

JEFFERSON COUNTY, WEST VIRGINIA
Departments of Planning & Zoning
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MEMORANDUM

TO: JEFFERSON COUNTY PLANNING COMMISSION
FROM: JENNIFER BROCKMAN, DIRECTOR OF PLANNING
DATE: MAY 14, 2010
SUBJECT: MAY 18, 2010 PLANNING COMMISSION MEETING

Please find attached the following documents for consideration at the May 18, 2010 Planning Commission meeting.

Documents provided:

- May 18, 2010 agenda.
1. Approval of the minutes from the April 27, 2010 meeting.
 - Draft minutes for the April 27, 2010 meeting.
 2. Citizen Communications.
 3. A call for postponements.
 4. Response to Planning Commission's request for information related to wireless communications towers in Jefferson County.

Documents provided:

- 2008 Zoning Ordinance, Section 2.443 Commercial Wireless Telecommunication Facilities and Towers.
 - Scenic Virginia Model Cell Tower Ordinance.
 - Personal Communications Industry Association Model Wireless Telecommunications Ordinance.
 - Camouflaged Cell Towers.
 - Clearwire Technology.
 - PPC for U.S. Cellular
 - MAP – Cellular Mounted Assets in Jefferson County, WV.
5. Discussion and vote on Proposed Subdivision Regulation Amendments to the 2008 Subdivision and Land Development Regulations.

Documents provided:

- Subdivision Regulation Amendment Suggestions Chart.
- Letter of suggestions from the Historic Landmarks Commission.
- Recommended changes to Subdivision Regulation Amendments after Planning Commission Review.
- Subdivision Regulation Amendments Suggestions from Legal Chart and Highlighted Regulations.

6. Blue Ridge Mountain Community Plan.
7. Reports from Legal Counsel and legal advice to PC.
8. Director's Report.

Documents provided:

- Director's Report Agenda.
 - Activity Report.
 - Urban Growth Boundary Legislation.
 - SB 595 Legislation.
 - Letter of Determination.

9. County Commission Liaison Report.
10. Planning Commission Exchange.
11. President's Report.
12. Actionable Correspondence.
13. 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
May 18, 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

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AGENDA
JEFFERSON COUNTY PLANNING COMMISSION
MAY 18, 2010
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13. 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.

MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
APRIL 27, 2010

The Jefferson County Planning Commission met on Tuesday, April 27, 2010, with the following Commission members present: John Maxey, President; Thomas Trumble, Vice President; Morgan Eppers, Secretary; Arnold Dailey, Daniel Hayes, Stephen Alemar, Kelly Baty, and Gene Taylor. Staff members present included Jennifer Brockman, Director of Planning and Zoning; Seth Rivard, Planner; Roger Goodwin, Chief County Engineer; Jonathon Saunders, County Engineer; Stephen Groh, Assistant Prosecuting Attorney; Julie Quodala, Planning and Zoning Office Manager; and Amy Puetz, Office Assistant.

Frances Morgan was absent with notification.

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

1. **Approval of minutes for the April 13, 2010 meeting:**

Mr. Trumble moved to approve the minutes of the April 13, 2010 Planning Commission meeting. Mr. Alemar seconded the motion which carried unanimously.

2. **Citizens Communication:** None.

3. **A call for postponements:** None.

4. **Postponed from the April 13, 2010 Planning Commission meeting. Request by William R. and Elizabeth G. Howard and Home Hill Corporation to have the Planning Commission accept Howard Farm Turner Road 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).**

Ms. Brockman read from the addendum to the staff report outlining staff's interpretation of the regulations in regards to this variance and recommended approval.

Mr. Walter Washington, Attorney representing Home Hill Corporation, and Mr. William Howard each submitted letters to the Planning Commission stating that they had read the staff report and its addendum and concurred with staff.

Mr. Walter Washington approached the podium and voiced his agreement with staff.

Mr. Maxey opened the public hearing. Reverend G. T. Schramm made comment in support of the variance. Mr. Maxey closed the public hearing.

Mr. Trumble moved to approve the variance with the staff recommended motion. Mr. Taylor seconded the motion which carried unanimously.

5. Request by Paul and Susan Prichard for a waiver from Section 20.202 and Section 21.103D of the Subdivision Regulations to allow the use of two entrances for Lot 1 in the Pritchard Minor Subdivision (PC file # 09-25).

Mr. Rivard read from the staff report recommending approval. Mr. Saunders gave the Engineering Department perspective and recommended approval.

Ms. Annette VanHilst, from Dewberry representing Paul and Susan Pritchard, explained the agricultural activity on the property and was available for questions.

Ms. Brockman introduced Mr. Goodwin who answered questions presented to staff.

Mr. Maxey opened the public hearing. Mr. Louis Meadows, neighboring resident, spoke in opposition to the waiver stating that the entrance approved by the Department of Highways is unsafe. However he was in favor of the applicant's effort to protect Rattlesnake Run. Ms. Christina Hiatt-Martinkosky, neighborhood resident, approached the podium to ask of the applicant how close the pavement would be to the stream and what provisions are being taken to protect the stream including allowing the stream to cool and keeping oils from the water. Ms. Robin Dipietro-Durand, also a neighboring resident, also spoke in concern of the safety of the road and suggested replacing a stop sign that had been previously removed. Mr. Maxey closed the public hearing.

