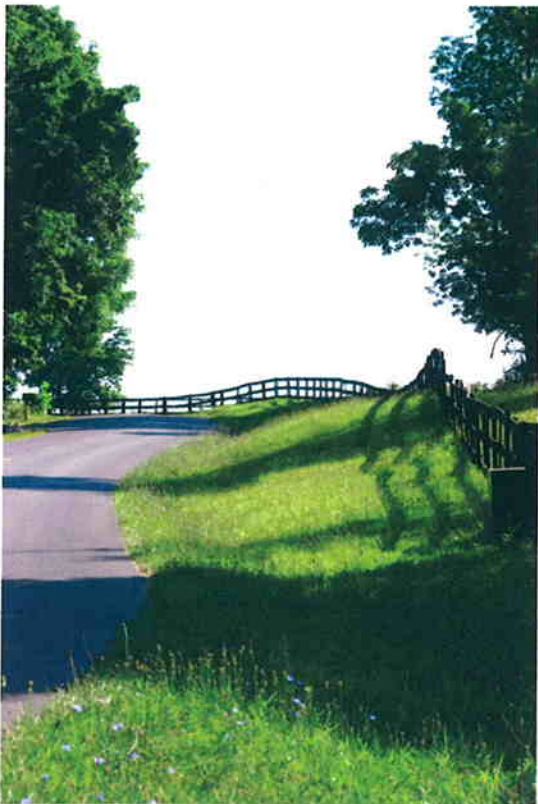
Howard Farm
 Cress Creek
 Howard Farm Road



Howard Farm Road from Shepherd Grade entrance,
7/12/09 9:30 PM



Back toward Shepherd Grade, 7/12/09 9:28 PM



Fence line from pond, 7/12/09 9:35 PM



Fence line continued, 7/12/09 9:19 PM



Walnut trees at culvert, 7/12/09 9:15 PM



Walnut trees - alternate view, 7/12/09 9:17 PM



Established entrance, 7/12/09 9:18 PM



General road condition, 7/12/09 9:37 PM



THE COUNTY COMMISSION OF JEFFERSON COUNTY
Office of the County Engineer

P.O. Box 338
Charles Town, WV 25414

Phone: 304/728-3228

PROJECT INSPECTION REPORT

Date Received 11/30/99 Requested By: Hank Walter Appointment Set For _____
Project Name EEDBANK at CRESS CREEK Lots 65-66 Building Permit # _____
Inspected By John C. Laughland Date Inspected December 1, 1999
Accompanied By _____

Component(s) Inspected: General

Activities Underway during Inspection: Laydown of base stone in cut-de-sac end of Juniper Drive

Findings: The road in Howard Farm has been paved (20' plus). Depth varies from 4" to 6"
Need ^{copies of} geotech ~~test~~ reports on subgrade or base course and assessment of existing road bed
Need letter from utilities as to acceptability for water & sewer lines
All roads are to grade. Need geotech data

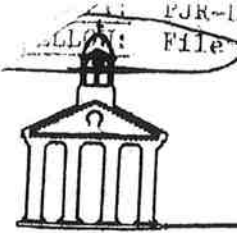
Other Comments or Recommendations:

Action Needed: Immediate Condition For Approval For Bond Release

See above

Approved As Constructed Approved With Conditions Action Required For Approval Approval Not Needed

Inspectors Signature [Signature] Title County Engineer Date _____



THE COUNTY COMMISSION OF JEFFERSON COUNTY

Office of the County Engineer

P.O. Box 338
Charles Town, WV 25414

Phone: 304/728-3228

PROJECT INSPECTION REPORT

Date Received 6/23/00 Requested By: HANK WALTER Appointment Set For _____
Project Name FERNBANK @ CRESS CREEK Building Permit # _____
Inspected By JOHN C. LAUGHLAND Date Inspected JUNE 29, 2000
Accompanied By _____

Component(s) Inspected:
Paving

Activities Underway during Inspection:
House construction

Findings:
The top coat paving has been completed. Remaining work consists of curbing & ditch concretions along the road and related to sink holes.

Other Comments or Recommendations:

Action Needed: Immediate Condition For Approval For Bond Release

Approved As Constructed Approved With Conditions Action Required For Approval Approval Not Needed

Inspectors Signature _____ Title County Engineer Date 6/29/00



THE COUNTY COMMISSION OF JEFFERSON COUNTY

Office of the County Engineer

99-34
File #

P.O. Box 338
Charles Town, WV 25414

Phone: 304/728-3228

PROJECT INSPECTION REPORT

Date Received _____ Requested By: Hank Walters Appointment Set For _____
 Project Name CRESS CREEK Building Permit # _____
 Inspected By John C. Laughland Date Inspected 3/6/01
 Accompanied By _____

Component(s) Inspected:

FINAL

Activities Underway during Inspection:

Findings:

OK

Other Comments or Recommendations:

Action Needed: Immediate Condition For Approval For Bond Release

Approved As Constructed Approved With Conditions Action Required For Approval | Approval Not Needed

Inspectors Signature _____ County Engineer _____ 3/6/01 _____
 Title Date

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

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

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

MEMO

TO: Planning Commission Members
FROM: Jennifer M. Brockman, AICP, Director, Planning and Zoning
DATE: April 27, 2010
RE: Follow Up Comments on Howard Farm Road Variance Request

The Jefferson County Planning Commission heard a variance request from William and Elizabeth Howard and the Home Hill Corporation at their April 13, 2010 meeting. The variance application requests that the Planning Commission accept Howard Farm Road (formerly Turner Lane) as a "County Grade" road instead of requiring the road be upgraded as required in the approval of the North Hills Subdivision (PC file #05-22). The Commission heard the staff report, the applicant's presentation and public comment at April 13, 2010 meeting. Due to the complexity of the questions that were raised at that meeting and that "County Grade" road is not clearly defined, the Planning Commission voted to postpone action until the April 27, 2010 meeting to allow staff to answer these questions. The following is a summary of the issues at hand and the staff's recommended course of action. This memo is intended to supplement the previously prepared staff report.

Background Facts:

- 1) Howard Farm Subdivision consists of seven platted lots, ranging from 3.5 acres to 13.49 acres, and a residue of approximately 57 acres.
- 2) Howard Farm Road is the primary access for these seven lots and the residue. It is a secondary access to 138 lots in the Cress Creek developments known as Fernbank and North Hills.
- 3) The five additional lots which appear on the tax map as having access to Howard Farm Road through an easement, now only have access to Shepherd Grade Road. The easement was abandoned.
- 4) Howard Farm Subdivision is zoned Residential Growth which would allow the development of lots with a minimum lot size of 40,000 square feet (with no central water and sewer); however there are restrictive covenants on the seven subdivided lots requiring a minimum lot size of 1.5 acres to 2 acres.
- 5) Between 1999 and 2001, Howard Farm Road (formerly Turner Lane) was upgraded from a gravel road to a 20-foot wide paved road in order for it to be used as the secondary access to the Cress Creek development. The upgraded road was inspected and approved by John Laughland, County Engineer. Anecdotal evidence indicates that Mr. Laughland allowed some undocumented design variances in the field when the road was

being improved to account for conditions that existed such as the walnut trees, three board fences, and topography. The road was accepted as constructed in 2001. At that time, there was not a maximum number of lots that could be developed within a subdivision that had an approved 20-foot paved roads and two approved entrances. The developers of Cress Creek and Howard Farm have made plans based on this approval and knowledge.

- 6) The County staff supports, and intends to encourage in the future, the interconnectivity of roads in adjoining subdivisions to allow for better opportunities for traffic to disperse.

Issues related to this variance request:

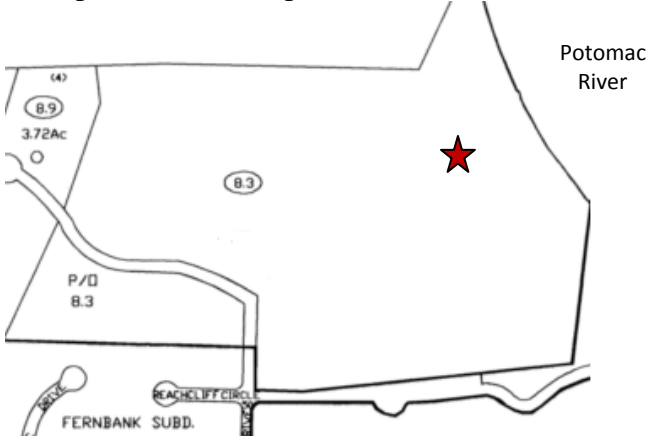
- 1) In 2005, the current County Engineer Roger Goodwin found that the road did not meet County standards and as a result the Home Hills Corporation was required to design and bond improvements to Howard Farm Road as a part of the approval of the North Hills Subdivision in order to meet these standards.
- 2) The 2005 improvements that were required did not require the road to be widened beyond the existing 20 foot road width. The improvements which were designed and bonded (and are the subject of this request) relate only to vertical alignment, ditch lines, and pavement sections.
- 3) All required improvements related to North Hills subdivision have been completed except for the improvements to Howard Farm Road.
- 4) The applicant is requesting that a variance be granted that would allow Howard Farm Road to remain as previously approved to allow for the preservation of the trees, fences and rural character of the area.

Effect of approval:

- 1) Approval of the requested variance should clearly state that this approval means that the road as constructed and approved "satisfies" the requirements of a County Road with 20 feet of pavement.
- 2) The Howard Farm Subdivision lots and residue have further development rights irrespective of the granting of this variance. In either case, for the purpose of this variance, any future development will be evaluated based on the County road standards in force at the time of application. Any future development that does generate the need for road improvements would also have the right to apply for a variance to be heard on its own merits. Current County road standards would permit up to 25 lots within the Howard Farm Subdivision on the 20 foot road. The current standards require subdivisions containing over 25 lots to have 22 feet of pavement and related improvements.
- 3) Approval should be conditioned on the engineer's concerns which include a stop sign being placed at the intersection of Howard Farm Road and Shepherd Grade Road and all brush removed from the road culverts including the drainage pipe located in the existing pond.

William R. and Elizabeth G. Howard Variance Request

Request by William R. and Elizabeth G. Howard for a variance to have the Planning Commission accept Howard Farm Turner Road as “County Grade” instead of requiring an upgrade of that road for North Hills Subdivision (PC file # 05-22). (Subdivision Regulations Article 8, Section 8.2).

APPLICANT:	William R. and Elizabeth G. Howard
OWNER:	Same as above
DEVELOPER:	Same as above
SURVEYOR/ENGINEER:	Dewberry
PROPERTY LOCATION:	This property is located on the east side of Route 5 (Shepherd Grade Road) at Howard Farm Road between Cress Creek and Howard Farm Subdivision.
LEGAL DESCRIPTION:	District: Shepherdstown; Map: 5; Parcel(s): 8.3 
ZONING DISTRICT:	2002 Zoning Map: Rural
SURROUNDING PROPERTIES:	2002 Zoning Map North: RG South: Rural East: RG West: Rural
LOT AREA:	100 acres (20 acres developed with 80 acres dedicated in a conservation easement)
PROPOSED DENSITY:	21 single family lots & 1 single family residue

William R. and Elizabeth G. Howard Variance Request

PERMIT APPROVALS:	
Health Department Permit	Permit No.: 17,158
Department of Highways	Permit No.: 5-97-0671
APPROVALS:	
Conditional Use Permit <i>PC File #Z04-05</i>	Submitted: 10/08/04 Issued: 04/21/05 Signed: 11/02/06 Expiration date: 10/21/06; extended until 06/21/08
Community Impact Statement (CIS) <i>PC File #05-22</i>	Submitted: 06/16/05 Staff Review Mtg.: 07/01/05 County Engineer Approval: 07/22/05 County Planner Approval: 07/19/05 PC Approval: 07/26/05 Expires on: 07/01/07
Preliminary Plat	Submitted: 02/02/06 Staff Review Mtg.: 02/17/06 County Planner Approval: 11/01/06 County Engineer Approval: 06/26/06
Site Plan	N/A
Final Plat	Submitted: 03/19/07 Legal Advertisement: 04/05/07 County Planner Approval: 04/30/07 County Engineer Approval: 04/30/07 PC Public Hearing: 05/08/07 60-day Provision Ends: 05/16/07
Variance History	12/21/06 - BZA granted an extension of the CUP from 10/21/06 to 06/21/08.
OTHER APPROVALS:	None required.

The request by the applicant is primarily an engineering concern. However, there are planning implications with this request. The applicant is required to increase the width of the road to comply with the 1979 Subdivision Regulations, as amended.

Planning believes this request to be reasonable based on the conditions of the area. Addressing safety and access, there are two points of access to the development, Fernbank Drive and Howard Farms Road. There is no on-street parking in this neighborhood that would impede vehicular traffic. If the road were to be widened, it would impact some large mature walnut trees and a meandering three tier wood horse fence. The loss of the high quality mature trees would be detrimental to the environment and the arched canopy that covers the road.

There has been a movement in planning towards narrower streets and roads. This trend has occurred for a variety of reasons. Narrower roads reduce speeds at which people drive, reduces impervious area and reduces the use of materials to construct roads. With stormwater quality being a large concern of the Chesapeake Bay requirements, adding additional impervious area is not beneficial. Staff recommends approval.

**A Motion Recommending Approval of a
Variance for Howard Farm Subdivision
April 27, 2010**

Whereas, The North Hills Subdivision (PC File #05-22) is part of the Cress Creek Subdivision, located off Shepherd Grade Road, northwest of Shepherdstown and is identified as Parcel 8.3 as shown on Tax Map 5, cumulatively consisting of 100 acres; and

Whereas, when the Cress Creek Subdivision exceeded 50 lots, a secondary point of ingress and egress was required; and

Whereas, Howard Farm Road (formerly Turner Road) in Howard Farm Subdivision was improved to meet this required secondary point of ingress and egress, resulting in a paved 20-foot road that was inspected and accepted as constructed by a former County Engineer; and

Whereas, The North Hills Subdivision was subsequently required to design, bond, and construct improvements to Howard Farm Road (formerly Turner Road) in Howard Farm Subdivision per Article 8, Section 8.2 of the 1979 Subdivision Ordinance, as amended, as a part of their final plat approval in 2005; and

Whereas, There are two points of ingress and egress which have received the approval of a former County Engineer to the North Hills Subdivision that allow for safe access of the development if an emergency situation were to occur; and

Whereas, The applicant is requesting a variance to not be required to improve Howard Farm Road due to site constraints that would require the removal of walnut trees and replacement of 1,800 feet of fence that is in good condition; and

Whereas, the landowners in the Howard Farm Subdivision support the request to retain the road in its current condition; and

Whereas, Staff recommends approval of the requested variance based on the conditions outlined in the staff report attached;

Now therefore it is found,

1. That Howard Farm Road, as constructed and approved, is determined to satisfy the County's requirements for a secondary access for Cress Creek Subdivision in general and for North Hills Subdivision; and
2. That Howard Farm Road, as constructed and approved, is determined to satisfy the County's requirement for a primary access for Howard Farm Subdivision as it exists today; and
3. That Howard Farm Subdivision has development rights that can still be utilized and that any future development that occurs in this area will be required to meet the County road standards in force at the time of application; and
4. That any future development that does generate the need for road improvements would also have the right to apply for a variance to be heard on its own merits;

And therefore be it moved, that the Jefferson County Planning Commission approves the request to release North Hills Subdivision from the requirement that Howard Farm Road be improved as required in Article 8, Section 8.2 of the 1979 Subdivision Ordinance, as amended; and that the bond be released for these improvements, with the condition that a stop sign being placed at the intersection of Howard Farm Road and Shepherd Grade Road and all brush removed from the road culverts including the drainage pipe located in the existing pond.

Approved, this 27th day of April 2010

By vote of the Jefferson County Planning Commission

By a vote of ____ Yes ____ No

John Maxey, Commission President

RECEIVED

APR 05 2010

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

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

SUBDIVISION & LAND DEVELOPMENT REGULATION WAIVER FORM

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

Property Owner (s): PRITCHARD PAUL C & SUSAN F

Mailing Address: PO BOX 1624

SHEPHERDSTOWN, WV 25443

Phone Number: 304 876 8448

Location of Property: Located south of Shepherdstown between Flowing Springs Road & Shepherdstown Pike. Property fronts

Shepherdstown Pike starting at the "Y" intersection & running SE for about 1600+ ft.

Lot Size: 36 + acres

Deed Book Reference: Deed Book #: 974 Page #: 504

Tax Map Reference: District: 09 Map: 17 Parcel: 15.1

Zoning District: Rural R-G R-LI-C I/C VLG

Section of Regulation: Subdivision Ordinance, Section 20.202 C & Section 21.103 D

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

See attached letter

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

Please note: Waivers must comply with Division 24.300 of the Subdivision and Land Development Regulations. To justify your waiver request, please address the following items: *(Attach additional pages as necessary)*

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

See attached letter

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

See attached letter

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

See attached letter

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

See attached letter

X 
Signature of Property Owner

X 
Signature of Property Owner

For Official Use Only

Amount of Fees Paid: _____

Date of Meeting/Public Hearing: _____

Official/Administrative Body: _____

Property to be posted by: _____

Adjoiner letters to be mailed by: _____

Official Signature and Seal: _____



April 5, 2010

Seth A. Rivard, Planner
Jefferson County Planning & Zoning Department
P.O. Box 338
Charles Town, WV 25414

Dear Mr. Rivard:

Attached please find an application from Paul and Susan Pritchard for a waiver from "**Sec. 20.202 Rural Subdivision**

...
C. Access. All lots shall face on an access easement having a width of 50 feet. This easement shall be part of the residue or remaining property" and from

"Sec. 21.103 Lots Design standards for lots in subdivisions and site development plans shall be as follows:

...
D. Access to existing roads. In the Agriculture (AG) ... districts, lots shall only have access via internal subdivision roads..."

Below I have outlined the background of this request and the reasons why it should be granted.

Background:

The existing property located between Flowing Springs Road and the Shepherdstown Pike (Exhibit 1) has been Mr. & Mrs. Pritchard's home for many years. The property contains 36+ acres and has been used for farming over the years. Currently and for the past few years, the Pritchards lease a portion of their property to a Community Supported Agriculture Organization (CSA) that provides fresh vegetables & flowers to the Shepherdstown area. A CSA is a form of intensive agriculture that provides fresh vegetables and other farm produce to people who buy shares in the CSA and also the general public. The CSA, "A Fresh & Local CSA" has been in operation since 1995 and has 100 members. It is located at the northern end of the property and is separated from the rest of the property by Rattlesnake Run. This farming operation is currently accessed from the Shepherdstown Pike with a valid WVDOH entrance permit.

The Pritchards are in the process of subdividing their land as a minor subdivision, creating three lots and a residue (Exhibit 2). Their intent is to eventually transfer these lots to their children.

Though they are creating these lots at the present time, they do not intend to develop any of the lots in the near future and wish to retain the CSA as a tenant on the property. Since the CSA is located on the proposed Lot No. 1, according to the Subdivision Ordinance, it needs to be accessed from the internal easement as shown on the proposed plat (Exhibit 2). In order to access the CSA from the internal easement, the farmer will need to cross Rattlesnake Run. Crossing Rattlesnake Run with farm machinery

and vehicles will degrade the Run and cause damage to the stream edges. The CSA is currently accessed from the Shepherdstown Pike and a valid highway entrance permit has been issued for this entrance (Exhibit 3 and 4). The Pritchards desire to retain this entrance to serve the CSA.

Conformance with Division 24.300 of the Subdivision and Land Development Regulations

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

The granting of the waiver will allow an existing agricultural use, the CSA, to continue as it is currently configured with access from Shepherdstown Pike. Allowing agricultural uses to continue in the rural area is in the best interest of the County and is supported both by the County's master plan and the County's zoning ordinance. If the CSA has to be accessed from the required easement per the Subdivision Regulations, major costs to construct a crossing of Rattlesnake Run will have to be undertaken. It is unlikely that the CSA can afford such costs and the only alternative would be to ford the stream causing degradation to the stream and its banks. Additionally, it should be noted that farming operations often have several entrances unto their property, one for the residence and other access points from public roads for fields and outbuildings.