Discussion ensued addressing the citizens' concerns. Ms. VanHilst provided resolution to some concerns. In response to Ms. Hiatt-Martinkosky's inquiry, Ms. VanHilst reaffirmed there would be no paving of the entrances. She also confirmed that Mr. Pritchard would be willing to write a letter to the State Highway Department requesting replacement of the removed stop sign and to request reduction of the road's speed limit in conjunction with his neighbors.

Mr. Alemar moved to approve with the staff recommended motion. Mr. Hayes seconded the motion which carried 6 for and 2 opposed (Mr. Daily and Mr. Baty).

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.

Ms. Brockman provided a memo to the Planning Commission in the agenda packets which detailed staff perspective on the moratorium. She stated that, due to the revision of the Subdivision Regulations, consideration of the moratorium may need to be delayed unless the Planning Commission deemed it a priority.

Mr. Paul Rosa of the Harpers Ferry Conservancy presented his argument to the Planning Commission insisting the urgency of the moratorium.

Mr. Groh was available for legal counsel on this topic. There was discussion on if a moratorium was appropriate at this time versus evaluating each individual application.

Mr. Maxey called for a break to allow staff to change the CD at 8:24 PM. Mr. Maxey called the meeting to order at 8:29 PM.

Discussion continued on the effect a moratorium would have legally and how quickly amendments to the Zoning Ordinance could be made.

Mr. Alemar moved to table this item to the May 18, 2010 Planning Commission meeting to allow staff to provide a list of all the cell towers that are currently in the county, and how many future applications staff may be aware of and also to allow legal to provide a review of the legal stipulations regarding moratoriums. Mr. Taylor seconded the motion which carried unanimously.

7. Blue Ridge Mountain Community Plan:

Mr. Rivard gave an overview of the meeting of the Citizen's Committee that had taken place Saturday, April 24, 2010. He also informed the Planning Commission that the website is now active.

8. Director's Report:

- a) Activity Report. A copy of staff's schedule was provided in the agenda packets.
- b) Status of Subdivision Regulation Amendments. Ms. Brockman explained that progress had been made on the amendments however, due to the priority of deadlines for other projects; the final draft was not complete.
- c) Shenandoah Professional Center Zone Change Request. Ms. Brockman informed the Planning Commission of the results of the public hearing held by the County Commission. She reported that the County Commission requested reports from staff and postponed voting on the item until May 6, 2010.
- d) Land Development Fees – Results of County Commission Workshop held April 22, 2010. Ms. Brockman explained the results of the County Commission Workshop. She stated that the County Commission requested there be a stakeholders meeting prior to the public hearing and for staff provide research into whether fees could be reduced for non-profit/not-for-profit agencies. She also conveyed that the County Commission had proposed no fees for land or buildings owned by the County, case-by-case waiver requests for County affiliated entities, and eliminating the fee for written zoning map or text interpretation. Ms. Brockman stated that the County Commission was requesting input on whether the increase in fees should be phased.

9. Reports from Legal Counsel and legal advice to Planning Commission: Mr. Groh reported to the Planning Commission on meetings with Engineering and Planning and Zoning Department heads. Mr. Groh reaffirmed that he would gather information on the legal aspects of enforcing a moratorium.

Mr. Maxey asked that legal provide a written comment stating that legal has reviewed the Subdivision Regulations and that they are consistent with 8A of the WV State Code in time for the public hearing on the Subdivision Regulations scheduled for May 25, 2010.

10. County Commission Liaison Report: None.

11. Planning Commission Exchange:

Mr. Maxey asked Ms. Ethers to formally draft a letter from the Planning Commission to the Department of Highways regarding the removal of the stop sign at the y intersection of Flowing Springs Road and Shepherdstown Pike. He asked that this be forwarded to the Planning and Zoning Department staff by May 12, 2010 to be included in the next agenda packet.

Mr. Hayes offered to make the Planning and Zoning Department aware of any grant opportunities. He will contact Ms. Brockman with any information he is able to provide.

12. President's Report: None.

13. Actionable Correspondence: None.

14. Non-Actionable Correspondence: Mr. Rivard passed out an email from Ms. Ethers that outlined research carried out by her and Mr. Baty on the topic of easements around swales and channels. Ms. Brockman stated that staff would review this information as updates are being made to the Subdivision Regulations.

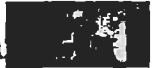
Mr. Alemar moved to adjourn at 9:26 PM. Mr. Taylor seconded the motion, which carried unanimously. A detailed transcript of the meeting may be found on CD #____. These minutes were prepared by Amy Puetz, Office Assistant.

Staff's Response to the Request for Information Regarding a Cell Tower Moratorium
Jefferson County Planning Commission Meeting
May 18, 2010

The thought that cell towers will diminish in use as technology grows more sophisticated is unfounded. In fact, it is likely that additional towers will be needed as the population becomes denser. Also, these towers are also being used to relay television and radio signals. There are two different thought processes that can be followed. Either we allow for taller towers that can support several collocation antennas or we allow for more towers to be built at a shorter height so that there are multiple locations for the antennas. Either way, due to the mountainous terrain there is a limited range in height that is ideal. Mike Saperstein, with the Personal Communications Industry Association did say that as technology advances there will be need for additional antennas. The more sophisticated the electronic device (i. e. netbooks, smart phones, tablet personal computers, etc.) the greater the need for expanding the amount of signals that can be transmitted, hence the need for more antennas. Furthermore, anecdotal evidence suggests that wireless communications facilities do assist in attracting advanced technological companies that could offer more challenging employment possibilities with higher pay scales, although, no qualitative data could be found to support this evidence.