The current design of the minor subdivision shows the interior access for Lot No.1 and if and when the lot is developed, the access for a home on the lot will be via the internal access easement. The design also shows the current access (existing entrance) to the CSA located on Shepherdstown Pike. By retaining this current entrance, the design of the subdivision allows Rattlesnake Run to remain undisturbed and the current agricultural use to continue.

Allowing the waiver will benefit the public by maintaining an agricultural use that benefits the CSA and its customers in the area as well as maintaining Rattlesnake Run in its current condition and not adding additional run off and pollutants into the Run.

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

The waiver if granted will not adversely affect the rights of any of the adjacent property owners or residents. The request is to allow the current situation to remain, not to make any changes to the current farming operation, the CSA, or to change the existing entrance to this operation.

- 3. The waiver, if granted, will be in keeping with the intent and purpose of these Regulations.*

The intent and purpose of the regulations is to encourage the preservation of farmland and the environment. The proposed waiver will do exactly that. It will allow the CSA, a farming activity that provides fresh vegetables and other farm produce to its customers in the area to continue as it has for the past fifteen years. It will not place an undue burden on the CSA to construct a crossing of the Run, a burden that could very well cause the CSA to have to close due to the high cost of such an endeavor. Additionally, not crossing the Run will allow Rattlesnake Run to remain undisturbed as it flows towards the Potomac River and as a consequence protect the environment.

I also note that in the proposed amendments to the Subdivision Ordinance currently under review, it is proposed to allow lots with 200 feet or more frontage on a public road to access directly unto that road. In this case Lot. No. 1 has more than 1200 ft. frontage on the Shepherdstown Pike and if the amendments were adopted, the entrance could be retained.

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

Allowing the waiver will allow the existing use on the portion of Lot No. 1 to remain in agricultural use. Lot No. 1 is a triangular lot, bounded by two roads that end in a point at the "Y" where Flowing Springs Road and Shepherdstown Pike intersect. Most of the land in Lot No. 1 is located in the flood plain of Rattlesnake Run. The portion of Lot No. 1 located north of Rattlesnake Run is not suitable as a residential use but is most suitable as an agricultural use. Allowing the waiver makes no changes to the current situation and continues the existing agricultural use and also the best use of the land.

Request:

The Planning Commission is requested to grant the waiver from *Sec. 20.202C* & "*Sec. 21.103 D* for the subject property at its April 27, 2010 meeting.

Sincerely



Annette G. van Hilst
Senior Planner

avanhilst@dewberry.com

Cc: Paul Pritchard
Lisa McCauley, Dewberry

Attachments:

1. Location Map
2. Draft Plat for Minor Subdivision (2 pages)
3. Highway Entrance Permit (2 pages)
4. Photographs (2 pages)

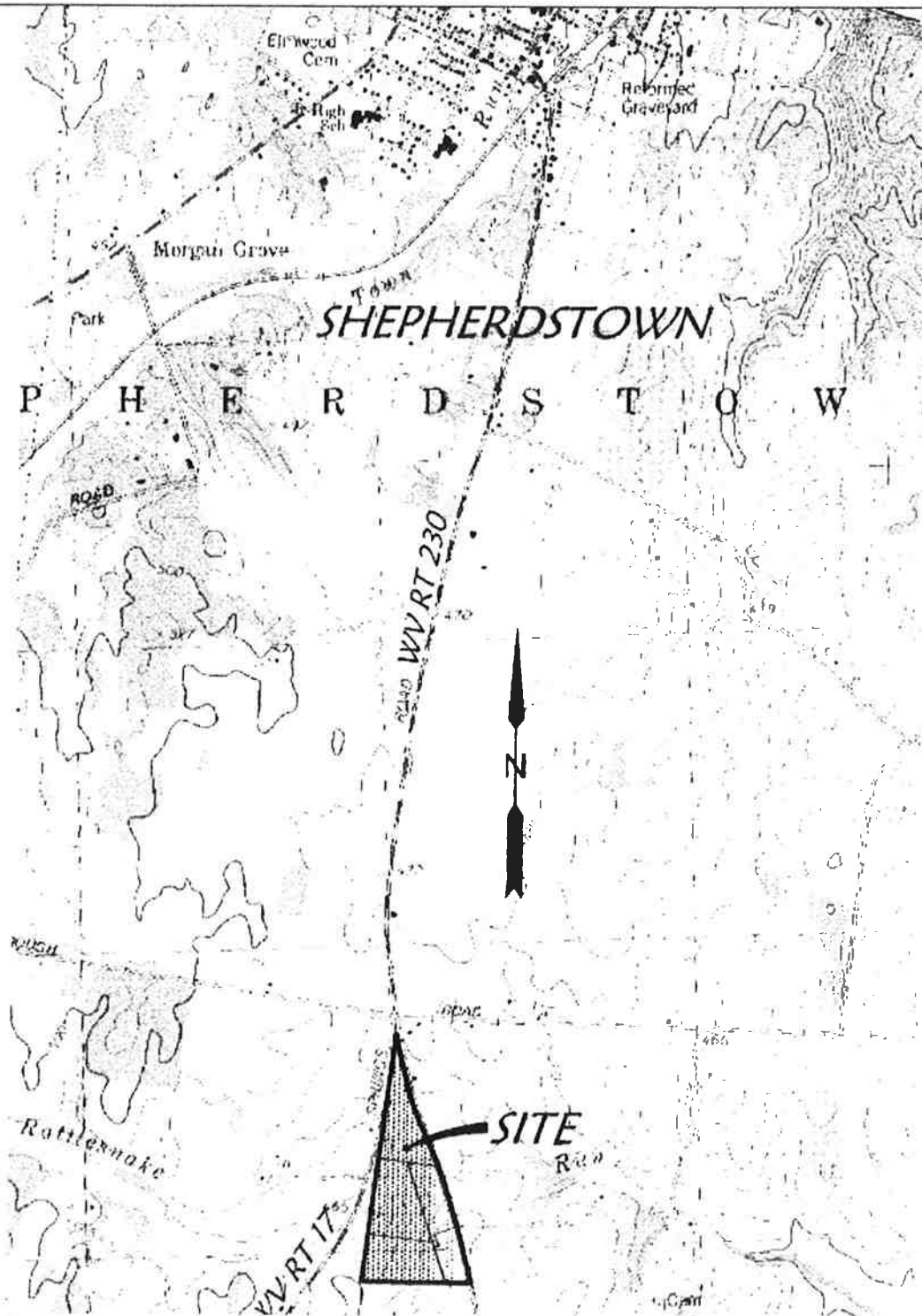


Exhibit 1 **Location Map**

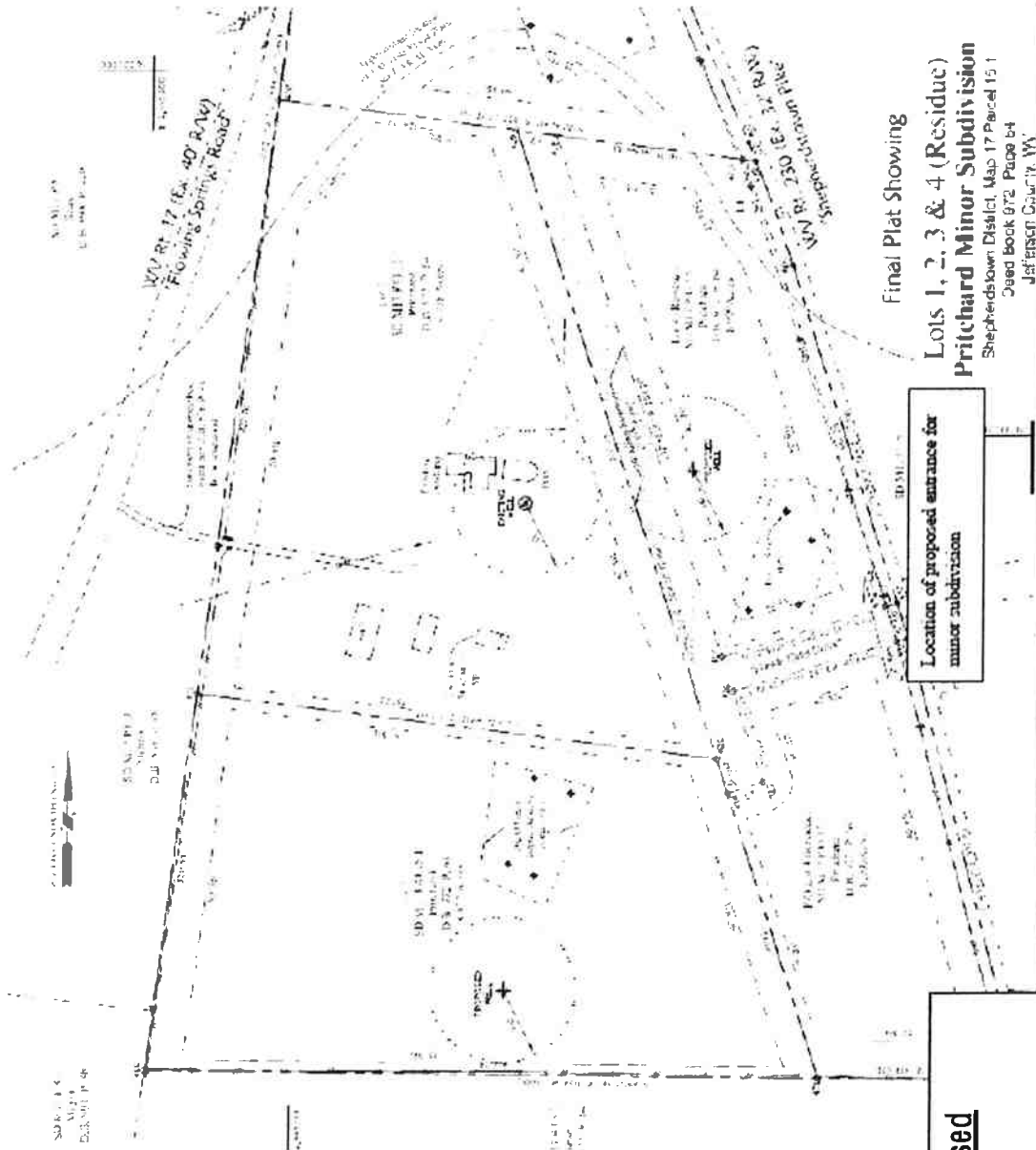


Exhibit 2: Proposed Subdivision
Page 1

Final Plat Showing
Lots 1, 2, 3 & 4 (Residue)
Pritchard Minor Subdivision
Shepherdstown District, Map 17 Parcel 15.1
Case Book 972, Page 64
Jefferson County, WV