Listed below you will find the following items in your packet:

1. 2008 Zoning Ordinance, Section 2.443 Commercial Wireless Telecommunication Facilities and Towers
2. Scenic Virginia Model Cell Tower Ordinance
3. Personal Communications Industry Association Model Wireless Telecommunications Ordinance
4. Camouflaged Cell Towers
5. Clearwire Technology
6. PPC for U.S. Cellular
7. MAP - Cellular Mounted Assets in Jefferson County, WV



Sec. 2.443 Commercial Wireless Telecommunication Facilities and Towers

- A. **Land Development Plans.** Land development *plan* approval is required.
- B. **Fence.** A fence that is 8 feet in height shall enclose all freestanding wireless telecommunications towers, wireless telecommunications structures, and wireless telecommunications facilities.
- C. **Height and Setbacks.** These setbacks shall apply in all zones. Setbacks may be modified as part of the *Conditional Use* process when such process is required. These setbacks are for new towers only.
 - 1. Any wireless telecommunications facility shall be located at least the length of the height of such tower plus an additional 10 percent to any external *property line*. For towers with preformed collapse points, it shall be the length of the longest section plus 10 percent.
 - 2. All portions of wireless telecommunications towers, wireless telecommunications structures, and wireless telecommunications facilities (excluding the required fence and guy wires) shall be a minimum of 15 feet from all *property lines*.
 - 3. No wireless telecommunications facility shall exceed 110 feet in height.
- D. **Application Location Considerations.**
 - 1. Applicants shall either be an FCC licensee, or have a binding rental commitment from a person who is an FCC licensee. Applications for wireless telecommunications facilities, antennas, towers, and structures shall include a needs assessment that shows areas of poor coverage that will be corrected by the tower or *antenna*. This study should identify the location, or group of locations, where a facility will meet the communications requirement.
 - 2. Propagation studies or maps shall also be submitted by the applicant showing existing coverage from all constructed or approved sites in the vicinity, as well as coverage anticipated with the proposed site. Propagation studies shall be run at a series of progressively lower heights until the height where signal becomes ineffective. The location of the proposed facilities shall be approved or denied based on the following priorities:
 - a. First, if co-location on another tower that meets the requirements of this section is possible, then the proposed facility shall be so co-located.
 - b. Second, if co-location is not feasible and the facility can be located on an existing utility structure such as a water tower or power pole, then the proposed facility shall be so located.
 - c. Third, if the first and second priority locations are not feasible, then the facility shall be located on or in an existing taller structure such as a steeple where the *antenna* can be camouflaged to retain the appearance of the structure.



- d. Fourth, if the first, second, and third priority locations are not feasible, then the facility shall be located on a site where the tower will largely be screened from view by existing vegetation on the site.
 - e. Fifth, if no other alternatives are available, then the proposed facility may be located on another location, with screening, camouflage, or concealment measures as approved by the Board of Zoning Appeals or Zoning Administrator.
3. No location shall be approved if another location of higher-order priority is available. For example, if a proposed location is fourth priority and a second priority location is a feasible alternative, then the application for the fourth priority site shall be denied.

E. Other Application Requirements.

- 1. The applicant must provide a West Virginia licensed engineer's certificate of structural integrity and safety of the proposed facility and the existing structure with the site plan.
- 2. For new structures/towers, applicant must prove that the support structure/tower is structurally designed to accept the co-location of at least two companies.
- 3. Applicants shall submit a balloon test and photo simulations to show what a proposed wireless facility would look like from various vantage points. The applicant shall be required to give two weeks notice to the public and the Board of Zoning Appeals indicating the date and time such tests will be conducted.
- 4. Applications shall also be accompanied by findings prepared by the applicant, indicating why a Distributed Antenna System (DAS) will not provide an adequate means of providing telecommunication services.
- 5. Applications shall be accompanied by a non-refundable application fee which may be used by the Board of Zoning Appeals or Zoning Administrator to employ an independent consultant to advise the review authority concerning the demonstration of need accompanying the application and the appropriateness of the proposed infrastructure in the context of the location or setting in which it is proposed.

F. Other Provisions.

- 1. If no functioning *antenna* is attached to a tower for 24 consecutive months, then the *owner* of the property shall:
 - a. Dismantle the tower and all associated structures; and
 - b. Restore the site as nearly as possible to pre-existing site conditions.
- 2. The applicant shall submit documentary evidence of compliance with all Federal Aviation Administration and Federal Communications Commission requirements.
- 3. Any portions of wireless telecommunications towers, structures, and facilities that are below the tree line and located within 300 feet of the Appalachian Trail shall be camouflaged to minimize the visual impact of such when viewed from the



Trail. The Planning Commission shall have final authority over the level of such camouflaging.