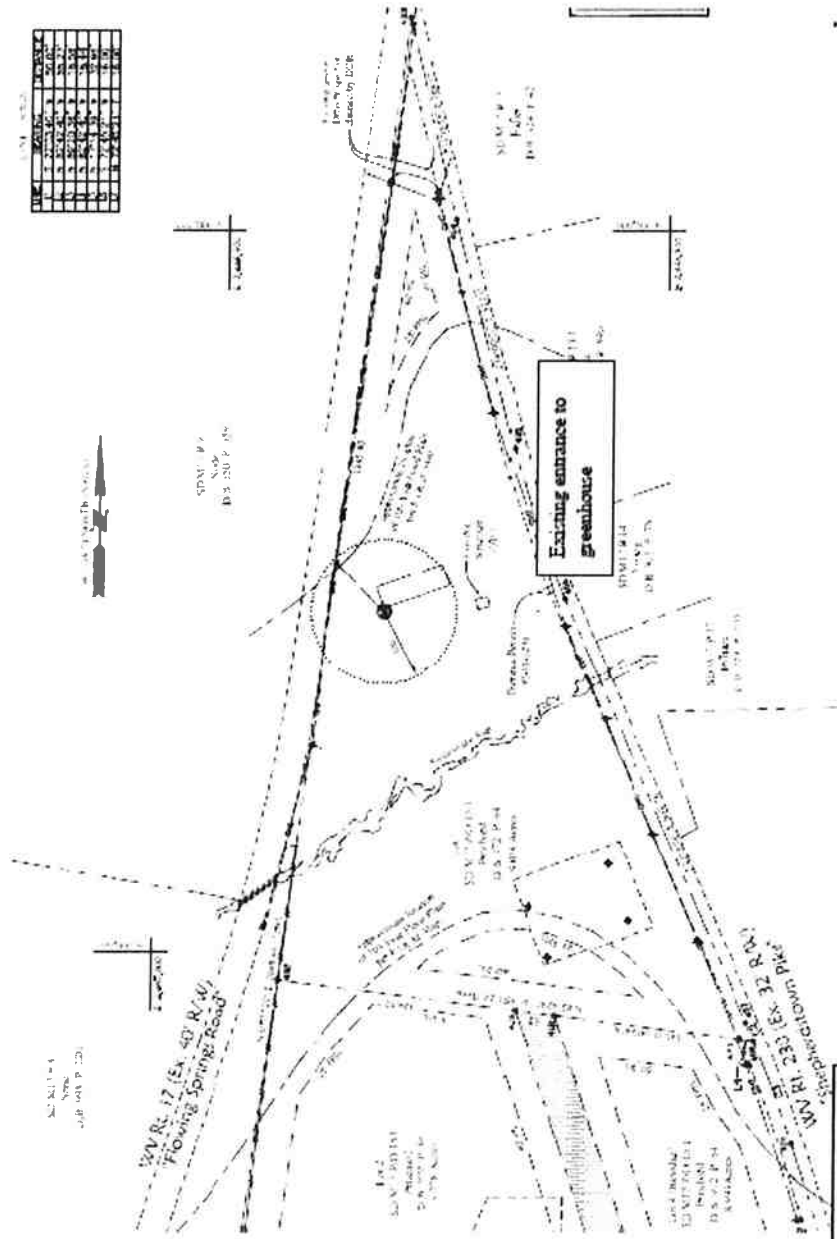


Exhibit 2:
Proposed Subdivision
Page 2

Aug. 13. 2009 01:38 AM ritchard St Ives Waterford 304 876 8306

PAGE. 6/ 9

Form MM-100
Rev. 3/2008

PERMIT NO. 5-01-0298

PERMIT TO ENTER UPON, UNDER, OVER OR ACROSS THE STATE ROADS OF THE STATE OF WEST VIRGINIA, AS PROVIDED FOR IN SECTION 8, ARTICLE 16, CHAPTER 17; SECTION 9, ARTICLE 16, CHAPTER 17; SECTION 8, ARTICLE 4, CHAPTER 17, WEST VIRGINIA CODE, 1931, AS AMENDED.

THIS PERMIT, Made this 23rd day of April, 2009, between the WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS, a statutory corporation hereinafter called DIVISION and Paul Pritchard PH: 876-8448
Address: Rt. 1, Box 1624, Shepherdstown WV 25443

hereinafter called APPLICANT.

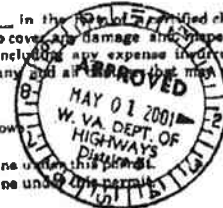
WITNESSETH

In consideration of the hereinafter set out covenants and in accordance with Section 8, Article 16, Chapter 17; or Section 9, Article 16, Chapter 17; or Section 8, Article 4, Chapter 17, of the Official Code of West Virginia, 1931, as amended, and the rules and regulations promulgated thereunder, APPLICANT does hereby apply to enter

West Side Co.
Circle Type of Route: I US WV RLS D Route No. 230 DOH Project No. _____ (if applicable),
at 0.154 mi. South of Co. 17 Mile Post 6.626
in Jefferson County, for the purposes hereinafter set forth and in accordance with the

plans and specifications which are attached hereto and made a part hereof. To construct and maintain a 20' approach and install a 15" C.M.P. stabilizing with a maximum size of 1 1/2" crusher run stone in a total depth of 6" compacted from the edge of the pavement to the right of way line. This work shall be constructed and maintained so that water and debris will not flow or be tracked onto the roadway. Should this parcel develop commercially, subdivide, or be located within a subdivision with internal access, this permit will be invalid. APPLICANT shall apply for a new permit to fit altered conditions.
APPLICANT further agrees to accept the conditions hereinafter set forth:

1. APPLICANT shall deposit with DIVISION the sum of \$ _____ in the form of a certified check, money order, or executed bond with surety satisfactory to DIVISION to cover any damage and inspection costs DIVISION may sustain by reason of the granting of this permit, including any expense incurred in restoring said highway to its original condition or the proper repair of any and all damage that may result within one (1) year from the date of the completion of said work.
2. APPLICANT agrees to reimburse DIVISION for inspection costs as follows:
 A. For any inspection costs incurred under this permit.
 B. At \$ _____ per linear foot for _____ feet of water line under this permit.
 C. At \$ _____ per linear foot for _____ feet of sewer line under this permit.
3. APPLICANT shall notify DIVISION at least 48 hours in advance of the date work will begin. Failure to comply will be cause for cancellation of this permit.
4. APPLICANT agrees to protect its employees, equipment and the users of the highway at all times in accordance with the current Division of Highways manual "Traffic Control For Streets and Highways Construction and Maintenance Operation".
5. APPLICANT agrees to comply with all applicable state and federal laws in the performance of work under this permit.
6. Supplementary conditions cited on the reverse side of this permit are understood and agreed to be a part hereof.
7. The work authorized under this permit shall be completed on or before the 31st day of October, 192009



RECOMMENDED:

James H. Powell
PERMIT SUPERVISOR

[Signature]
Signature and Title of Applicant

BOND REQUIREMENT:

BOND NO. _____ / DATE _____
Attached On File

APPROVED: [Signature]

Exhibit 3: Highway Entrance Permit

Page 1 of 2



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
Division of Highways

Office of the District Engineer
District Five

Joe Manchin, III
Governor

P. O. Box 20 Charleston, West Virginia 25310-0020 HQ 289 5471

December 29, 2009

Bill Dodge, Associate
Dewberry & Davis, LLC
P.O. Box 45
Charles Town, WV 25414-0045

Dear Mr. Dodge:

Permits 5-01-0298 and 5-01-0299
Paul and Susan Pritchard
Pritchard Minor Subdivision

At your request, a review of the subject permits was conducted relative to extending the completion date and incorporating the survey plat dated October 6, 2009 as an addendum.

The completion date has been revised with an extension granted until December 31, 2010 and the final signed survey plat will be made a part of the subject permits. Once all work has been completed, notify this office at (304) 289-2286 so a final review can be conducted. Please attach this letter to the original permits to serve as an addendum.

If you have questions or need additional information, contact this office.

Sincerely,

Rick Shobe
District Permit Supervisor

FJS:k

cc: Paul/Susan Pritchard
Jefferson County
Permit Files

FOR INFORMATIONAL USE ONLY



Rattlesnake Run at Shepherdstown Pike looking east



North side of Rattlesnake Run looking south




Entrance to CSA with Greenhouse in background

Exhibit 4: Photos

Page 1 of 2

Paul and Susan Pritchard Waiver Request

Request by Paul and Susan Pritchard for a waiver from Section 20.202 and Section 21.103 D of the Subdivision Regulations, to allow the use of two entrances for the Pritchard Minor Subdivision (PC file #09-25).

APPLICANT:	Paul and Susan Pritchard
OWNER:	Same as above
DEVELOPER:	Same as above
SURVEYOR/ENGINEER:	Dewberry
PROPERTY LOCATION:	This property is located south of Shepherdstown between Flowing Springs Road and Shepherdstown Pike. The property fronts Shepherdstown Pike starting at the "Y" intersection and running SE for about 1600+ feet.
LEGAL DESCRIPTION:	District: Shepherdstown; Map:17; Parcel(s): 15.1 
ZONING DISTRICT:	2002 Zoning Map: Rural
SURROUNDING PROPERTIES:	2002 Zoning Map North: Rural South: Rural East: Rural West: Rural
LOT AREA:	36.638 acres
PROPOSED DENSITY:	3 single family lots & 1 single family residue

Paul and Susan Pritchard Waiver Request

PERMIT APPROVALS:	
Health Department Permit	Permit No.: SDA-190910-17
Department of Highways	Permit No.: 5-01-0298 & 5-010299
APPROVALS:	
Conditional Use Permit	N/A
Concept Plan	N/A
Preliminary Plat	N/A
Site Plan	N/A
Final Plat	Pre-proposal Conference Meeting: 10/06/09 Pre-proposal Conference Memorandum: 10/21/09 Submitted: 10/07/09 Determination Letter: 10/22/09 County Planner Approval: N/A County Engineer Approval: N/A
Variance History	N/A
OTHER APPROVALS:	GIS/Addressing Approval Letter: 11/03/09

Planning & Zoning Department Recommendations

The applicant is requesting a waiver from Section 20.202 C, which requires all lots to have access to a 50 foot easement and that easement shall remain on the residue or parent parcel. The waiver process in the 2008 Subdivision Regulations is different from the variance process outlined in the 1979 Subdivision Regulations. In order to grant a waiver the following four criteria must be met:

- The design of the project will provide public benefit in the form of reduction in County maintenance cost, greater open space, parkland consistent with the County parks plan, or benefits of a similar nature.
- The waiver, if granted, will not adversely affect the public health, safety or welfare or the rights of adjacent property owners or residents.
- The waiver, if granted, will be in keeping with the intent and purpose of this Ordinance.
- The waiver, if granted, will result in a project of better quality and/or character.

This particular request is located on a triangular property between Flowing Springs Road (Rt. 17) and Shepherdstown Pike (Rt.230). The applicant has proposed to subdivide the property into three lots and a residue. Proposed Lot 1 of the subdivision is located in the very northern section and will be triangular in shape when subdivided from the remaining lots. Rattlesnake Run flows through this lot; as such it is impacted heavily by floodplain area. Lot 1 is showed as having a southern access, which will be used by all lots created from the subdivision process and will have a northern access above Rattlesnake Run. The effect is that Lot 1 is proposed to have two entrances. Per the Subdivision

Regulations, all lots created are supposed to have right of entry only from the newly created access easement that is required to be on the residue parcel. The waiver is to allow Lot 1 to have two points of access. Currently there is an entrance permit for the existing access on Lot 1 and the additional access to Lot 1 will be shared by three other lots.

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

Having two access points, in this situation, will not result in any maintenance cost for the County, since the road is state maintained. Neither, would this create an increase in cost for the state. As part of a minor subdivision, there is no parkland or parks plan implications. The waiver would allow for the continuation of the organic agricultural use. Protecting the agricultural use is in keeping with the County's goals of protecting farm operations where possible.

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

The waiver will not adversely affect public health, safety or welfare or the rights of adjacent property owners. Since the additional access to the agricultural portion currently exists, there will be no additional adverse impact. The proposed lot is surrounded by roads on each side and agricultural operation is located across a Rattlesnake Run, which is a distance from the remaining three proposed lots. Since the driveway access is a safe distance from other access points, as mandated by technical engineering requirements, the public safety is maintained. The minimum distance required is 300 feet from access drive to access drive. In this situation, it is 1340 feet apart; more than sufficient distance to provide for public safety. The applicant is intending to maintain Lot 1 in its current agricultural operation. Hence, no significant traffic is expected to flow through this point. Staff will require a note on the plat that this variance is only for the existing agricultural use. This section of the lot is not well suited for a residential use; as such a note on the plat will restrict residential use of that area.

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

While the intent of the Subdivision Regulations is to limit the number of access points, the regulations do take into consideration other impacts that occur when subdividing. Section 20.302 specifically states, within the Subdivision General Review Standards, "The plan works with the natural conditions of the property, so as to minimize destruction of the natural resources." Within the Subdivision General Review Standards is a section titled "Improvement through Modulation." This allows for infrastructure, in this case the access, to be modified if it "would assist in improving the developments quality, better preserve natural resources, better protect neighbors, or result in community wide benefits." Division 22.200 relates to street design and one of the objectives is that street layouts "Respect the natural resources, topography and drainage features."

It is staffs judgment that protecting the natural features of this property is in keeping with the Subdivision Regulations intent. Requiring the applicant to place a stream crossing through Rattlesnake

Run is not in the best interest of the applicant or the community. There is a movement to reduce the amount of creek crossings where possible and this is a situation where that can be accomplished. With the Chesapeake Bay requirements being intensified, it would not be in keeping with those principles to deny this waiver and require a stream crossing to be installed.

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

Granting the waiver will result in a project of better character. As mentioned above, there are natural features to this property that would be protected if two access points were provided.

Engineering Department Recommendations

Explanation of Circumstances

The northern portion of the Pritchard property is divided from the southern portion by Rattlesnake Run. At the present time, an area on the northern part of the parcel is used for agricultural purposes. The current access to the agricultural operation on the northern portion of the parcel is via a driveway off of Shepherdstown Pike (RT 230). The property owner has a highway entrance permit for this entrance. However, the proposed minor subdivision lots will be served by a 50' access easement that connects to Shepherdstown Pike on the southern portion of the parcel.

The Subdivision Ordinance requires that all the minor subdivision lots utilize the internal 50' access easement. Upon creation of the minor subdivision, the existing agricultural/commercial operation will be located on Lot 1 of the newly created minor subdivision. Therefore, the residential portion of Lot 1 will be required to use the newly created southern 50' access easement and the agricultural/commercial operation will only have entrance via the existing current northern access, also off of Shepherdstown Pike. Since the agricultural/commercial operation is located on the northern portion of the parcel, a stream crossing would have to be installed in order for the required 50' access easement to be utilized, if this waiver is not granted. It should be noted that the buildable area on Lot 1 is located south of the stream; therefore, a crossing will not be necessary for the residential portion of Lot 1 when a home is built.

The applicant indicated that the agricultural operation will continue and will use the existing northern entrance, even after a home is established on Lot 1.

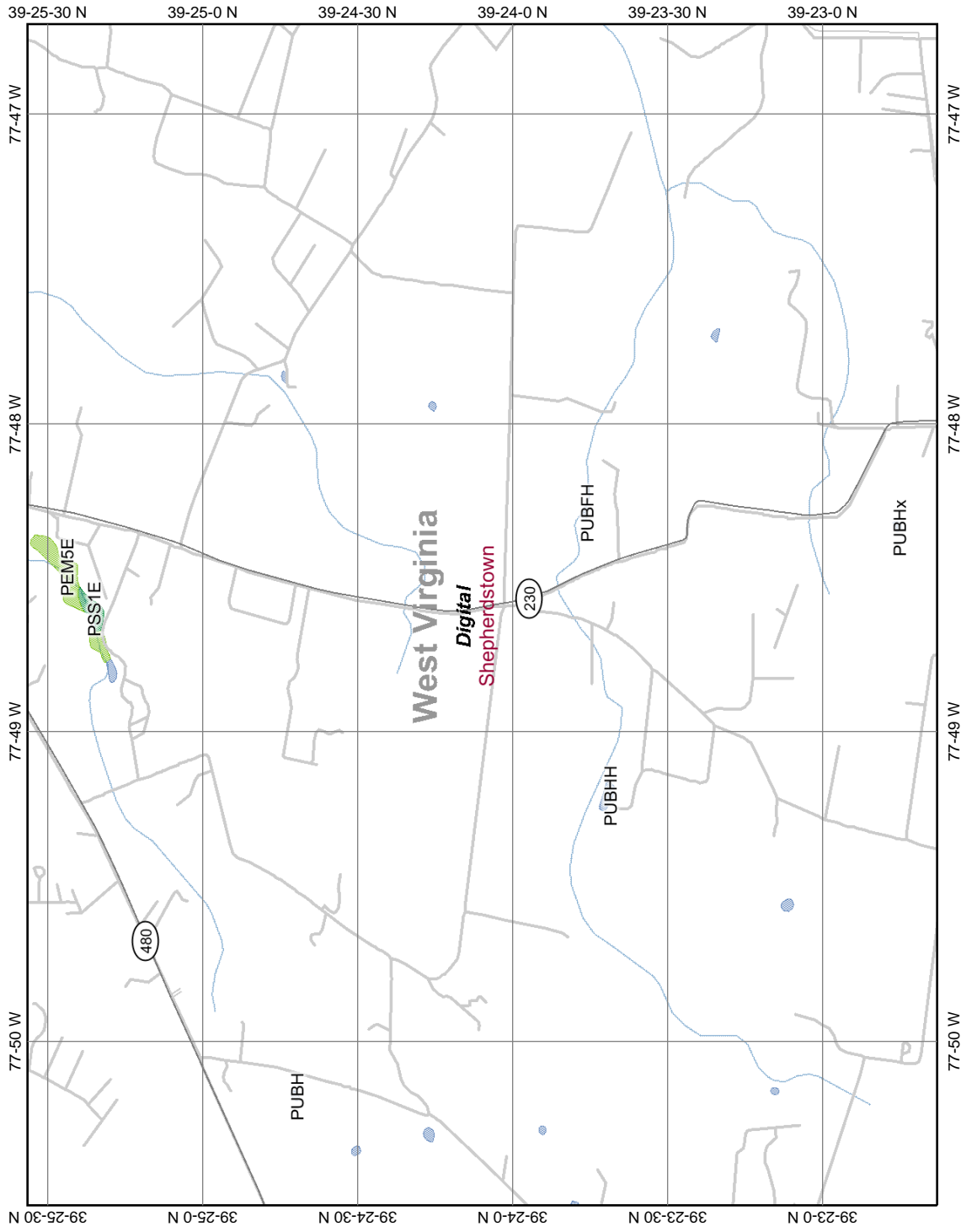
Criteria for Granting a Variance

The applicant has demonstrated that they meet the four criteria required for a variance. By granting this variance, the applicant will eliminate any disturbance to the stream, which is in a mapped flood hazard area.

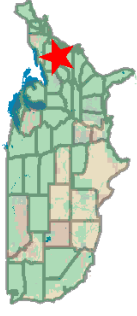
Recommendation

Staff recommends approval of this waiver, to allow for two access points, in this minor subdivision. As noted above, there are natural features that would be protected by granting this waiver. If Lot 1 were required to have access exclusively from the proposed 50 foot easement that is on the residue, a crossing through Rattlesnake Run would be required. Ecologically, this is not in the best interest of the community. The goal is to reduce impacts on streams not create additional impacts. Granting this waiver will not negatively impact public health, safety or welfare, nor will it undermine the intent of the Subdivision Regulations. Finally, a note shall be placed on the plat noting that the existing northern entrance off of Shepherdstown Pike can be used to serve the agricultural operation only; any residential home or structures that are built shall be required to access Lot 1 via the internal 50' access easement.