4. All towers shall be painted a non-contrasting gray or similar color, minimizing its visibility, unless otherwise required or requested by the Federal Communications Commission, Federal Aviation Administration, or the Jefferson County Board of Zoning Appeals (in the Conditional Use Permit).
5. No advertising is permitted anywhere on the wireless telecommunications antennas, wireless telecommunications equipment shelters, wireless telecommunications facilities, or wireless telecommunications towers.
6. The utilization of an existing structure does not require the creation of a separate lot.
7. Upon notification to the Department of Planning, operational, temporary test towers/antennas may be erected for a period not exceeding 30 days per parcel.
8. Wireless telecommunication towers, excepting *antennas*, based within 250 vertical feet of the Blue Ridge Line shall not rise above the average tree canopy within a 100-foot radius of the proposed site. The 250 vertical feet shall be measured by drawing a perpendicular line from the site to the Blue Ridge Line.

G. **Certificate of Appropriateness.** A Certificate of Appropriateness shall be issued by the approval authority (Board of Zoning Appeals or the Zoning Administrator), regardless of location, indicating the proposed telecommunication facility has utilized a concealment or camouflage technique which is appropriate to the local landscape setting.

**SCENIC VIRGINIA
MODEL CELL TOWER ORDINANCE (BASED ON ALBEMARLE COUNTY)
PERSONAL WIRELESS SERVICE FACILITIES**

The purpose of this section is to implement the personal wireless service facilities policy, adopted as part of the comprehensive plan. Each personal wireless service facility (hereinafter "facility") shall be subject to following:

- A. *Application for approval:* Each request for approval of a personal wireless service facility shall include the following information:
1. A completed application form, signed by the owner, the owner's agent or the contract purchaser. If the owner's agent signs the application, he shall also submit written evidence of the existence and scope of the agency. If the contract purchaser signs the application, he shall also submit the owner's written consent to the application.
 2. A recorded plat or recorded boundary survey of the parcel on which the facility will be located; provided, if neither a recorded plat nor boundary survey exists, a copy of the legal description of the parcel and the Albemarle County Circuit Court deed book and page number.
 3. The identity of the owner of the parcel and, if the owner is other than a real person, the complete legal name of the entity, a description of the type of entity, and written documentation that the person signing on behalf of the entity is authorized to do so.
 4. Except where the facility will be located entirely within an existing structure, a scaled plan and a scaled elevation view and other supporting drawings, calculations, and other documentation required by the director of planning and community development, signed and sealed by an appropriate licensed professional. The plans and supporting drawings, calculations and documentation shall show:
 - (a) The location and dimensions of all proposed improvements, including the maximum height above ground of the facility (also identified in height above sea level).
 - (b) The design of the facility, including the specific type of support structure and the design, type, location, size, height and configuration of all proposed antennas and other equipment.
 - (c) Except where the facility would be attached to an existing structure, the topography within two thousand (2,000) feet of the proposed facility, in contour intervals not to exceed ten (10) feet.
 - (d) The height of all trees within fifty (50) feet of any proposed monopole or

tower relied upon to establish the proposed height and/or screening of the monopole or tower

- (e) All existing and proposed setbacks, parking, fencing and landscaping.
- (f) The location and design of all proposed accessways.
- (g) Except where the facility would be attached to an existing structure, residential structures, residential and rural areas zoning district boundaries, agricultural and forestal district boundaries and parcels subject to conservation easements within two thousand (2,000) feet of the facility.
- (h) The proximity of the facility to commercial and private airports.

5. Photographs of the site.

6. For any proposed monopole or tower, photographs taken of a balloon test, which shall be conducted as follows:

- (a) The applicant shall contact the department of planning and community development within thirty (30) days after the date the application was submitted to schedule a date and time when the balloon test will be conducted. The test shall be conducted within sixty (60) days after the date the application was submitted, and the applicant shall provide the department with at least seven (7) days prior notice; provided that this deadline may be extended due to inclement weather or by the agreement of the applicant and the department.
- (b) The test shall consist of raising one or more balloons from the site to a height equal to the proposed facility.
- (c) The balloons shall be of a color or material that provides maximum visibility.
- (d) The photographs of the balloon test shall be taken from the nearest residence and from appropriate locations on abutting properties, along each publicly used road from which the balloon is visible, and other properties and locations as deemed appropriate by the director of planning and community development. The applicant shall identify the camera type, film size, and focal length of the lens for each photograph.

B. *General regulations:* Except as otherwise provided in this paragraph, each facility shall be subject to all applicable regulations in this chapter.

- 1. Notwithstanding section ____ of this chapter, a facility may be located in an area on a lot or parcel other than a building site.
- 2. Notwithstanding section ____ of this chapter, the director of planning and

community development may authorize a facility to be located closer in distance than the height of the structure to any lot line if the applicant obtains an easement acceptable to the county attorney prohibiting development on the part of the abutting lot sharing the common lot line that is within the facility's fall zone (e.g., the setback of an eighty (80) foot-tall facility could be reduced to thirty (30) feet if an easement is established prohibiting development on the abutting lot within a fifty (50) foot fall zone).

3. The area and bulk regulations or minimum yard requirements of the zoning district in which the facility will be located shall not apply.
 4. Notwithstanding section ____ of this chapter, a facility may be located in a required yard.
 5. Notwithstanding section ____ of this chapter, a site plan shall not be required for a facility, but the facility shall be subject to the requirements of section ____ and the applicant shall submit all schematics, plans, calculations, drawings and other information required by the director of planning and community development to determine whether the facility complies with section _____. In making this determination, the director may impose reasonable conditions authorized by section ____ in order to assure compliance.
 6. A facility, other than a microwave dish, attached to an existing structure and which does not exceed the height of the existing structure and is flush mounted to the structure, shall be permitted as a by right use; provided, however, it shall be subject to all applicable regulations applying to the existing structure and to the regulations set forth in subsection _____.
 7. A facility located entirely within an existing building shall be permitted as a by right use; provided, however, it shall be subject to all applicable regulations applying to the building. Such a by right use facility may include a self-contained shelter or cabinet not located within a building if it is screened from public view or a whip antenna less than six (6) inches in diameter which exceeds the height of the existing building.
- C. *Regulations applicable to a facility attached to an existing structure.* A by-right use facility described in subsection ____ shall be installed and operated subject to the following regulations:
1. The facility shall be designed, constructed and maintained as follows: (i) guy wires shall not be permitted; (ii) outdoor lighting for the facility shall be permitted only during maintenance periods; regardless of the lumens emitted, each outdoor luminaire shall be fully shielded as required by section ____ of this chapter; (iii) any equipment cabinet not located within the existing structure shall be screened from public view; (iv) a whip antenna less than six (6) inches in diameter may exceed the height of the existing structure; (v) a grounding rod, whose height shall not exceed two feet and whose width shall not exceed one-inch

in diameter at the base and tapering to a point, may be installed at the top of facility or the structure; and (vi) within one month after the completion of the installation of the facility, the applicant shall provide a statement to the department of planning and community development certifying that the height of all components of the facility complies with this regulation.

2. Equipment shall be attached to the structure only as follows: (i) the total number of arrays of antennas attached to the existing structure shall not exceed three (3), and each antenna proposed to be attached under the pending application shall not exceed the size shown on the application; (ii) only flush mounted antennas shall be permitted; no antenna shall project from the structure beyond the minimum required by the mounting equipment, and in no case shall an antenna project more than twelve (12) inches from the existing structure; and (iii) each antenna and associated equipment shall be a color that matches the existing structure.
3. Prior to beginning construction or installation of any equipment cabinet not located within the existing structure, or installation of access for vehicles or utilities, a tree conservation plan, developed by a certified arborist, specifying tree protection methods and procedures, and identifying any existing trees to be removed on the site both inside and outside the access easement and lease area shall be submitted to the director of planning and community development for approval. All construction or installations associated with the equipment cabinet, including necessary access for construction or installation, shall be in accordance with this tree conservation plan. Except for the tree removal expressly authorized by the director, the applicant shall not remove existing trees within two hundred (200) feet of the lease area, or the vehicular or utility access.
4. The facility shall be disassembled and removed from the site within ninety (90) days of the date its use for wireless telecommunications purposes is discontinued.
5. The applicant shall submit a report to the zoning administrator by July 1 of each year. The report shall identify each user of the existing structure that is a wireless telecommunications service provider.
6. No slopes associated with construction of the facility and accessory uses shall be created that are steeper than 2:1 unless retaining walls, revetments, or other stabilization measures acceptable to the county engineer are employed.
7. The regulations in section ____ of this chapter shall apply.
8. Any equipment cabinet not located within the existing structure shall be: (i) fenced only with the approval of the director of planning and community development; (ii) screened from all lot lines either by the terrain, existing structures, existing vegetation, or by added vegetation approved by the department of planning and community development's landscape planner.



MODEL WIRELESS TELECOMMUNICATIONS ORDINANCE

PCIA, THE WIRELESS INFRASTRUCTURE ASSOCIATION

December, 2006

About PCIA

PCIA is an association of companies that seek the advancement of the wireless communications industry through advocacy, technical and marketplace initiatives. PCIA supports programs and policies that expand the growth of the wireless network infrastructure and deployment industry. PCIA's goal is to create a better financial and business environment in which its members can grow and succeed. For more information, please go to www.pcia.com.

MODEL WIRELESS TELECOMMUNICATIONS ORDINANCE

I. Purpose and Legislative Intent.

The purpose of this Wireless Telecommunications Ordinance is to ensure that residents and businesses in [the Municipality] have reliable access to wireless telecommunications networks and state of the art communications services while also ensuring that this objective is achieved in a fashion that preserves the intrinsic aesthetic character of the community and is accomplished according to [the Municipality's] zoning, planning, and design standards. The Telecommunications Act of 1996 preserved, with certain limitations, local government land use and zoning authority concerning the placement, construction, and modification of wireless telecommunications facilities. [The Municipality] recognizes that facilitating the development of wireless service technology can be an economic development asset to [the Municipality] and a significant benefit to its residents. To accomplish the above stated objectives and to ensure that the placement, construction or modification of wireless telecommunications facilities complies with all applicable Federal laws, and is consistent with [the Municipality's] land use policies, [the Municipality] is adopting a single, comprehensive, wireless telecommunications ordinance.

This Ordinance establishes parameters for the siting of Wireless Telecommunications Facilities. By enacting this Ordinance it is [the Municipality's] intent to:

- (1) Ensure access to reliable wireless communications services throughout all areas of [the Municipality];
- (2) Encourage the use of existing Monopoles, Towers, Utility Poles and other structures for the collocation of Telecommunications Facilities;
- (3) Encourage the location of new Monopoles and Towers in non-residential areas;
- (4) Minimize the number of new Monopoles and Towers that would otherwise need to be constructed by providing incentives for the use of existing structures;
- (5) Encourage the location of Monopoles and Towers, to the extent possible, in areas where the adverse impact on the community will be minimal;
- (6) Minimize the potential adverse effects associated with the construction of Monopoles and Towers through the implementation of reasonable design, landscaping and construction practices;
- (7) Ensure public health, safety, welfare, and convenience; and
- (8) Conform to Federal and State laws that allow certain antennas to be exempt from local regulations.