Wetland-Pritchard



Map center: 39° 24' 6" N, 77° 48' 37" W



Legend

- Interstate
- Major Roads
- Other Road
- Interstate
- State highway
- US highway
- Roads
- Cities
- USGS Quad Index 24K
- Lower 48 Wetland Polygons
- Estuarine and Marine Deepwater
- Estuarine and Marine Wetland
- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond
- Lake
- Other
- Riverine
- Lower 48 Available Wetland Data
- Non-Digital
- Digital
- No Data
- Scan
- NHD Streams
- Counties 100K
- States 100K
- South America
- North America



Scale: 1:38,141

This map is a user generated static output from an Internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.

JOINS PANEL 0040

330000 FT

230

Jeff
Uninc

TROUGH ROAD

Rattlesnake Run

ZONE A

SPRING RETREAT
LANE



MAP SCALE 1" = 1000'



NATIONAL FLOOD INSURANCE PROGRAM

PANEL 0045E

FIRM

FLOOD INSURANCE RATE MAP

JEFFERSON COUNTY,
WEST VIRGINIA
AND INCORPORATED AREAS

PANEL 45 OF 245
(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY NUMBER PANEL SUFFIX
JEFFERSON COUNTY 540065 0045 E

Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.

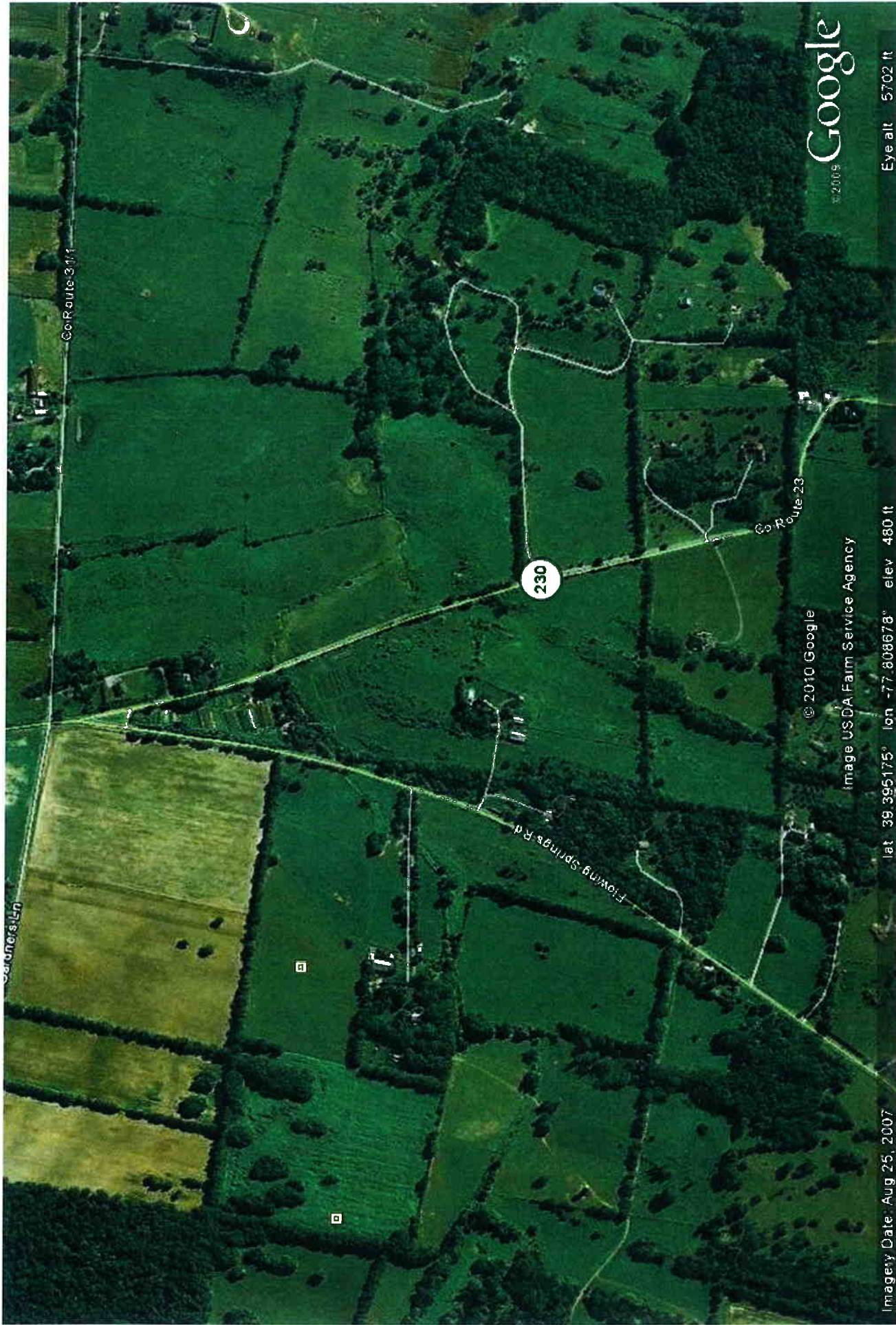


MAP NUMBER
54037C0045E

EFFECTIVE DATE
DECEMBER 18, 2009

Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps, check the FEMA Flood Map Store at www.msc.fema.gov



© 2009 Google

© 2010 Google

Image USDA Farm Service Agency

Eye alt 5702 ft

lat 39.395175° lon -77.808678° elev 480 ft

Imagery Date: Aug 25, 2007

**A Motion Recommending Approval of a
Waiver for Paul and Susan Pritchard**

Whereas, Section 20.202 (C) of the 2008 Subdivision Regulations requires all lots to face an access easement having a width of 50 feet which shall be on the residue parcel.

Whereas, Paul and Susan Pritchard, located between Shepherdstown Pike (Rt. 230) and Flowing Springs Road (Rt. 17), is processing a minor subdivision that has three lots, plus a residue parcel and has requested a waiver from Section 20.202 (C).

Whereas, the following findings shall have been made in regards to the request in accordance with the provisions of Division 20.200, Section 20.202 (C) of the 2008 Subdivision Ordinance:

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

Now therefore be it moved, that the Jefferson County Planning Commission approves the requested waiver for the Paul and Susan Pritchard.

Approved this 27th day of April, 2010
By vote of the Jefferson County Planning Commission
By a vote of _____ Yes _____ No

John Maxey, Commission President

From: Planning Department [mailto:planningdepartment@jeffersoncountywv.org]
Sent: Thursday, April 22, 2010 12:13 PM
To: jbrockman@jeffersoncountywv.org; jhartman@jeffersoncountywv.org;
jsnyder@jeffersoncountywv.org; jquodala@jeffersoncountywv.org; srivard@jeffersoncountywv.org
Subject: Fw: Paul Rosa

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

From: "Guy G. Chicchirichi"
Sent 4/16/2010 6:36:12 PM
To: planningdepartment@jeffersoncountywv.org
Subject: Paul Rosa

Ladies and Gentlemen:

Reference your agenda for the April 27th mtg.

This is in response to what appears to be Mr. Rosa's opposition to provide more wireless communication towers.

i.e: Item # 6 : Response to Paul Rosa's request to initiate an amendment to the Zoning Ordinance for the County Commission to pursue a moratorium for wireless communication towers.", for pc agenda April 27th.

Wireless communication towers (cell phone towers) are a modern day necessity and play an important part in the safety and convenience of the public. Not to mention the ever growing use by many business's and their employees. Wireless communication technology provides more than just verbal and/or text communication between parties. It's also used to transmit vital information between individuals and businesses. To restrict proper coverage in our county is a detriment to the public of Jefferson County and the every day trade of businesses. The current lack of coverage in some areas of our county is also insufficient to properly protect the public during an emergency.

During other matters that I have tried to address over the years the excuse given for the county governments negative responses to development or expansion has always included tourism and the amount of money it brings into our county. My point is this. If tourism is so important to us and tourism is a mobile phenomenon why don't we provide the proper cell phone coverage for these people when they visit us. People transact business when they visit our area everyday and will ignore us if they find they cannot be within easy reach of their employer. The lack of wireless communication towers

throughout our county is unsafe, inconvenient and bad for business, including tourism!

If anything should be done it should be to encourage development of a proper grid of communication towers to provide coverage to the areas that cannot be accessed at this time. Specifically; Harpers Ferry/Bolivar and Shepherdstown/Bakerton area's and others.

Thank you for your attention and I look forward to your positive response.

Sincerely,

Guy G. Chicchirichi
1316 N. Mildred St.
Ranson, WV 25438

gchicc@frontiernet.net

Guy G. Chicchirichi

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

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

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

MEMO

TO: Planning Commission Members
FROM: Jennifer M. Brockman, AICP, Director, Planning and Zoning
DATE: April 27, 2010
RE: Response to Proposed Wireless Telecommunications Moratorium

At the April 13, 2010 Planning Commission meeting, Paul Rosa brought a request to the Planning Commission regarding the County's wireless communications facilities. As I understand the request, Mr. Rosa would like the Planning Commission to support the moratorium that he is proposing to the County Commission and also to consider an immediate amendment to the Zoning Ordinance related to wireless communications facilities. Mr. Rosa suggests that the Commission should consider replacing the current Zoning provisions with the language from the failed Zoning Ordinance that pertains to wireless communication facilities because public input was obtained to write that language. Mr. Rosa is concerned that the current ordinance allows towers to be 199 feet tall and most of the new towers have been proposed at this height. Additionally, Mr. Rosa proposes that provisions for a variety of alternatives to standard cell towers be included in the amendment to the Zoning Ordinance.

Staff is aware of the need to revise many portions of the Zoning Ordinance. While it may seem "logical" to incorporate pre-written portions of the failed Zoning Ordinance into the current Ordinance, generally inserting pre-written text without a prudent review of all the material is not a preferred method of adopting amendments. Even if this section was fully vetted and had good support, incorporating new language in to old regulations still involves considerable review to ensure that other sections of the Ordinance being revised are not affected. Staff is developing a proposed timeline for the needed revisions to the Subdivision Regulations and Zoning Ordinance. Staff plans to present this timeline for revisions to the Commission at their May 18, 2010 meeting. Revisions to the wireless communications section of the Zoning Ordinance would not have been of foremost concern. If the Planning Commission determines that considering revisions to the wireless communications section is a priority, other revisions may need to be delayed.

In regards to the moratorium, generally a moratorium should only be undertaken if there are imminent health, safety or welfare concerns to be considered if current conditions are not changed. There are a number of wireless providers currently considering locating in Jefferson County at this time. It is a valid assumption, that once a tower is in place, it is not likely that it would be removed with something less intrusive. Mr. Rosa intends to address the County Commission in May and would like the Planning Commission's endorsement of his proposed moratorium. In my professional opinion, his request for a moratorium is not warranted at this

time. Although, if a moratorium is enacted, it will be important to ensure a revision to the Zoning Ordinance with regards to wireless communications occurs relatively quickly.

4/13/10 Rec'd from Paul Rosa
@ PC nty



December 31, 2007

Mr. Tony Redman
Jefferson County Planning Department
Post Office Box 338
Charles Town, WV 25414

Dear Mr. Redman:

The Harpers Ferry Conservancy is pleased to present these comments on the draft Jefferson County Zoning Ordinance.¹ Our comments are confined to the provisions relating to Commercial Communications Towers.²

Although these provisions only comprise a small portion of the draft Ordinance, their potential impacts on the Jefferson County landscape could be large. Unless properly regulated such developments could introduce industrial infrastructure in residential, scenic and historic settings where they are detrimental. Though well-intended, we believe the draft provisions are overly simplistic and will not be effective in achieving agreeable aesthetic outcomes.

At the outset, we would like to say that the very title of this section, Commercial Communications Towers, is inappropriate. Inherent in the title is a presumption that towers are necessary for wireless communications. We submit that a better title would be "Wireless Telecommunications Facilities," and that "towers" be evaluated as one possibility amongst a range of "antenna support structures."

With respect to the body of this section, it is deficient with respect to submittal standards, performance standards and public notice requirements.

¹ Draft dated October 31, 2007.
² Section 2.443.

PO Box 1350
Harpers Ferry
WV 25425
phone 304.725.2990
mobile 304.839.1262
prosa@wireless.org
www.wireless.org

The most glaring omission of the draft Ordinance is that it fails to specify a maximum structure height. This is a fatal flaw that should be remedied. For reasons that will be more fully set out below, we would recommend a maximum height of 110 feet.

With respect to submittal standards the requirement for a “needs assessment”³ needs substantial revision. A predicate condition for demonstrating a need is that a person actually is licensed by the Federal Communications Commission to provide personal communications services. The draft contains no such requirement. This is an important consideration because in the vertical real estate market where wireless services are the dominant use, real estate speculators proceed to erect towers in areas where they anticipate future needs by wireless carriers. Such speculative building may or may not prove fruitful. Thus the Ordinance should require an applicant to either be an FCC licensee, or have a binding rental commitment from a person who is an FCC licensee.⁴

The demonstration of “need” should be beefed up as well. Propagation studies or maps should require submittal of maps showing existing coverage from all constructed or approved sites in the vicinity, as well as coverage anticipated with the proposed site. Given basic scientific method suggests that propagation studies should be run at progressively lower heights until the height where signal becomes ineffective, such a series should be required as part of the submittal package.

The draft Ordinance fails to state a submittal requirement for balloon tests and photo simulations to show what a proposed wireless facility would look like from various vantage points. Even where required, these typically are done by wireless providers and submitted without the public being given an opportunity to witness the tests themselves and to comment on perspectives that are important to them that may have been overlooked by the provider. This is where public notice becomes important. Not only should such tests and simulations be required, but the applicant should be required to give appropriate legal notice to the public sufficiently in advance of such tests to allow for public participation.

Though the five-tiered hierarchy specified in the draft Ordinance⁵ for preferred antenna mounting scenarios represents a good start, as will be seen below, these provisions need major revamping.

A bit of history with respect to wireless siting in Jefferson County is in order. The first wave of new tower applications came when Personal Communication Services (PCS) were first licensed. This increased the universe of providers from two to eight in each geographic market. In addition, the physics of the new services required more towers at closer ranges.⁶ Several of these tower siting proposals in Jefferson County

³ Section 2.443(D)(1).

⁴ We note that several towers in Jefferson County are owned by such speculative interests.

⁵ Section 2.443(D).

⁶ The incumbent Cellular carriers operate in the 800 MHz band. The new PCS carriers operate in the 1900 MHz band and their signal does not travel as far as the lower frequencies.

were contentious and led to the current Ordinance provisions.⁷ As networks evolved, a number of existing structures (principally water towers) were used to host antennas, and several new towers were built. It is notable that in the vicinity of Harpers Ferry all wireless facilities were “stealth” facilities.

Given a core RF signal coverage overlay is in place along the Route 9 corridor and in most portions of the incorporated municipalities, and given surging use of high rate data in addition to voice will require greater signal fidelity and closer proximity to users, we believe a lower height restriction than the 199 feet presently allowed⁸ is appropriate.

We recommend a height of 110 feet. We do so for several reasons. First, with the exception of the Blue Ridge east of the Shenandoah River, the average terrain across Jefferson County varies by plus or minus 100 feet. With a variety of tall towers already in place, new sites can be developed at lower heights to fill in gaps in coverage and to increase signal quality in areas with marginal coverage. Reasonable coverage for infill sites can be obtained in many locations across this terrain at heights of 110 feet.

At 110 feet, a variety of camouflage and concealment schemes are viable that allow infrastructure to blend inconspicuously into the surrounding landscape. Beyond that height, serious questions would arise with respect to context, scale and credibility of a wireless site.⁹ The 199 foot limit allowed by the current Ordinance¹⁰ is an artificial construct unrelated to need. Companies typically apply for 199-foot towers because they are one foot short of the Federal Aviation Administrations 200-foot tower lighting threshold while maximizing rental revenues from prospective tenants.

Before even considering a tower or other support structure, the draft Ordinance should contemplate a preference for emerging technologies such as Distributed Antenna Systems (DAS). DAS systems allow all eight carriers in a given geographic area to share the same infrastructure without using towers. With a DAS system, the carriers place their equipment cabinets at a common location then connect their equipment to an interface cabinet. From here fiber optic cable is strung over existing wood electric distribution poles, or trenched in as needed. Omnidirectional (whip) antennas are mounted atop the wood poles along with microcells that look exactly like cable TV boxes that presently are mounted on utility poles. Depending on terrain, antennas can typically be placed at half-mile intervals. Although DAS deployment may not be appropriate on a countywide basis for cost reasons, it is highly suited for the challenging topography surrounding the confluence of the Potomac and Shenandoah Rivers at Harpers Ferry.

⁷ Section 4B.

⁸ Section 4B.6.

⁹ Examples would include a 200-foot silo when such structures do not typically occur on farmscapes, a 150-foot fake tree tower set amidst an average canopy height of 50 feet. Such deployments would draw the eye, rather than conceal a site.

¹⁰ Section 4B.6, *supra*.

Given Jefferson County's agricultural character, silos (or structures that appear to be silos) logically lend themselves as one of the primary deployment strategies for the county. But we believe that the Ordinance should require the equivalent of a Certificate of Appropriateness employed for developments on or near historic properties to insure a camouflage or concealment scheme is appropriate to the setting. Even though a fake cactus and palm tree are available to host antennas, would they be appropriate for our local landscape? Would a blue Harvestore silo on a ridgeline with no associated farmstead appear in context¹¹, or would a 200-foot pine tree appear in scale with its surroundings? We think not and that is the reason we make this recommendation.

Consideration also should be given to assessing nonrefundable application fees¹² specifically for wireless facilities along with requiring evaluation of each application by an independent consultant of the Planning Commission's choosing. This would give lay Planning Commission members the benefit of a consultant's expertise with respect to the demonstration of need as well as the appropriateness of the proposed infrastructure.

Although the five-tiered hierarchy in the draft Ordinance should not be abandoned outright, it should be reworked to incorporate suggestions such as we have set out here. The objective of the Ordinance should be to insure high quality wireless services for the residents of Jefferson County that do not impose industrial intrusions in inappropriate settings.

We submit that the present draft Ordinance will fail to achieve this objective. Given the maxim that communities that demand agreeable aesthetic outcomes are the ones that achieve them, we would encourage the Planning Commission and County Commission to revisit this section of the Ordinance. Together we can craft a regulatory scheme that lays wireless infrastructure lightly on the landscape. We welcome the opportunity to work with you toward that end.

Sincerely,



Paul Rosa
Project Director

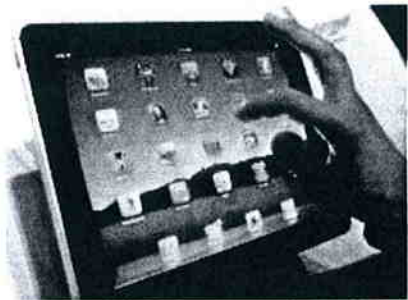
¹¹ One such installation already has been proposed and defeated in the vicinity of Halltown.

¹² The highest such nonrefundable fee in the area is \$7,000 required by the city of Gaithersburg, MD.

4/13/10 Rec'd from
1 Paul Rosa
@ PC mtg

iPad, other mobile devices to worsen strain on cellphone network

By Jenna Wortham
The New York Times
February 1, 2010



Apple's iPad is shown after it was unveiled at the Moscone Center in San Francisco on Wednesday. (Marcio Jose Sanchez, The Associated Press)

Could Apple's new iPad end up being too much of a good thing?

Steven Jobs, Apple's chief executive, played up the iPad's ability to stream live baseball games and hit movies during his demonstration last week. But people who are willing to pay more to get that content over AT&T's 3G data network may pay another price: glacial downloads and spotty service on an already overburdened system.

America's advanced cellphone network is already beginning to be bogged down by smartphones that double as computers, navigation devices and e-book readers. Cellphones are increasingly being used as TVs, which hog even more bandwidth. They can also transmit video, allowing for videoconferencing on cellphones.

And a new generation of netbooks, tablet PCs and other mobile devices that connect to cellphone networks will only add to the strain. "Carrier networks aren't set to handle 5 million tablets sucking down 5 gigabytes of data each month," said Philip Cusick, an analyst at Macquarie Securities.

Wireless carriers have drastically underestimated the network demand by consumers, which has been driven largely by the iPhone and its applications, he said. "It's only going to get worse as streaming video gets more prevalent."