II. Definitions.

For the purposes of this Ordinance, the following terms shall be defined as:

Accessory Equipment -- Any equipment serving or being used in conjunction with a Telecommunications Facility or Support Structure. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.

Administrative Approval -- Zoning approval that the [Zoning Administrator] or designee is authorized to grant after Administrative Review.

Administrative Review -- The procedures established in Section IV E of this Ordinance.

Antenna -- Any structure or device used to collect or radiate electromagnetic waves for the provision of cellular, paging, personal communications services (PCS) and microwave communications. Such structures and devices include, but are not limited to, directional antennas, such a panels, microwave dishes and satellite dishes, and omnidirectional antennas, such as whips.

Collocation -- The act of siting Telecommunications Facilities in the same location on the same Support Structure as other Telecommunications Facilities. Collocation also means locating Telecommunications Facilities on an existing structure (for example: buildings, water tanks, towers, utility poles, etc.) without the need to construct a new support structure.

“Carrier on Wheels” or “Cell on Wheels” (“COW”) -- A portable self-contained cell site that can be moved to a location and set up to provide personal wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the Antenna support structure.

Ordinary Maintenance -- Ensuring that Telecommunications Facilities and Support Structures are kept in good operating condition. Ordinary Maintenance includes inspections, testing and modifications that maintain functional capacity, aesthetic and structural integrity; for example the strengthening of a Support Structure’s foundation or of the Support Structure itself. Ordinary Maintenance includes replacing Antennas and Accessory Equipment on a like-for-like basis within an existing Telecommunications Facility and relocating the Antennas of approved Telecommunications Facilities to different height levels on an existing Monopole or Tower upon which they are currently located. Ordinary Maintenance does not include Minor and Major Modifications.

Major Modifications -- Improvements to existing Telecommunications Facilities or Support Structures that result in a substantial change to the Facility or Structure. Collocation of new Telecommunications Facilities to an existing Support Structure without Replacement of the structure shall not constitute a Major Modification. Major Modifications include, but are not limited to, extending the height of the Support Structure by more than twenty (20) feet or ten percent (10%) of its current height whichever is greater, and the Replacement of the structure.

Minor Modifications -- Improvements to existing Telecommunications Facilities and Support Structures, that result in some material change to the Facility or Support Structure but of a level,

quality or intensity that is less than a “substantial” change. Such Minor Modifications include, but are not limited to, extending the height of the Support Structure by less than twenty (20) feet or ten percent (10%) of its current height, whichever is greater, and the expansion of the compound area for additional Accessory Equipment.

Monopole --A single, freestanding pole-type structure supporting one or more Antenna. For purposes of this Ordinance, a Monopole is not a Tower.

Replacement -- Constructing a new Support Structure of proportions and of equal height or such other height as would be allowed under the definition of Minor Modification to a pre-existing Support Structure in order to support a Telecommunications Facility or to accommodate Collocation and removing the pre-existing Support Structure.

Stealth Telecommunications Facility -- Any Telecommunications Facility that is integrated as an architectural feature of a structure so that the purpose of the Facility for providing wireless services is not readily apparent to a casual observer.

Support Structure(s) – A structure designed to support Telecommunications Facilities including, but not limited to, Monopoles, Towers, Utility Poles and other freestanding self- supporting structures.

Telecommunications Facility(ies) -- Any unmanned facility established for the purpose of providing wireless transmission of voice, data, images or other information including, but not limited to, cellular telephone service, personal communications service (PCS), and paging service. A Telecommunication Facility can consists of one or more Antennas and Accessory Equipment or one base station.

Tower -- A lattice-type structure, guyed or freestanding, that supports one or more Antennas.

III. Approvals Required for Telecommunications Facilities and Support Structures.

- (A) Administrative Review. Telecommunications Facilities located on any existing support structure shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance. New Support Structures that are less than sixty (60) feet in height shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance. New Support Structures up to one hundred ninety-nine (199) feet in height shall be permitted in any Industrial District after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance. Monopoles or replacement poles located in utility easements or rights-of-way shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance. Stealth Telecommunications Facilities shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance.

- (B) Special Permit. Telecommunications Facilities and Support Structures not permitted by Administrative Approval shall be permitted in any district upon the granting of a Special Permit from the [Zoning Board] in accordance with the standards set forth in this Ordinance.
- (C) Exempt. Ordinary Maintenance of existing Telecommunications Facilities and Support Structures, as defined herein, shall be exempt from zoning and permitting requirements. In addition, the following facilities are not subject to the provisions of this Ordinance: (1) antennas used by residential households solely for broadcast radio and television reception ; (2) satellite antennas used solely for residential or household purposes; (3) COWs placed for a period of not more than one hundred twenty (120) days at any location within [The Municipality] after a declaration of an emergency or a disaster by the Governor or by the responsible official of [The Municipality]; and (4) television and AM/FM radio broadcast towers and associated facilities.