An hour of browsing the Web on a mobile phone consumes roughly 40 megabytes of data. Streaming tunes on an Internet radio station such as Pandora draws down 60 megabytes each hour. Watching a grainy YouTube video for the same period of time causes the data consumption to nearly triple. And watching a live concert or a sports event will consume close to 300 megabytes an hour.

AT&T, the sole carrier of the iPhone in the United States, has become the cause of vexation for its customers in major cities because of dropped calls, patchy service and other network hiccups.

The other carriers may share the problem as they sell more data-sucking devices; sales of smartphones are expected to increase 30 percent this year, according to Morgan Stanley analysts.

In a recent briefing with analysts, Ralph de la Vega, AT&T's chief executive for mobility, said that users of smartphones, primarily the iPhone, were straining the network by watching video and surfing the Web. The company reported an unprecedented increase in wireless data use of nearly 7,000 percent since late 2006.

"The iPhone has changed the consumer's expectation of what a mobile device is able to do," said Jeff Bradley, senior vice president for devices at AT&T. "We are working rapidly to make sure they can meet those expectations."

Read more: http://www.denverpost.com/ci_14306864#ixzz0eIrXSF62

February 19, 2010 Wireless Week

Report: Dropped Calls More Frequent in Smartphones

By Maisie Ramsay

Smartphone users are more likely to experience dropped calls and poor voice quality, according to a new report from J.D. Power and Associates.

The company's 2010 Wireless Call Quality Performance Study found that smartphone customers are nearly three times more likely to experience dropped calls than traditional mobile phone customers. They also report that smartphone customers experience problems at a rate that is 6 per 100 calls greater than problems experienced by subscribers using lower-end handsets.

"As carriers continue to upgrade network infrastructure, expand coverage areas and improve data speeds, smartphone usage will continue to test network capacity," said Kirk Parsons, senior director of wireless services at J.D. Power and Associates in a statement. "Smartphones will continue to stress wireless networks with higher data usage for texting, e-mailing and Web surfing, so it is crucial for wireless carriers to enhance existing network speed and capacity, as well as to develop and upgrade to next-generation technologies."

Growth in smartphone subscribers caused call quality to drop overall. The company found that the number of dropped calls hit 6 per 100, compared to 4 per 100 calls six months ago. Calls with poor voice quality increased to 13 per 100, from 11 per 100 six months ago.

"Wireless customers rely on their phones to do everything from providing them with driving directions to sending picture messages, as well as placing calls, so carriers must provide their customers with a problem-free experience to keep them satisfied," Parsons said. "Wireless customers have higher expectations of their phones and the networks on which they operate than ever before. Carriers must continue to deliver on their promises for faster and more reliable connections as the number of customers using these advanced devices grows."

J.D. Powers and Associates also ranked U.S. Cellular and Verizon Wireless top most in call quality. Verizon had fewer customer-reported problems with calls than other operators in the Northeast, Mid-Atlantic, Southeast, Southwest and West regions of the U.S. This is the 11th consecutive time Verizon has landed the top spot.

U.S. Cellular beat out Verizon in the North Central region, where the carrier ranked highest for the ninth consecutive time.

Wireless Week February 9, 2010

Cisco Report Finds Skyrocketing Data Traffic

By Maisie Ramsay Tuesday, February 9, 2010

Everyone knows that mobile data traffic is growing fast but even the most well-informed industry insiders may be caught off guard by dramatic new findings by Cisco.

The company's Visual Networking Index Global Mobile Data Forecast found that worldwide mobile data traffic could hit an annual run rate of 40 exabytes by 2014, or 3.6 exabytes per month – the equivalent of 133 times all the data traffic that has ever gone over mobile networks from their onset in the 1980s to today.

"Mobile data traffic is growing faster than expected five years ago," said Cisco Senior Director of Service Provider Marketing Doug Webster in the report. "The rapid consumer adoption of smartphones, netbooks, eReaders and Web-ready video cameras as well as machine-to-machine applications like eHealth monitoring and asset tracking systems, are continuing to place unprecedented demands on mobile networks."

The report found that mobile video will represent 66 percent all mobile data traffic by 2014, increasing 66-fold from 2009 to 2014 – the highest growth rate of any mobile data application tracked in Cisco's forecast.

India is expected to have the highest country mobile data traffic growth rate of any country, with a compound annual growth rate of 222 percent for the forecast period, followed by China with a 172 percent rate and South Africa with a 156 percent rate.

The company also found that global mobile data traffic has increased by 160 percent over the past year to 90 petabytes per month, or the equivalent of 23 million DVDs. By 2014, Cisco predicts that more than 400 million of the world's Internet users will access the network solely through a mobile connection.

Cisco's report relied upon various independent analyst forecasts as well as real-world mobile data usage studies.

4/13/10 Rec'd from
Paul Rosa @
PC mtg

Wireless Telecommunications Facilities Moratorium

WHEREAS Jefferson County enacted a Zoning Ordinance in 1988 that includes provisions regulating Wireless Telecommunication Facilities and;¹

WHEREAS in the subsequent decade it was considered that those provisions were inadequate to anticipate the burgeoning demand for wireless voice and data services and the network infrastructure necessary to support this increased demand, and;

WHEREAS Jefferson County and surrounding jurisdictions presently are receiving a wave of applications for new towers to meet coverage and capacity requirements for commercial wireless networks, and

WHEREAS the individual and cumulative effects of these applications have the potential to compromise the rural, historic and cultural character of the essential Jefferson County landscape and to interfere with property values and the orderly development of the County, and the current Zoning Ordinance provisions appear inadequate to protect those interests;

THEREFORE the Jefferson County Commission declares that no application for commercial wireless telecommunication towers, antennas, auxiliary shelter or structures, or any other commercial wireless telecommunication facilities shall be accepted into the Planning Commission Office for a period of six months from the adoption of this moratorium. Likewise no commercial wireless telecommunication facility shall be constructed or placed in the unincorporated areas of Jefferson County during the same period.

AND BE IT FURTHER PROVIDED that this provision shall expire six months after its enactment or on such prior date that new rules regarding such facilities are adopted by the County Commission of Jefferson County.

ENACTED this ____ day of May, 2010.

Jefferson County Commission
Lyn Widmyer, President

¹ Jefferson County Zoning Ordinance effective on July 1, 1998, Article 4B, *et seq.*

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

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

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

Director's Report
April 27, 2010
Planning Commission meeting

- 1) Activity Report (attached)
- 2) Status of Subdivision Regulation Amendments
- 3) Shenandoah Professional Center Zone change Request – CC workshop and vote on 5/6/10
- 4) Land Development Fees – Results of County Commission Workshop (4/22/10)
 - a) Requested stakeholders meeting prior to public hearing
 - b) Requested research into whether fees could be reduced for non-profits/ not-for-profits
 - c) Proposed no fees for land or buildings owned by the County
 - d) Proposed case by case waiver requests for County affiliated entities such as the EDA or Parks and Rec
 - e) Proposed eliminating fee for written zoning map or text interpretation
 - f) Requested input into whether increase should be phased

Christine Chalmers

To: PLANNING COMMISSION
Subject: FW: WEEKLY CALENDAR

MONDAY, APRIL 19, 2010

10:00 am JENNIE, SETH & JENNILEE – WEEKLY SUBMISSIONS MEETING (PLANNING)
1:00 pm JENNIE, JENNIFER & SETH – MEETING WITH STEVE GROH (2 HOURS)
2:00 pm JENNIE & JENNIFER - WEEKLY ZONING MEETING
3:00 pm – 5:00 pm JENNIE – “WAC” MEETING (SETH/BACK-UP ATTENDEE)

TUESDAY, APRIL 20, 2010

9:30 am - STAFF MEETING
1:30 pm SETH – MEETING WITH JONATHAN
2:30 pm SETH – MEETING WITH RICHARD HOFFMAN
2:30 pm – 5:00 pm JENNIE – EDA BOARD MEETING

WEDNESDAY, APRIL 21, 2010

10:30 am JENNIE & SETH – MEETING WITH ROGER & JONATHAN / RE: DOH ISSUES
11:00 am JENNIE – MEETING w/ ROGER, WALTER WASHINGTON & BILL HOWARD
RE: CRESSCREEK VARIANCE
2:00 pm JENNIFER – MEETING w/ JONATHAN & STEPHANIE PETWAY / RE: CELL TOWER
4:00 pm – 5:30 pm SETH – MEETING @ RANSON CITY HALL / RE: DEVELOPMENT FINANCE & PRO FORMAS

THURSDAY, APRIL 22, 2010

9:00 am - COUNTY COMMISSION MEETING
1:00 – 2:30 pm JENNIE – LAND DEVELOPMENT FEE WORKSHOP
3:30 pm JENNIE – MEETING WITH TODD FAGAN / RE: URBAN TREE CANOPY

FRIDAY, APRIL 23, 2010

10:00 am JENNIFER – MEETING WITH ED JOHNSON

SATURDAY, APRIL 24, 2010

2:00 pm JENNIE – ST. ANDREWS MOUNTAIN COMMUNITY CENTER

Christine Chalmers

To: PLANNING COMMISSION
Subject: FW: WEEKLY CALENDAR

MONDAY, APRIL 26, 2010

9:00 am JENNIFER – MEETING WITH MIKE SHEPP
NOON (ish) JENNIE, SETH & JENNILEE – WEEKLY SUBMISSIONS MEETING (PLANNING)
3:30 pm JENNIE & JENNIFER - WEEKLY ZONING MEETING

TUESDAY, APRIL 27, 2010

9:30 am - STAFF MEETING
7:00 pm PC MEETING

WEDNESDAY, APRIL 28, 2010

10:00 am JENNIE, JULIE, SETH, JENNILEE, AMY (CHRISTINE) – MOUNTAIN SITE VISIT
2:00 pm JENNIE & SETH – MEETING WITH NORMA & JONATHAN / RE: DANIELS FOREST

THURSDAY, APRIL 29, 2010

9:00 am - COUNTY COMMISSION MEETING
? JENNIE –

FRIDAY, APRIL 30, 2010

10:00 am JENNIE, SETH & JENNIFER – SITE VISIT WITH MIKE CASSELL / RE: OBF PROPERTIES, LLC
LOCATION: BOX FACTORY ROAD IN SUMMIT POINT