IV. Telecommunications Facilities and Support Structures Permitted by Administrative Approval.

A. Telecommunications Facilities Located on Existing Structures

- (1) Antennas and Accessory Equipment are permitted in all zoning districts when located on any existing structure, including, but not limited to, buildings, water tanks, utility poles, broadcast towers or any existing Support Structure in accordance with the requirements of this Part.
- (2) Antennas and Accessory Equipment may exceed the maximum building height limitations, provided the Antenna and Accessory Equipment are in compliance with the requirements and standards of this Part.
- (3) Each Antenna mounted on existing structures and any Accessory Equipment shall meet the following standards:
 - (a) Omnidirectional or whip Antennas shall not exceed twenty (20) feet in length and not exceed seven (7) inches in diameter and shall be of a color that is identical or similar to the color of the supporting structure to make the Antenna and related Accessory Equipment visually unobtrusive.
 - (b) Directional or panel Antennas shall not exceed ten (10) feet in length and two (2) feet in width and shall be of a color that is identical or similar to the color of the supporting structure to make the Antenna and related Accessory Equipment visually unobtrusive.

- (c) Cylinder-type Antennas shall not exceed ten (10) feet in length and not exceed twelve (12) inches in diameter and shall be of a color that is identical or similar to the color of the supporting structure to make the Antenna and related Accessory Equipment visually unobtrusive.
- (d) Satellite and microwave dishes shall not exceed ten (10) feet in diameter. Dish antennas greater than three (3) feet in diameter shall be screened with an appropriate architectural treatment that is compatible with or integral to the architecture of the building to which they are attached. This screening requirement shall not apply to dishes located upon Towers or Monopoles.
- (e) Other Antenna types not specifically mentioned above shall be permitted if they are not significantly greater in size and will have a visual impact no greater than the Antennas listed above. This provision is specifically included in this Ordinance to allow for future technological advancements in the development of Antennas.
- (f) Accessory Equipment must comply with Section VI (E).

B. New Support Structures

- (1) New Support Structure less than fifty (50) feet in height shall be permitted in all zoning districts in accordance with the requirements of this Part.
- (2) New Support Structures up to one hundred ninety-nine (199) feet in height shall be permitted in all Industrial Districts in accordance with the requirements of this Part. The height of any proposed support structure shall not exceed the minimum height necessary to meet the coverage objectives of the Facility. The setback of the structure shall be governed by the setback requirements of the underlying zone.
- (3) In the case of a monopoles or replacement poles that will support utility lines as well as a Telecommunications Facility shall be permitted within utility easements or rights-of-way, in accordance with requirements of this Part.
 - (a) The utility easement or right-of-way shall be a minimum of one hundred (100) feet in width.
 - (b) The easement or right-of-way shall contain overhead utility transmission and/or distribution structures that are eighty (80) feet or greater in height.

- (c) The height of the Monopole or replacement pole may not exceed by more than thirty (30) feet the height of existing utility support structures.
 - (d) Monopoles and the Accessory Equipment associated there with shall be set back a minimum of fifteen (15) feet from all boundaries of the easement or right-of-way.
 - (e) Single carrier Monopoles may be used within utility easements and rights-of-way due to the height restriction imposed by Subsection (c) above.
 - (f) Poles that use the structure of a utility tower for support are permitted under this Section. Such poles may extend up to twenty (20) feet above the height of the utility tower.
- (4) Monopoles or replacement poles located on public property or within public rights-of-way that will support public facilities or equipment in addition to Telecommunications Facilities shall be permitted in accordance with requirements of this Part. Examples include, but are not limited to, municipal communication facilities, athletic field lights, traffic lights, street lights, and other types of utility poles in the public right-of-way.

C. Stealth Telecommunications Facilities

- (1) Stealth Telecommunications Facilities shall be permitted in all zoning districts after Administrative Review and Administrative Approval in accordance with the requirements below:
 - (a) Antennas must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer.
 - (b) The structure utilized to support the Antennas must be allowed within the underlying zone district. Such structures may include, but are not limited to, flagpoles, bell towers, clock towers, crosses, monuments, smoke stacks, parapets, and steeples.
 - (c) Setbacks for the supporting structure shall be governed by the setback requirements of the underlying zoning district.

D. General Standards, Design Requirements, and Miscellaneous Provisions

- (1) Unless otherwise specified herein, all Telecommunications Facilities and Support Structures permitted by Administrative Approval are subject to

the applicable general standards and design requirements of Section VI and the provisions of Section VII.

E. Administrative Review Process

- (1) All Administrative Review applications must contain the following:
 - (a) Administrative Review application form signed by applicant.
 - (b) Copy of lease or letter of authorization from property owner evidencing applicant's authority to pursue zoning application
 - (c) Zoning Drawings detailing proposed improvements. Drawings must depict improvements related to the requirements listed in this Part, including property boundaries, setbacks, topography, elevation sketch, and dimensions of improvements.
 - (d) In the case of a new Support Structure:
 - (i) Statement documenting why collocation cannot meet the applicant's requirements. Such statement may include such technical information and other justifications as are necessary to document the reasons why collocation is not a viable option; and
 - (ii) The applicant shall provide a list of all existing structures considered as alternatives to the proposed location. The applicant shall provide a written explanation why the alternatives considered were either unacceptable or infeasible due to technical, physical, or financial reasons. If an existing tower or monopole is listed among the alternatives, applicant must specifically address why the modification of such structure is not a viable option.
 - (iii) Applications for new Support Structures with proposed Telecommunications Facilities shall be considered together as one application requiring only a single application fee.
 - (e) Administrative Review application fee.
- (2) Procedure.
 - (a) Within ten (10) business days of the receipt of an application for Administrative Review, the [Zoning Administrator] shall either: (1) inform the Applicant in writing the specific reasons why the application is incomplete and does not meet the submittal requirements; or (2) schedule an Administrative Review meeting

with the Applicant within thirty (30) days of the receipt of a complete application. This meeting is not a public hearing.

- (b) An applicant that receives notice of an incomplete application may submit additional documentation to complete the application. An applicant's failure to complete the application within sixty (60) business days after receipt of written notice shall constitute a withdrawal without prejudice of the application. An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.
- (c) The Administrative Review meeting will be conducted to confirm that the proposed application is consistent with this Ordinance. The [Zoning Administrator] must issue a written decision granting or denying the request within fifteen (15) days of the meeting unless an extension of time is agreed to by the Applicant. Failure to issue a written decision within (15) days shall constitute a denial of the application. The applicant may appeal such a denial as provided in this Ordinance or applicable State or Federal Law.
- (d) Should the [Zoning Administrator] deny the application, the [Zoning Administrator] shall provide written justification for the denial. The denial must be based on substantial evidence of inconsistencies between the application and this Ordinance.
- (f) Applicant may appeal any decision of the [Zoning Administrator] approving, approving with conditions, or denying an application or deeming an application incomplete, within thirty (30) days to [the Local Appeals Board] in accordance with this Ordinance.

V. Telecommunications Facilities and Support Structures Permitted by Special Permit.

A. Any Telecommunications Facility or Support Structures Not Meeting the Requirements of Section IV Shall Be Permitted by Special Permit in all Zoning Districts Subject to:

- (1) The submission requirements of Section V (B) below; and
- (2) The applicable standards of Sections VI and VII below; and
- (3) The requirements of the special permit general conditions at Code Section _____. [Insert cross reference to Municipality code section that establishes general conditions applicable to Special Permits.]

B. Submission Requirements for Special Permit Applications

- (1) All Special Permit applications for Telecommunications Facility and Support Structures must contain the following:
 - (a) Special Permit application form signed by applicant.
 - (b) Copy of lease or letter of authorization from the property owner evidencing applicant's authority to pursue zoning application.
 - (b) Written description and scaled drawings of the proposed Support Structure, including structure height, ground and structure design, and proposed materials.
 - (c) Number and type of proposed Antennas and their height above ground level, including the proposed placement of Antennas on the Support Structure.
 - (d) When locating within a residential area, a written technical and operational analysis of why a Monopole or similar structure at a height of less than one hundred (100) feet cannot be used.
 - (e) Line-of-sight diagram or photo simulation, showing the proposed Support Structure set against the skyline and viewed from at least four (4) directions within the surrounding areas.
 - (f) A statement justifying why Collocation is not feasible. Such statement shall include:
 - (i) Such technical information and other justifications as are necessary to document the reasons why collocation is not a viable option; and
 - (ii) The applicant shall provide a list of all existing structures considered as alternatives to the proposed location. The applicant shall provide a written explanation why the alternatives considered were either unacceptable or infeasible due to technical, physical, or financial reasons. If an existing tower was listed among the alternatives, applicant must specifically address why the modification of such tower is not a viable option.
 - (g) A statement that the proposed Support Structure will be made available for Collocation to other service providers at commercially reasonable rates.
 - (h) If required of other Special Permit applications, a property owner list that includes the name, address, and tax parcel information for each parcel entitled to notification of the application.

(j) Special Permit application fee.

(C) Procedure.

- (1) Within ten (10) business days of the receipt of an Application for a Special Permit, the [Zoning Administrator or the Zoning Board's designee] shall meet with the applicant to confirm that the application is complete or to inform the applicant in writing the specific reasons why the application is incomplete. This review meeting with staff is not a public hearing and is not subject to any public notification requirements.
- (2) If an application is deemed incomplete, an Applicant may submit additional materials to complete the application. An applicant's failure to complete the application within sixty (60) business days after receipt of written notice shall constitute a withdrawal without prejudice of the application. An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.
- (3) Once an application is deemed complete, a review meeting shall be held within ten (10) days.
- (4) At this review meeting, staff shall provide applicant, in writing, a list of additional potential alternative structures, including readily-available identifying information (e.g., address, tax map identification, latitude and longitude) or such other information as will allow the applicant to identify the potential alternative structures. If, after investigation, the applicant concludes that the potential alternative structures identified by municipal staff are not acceptable or feasible, the applicant shall provide an explanation for its decision using technical, physical, or financial information at the hearing on the Special Permit.
- (5) A complete application for a Special Permit shall be scheduled for a hearing date at this review meeting in accordance with the requirements of this Ordinance.
- (6) Applications for new Support Structures with proposed Telecommunications Facilities shall be considered as one application requiring only a single application fee.
- (7) The posting of the property and public notification of the application shall be accomplished in the same manner required for any Special Permit application under this Ordinance.

VI. General Standards and Design Requirements.

(A) Design.

(1) Monopoles shall be subject to the following:

- (a) Monopoles shall be designed to accommodate at least three (3) telecommunications providers.
- (b) The compound area surrounding the Monopole must be of sufficient size to accommodate Accessory Equipment for at least three (3) telecommunications providers.
- (c) Unless otherwise required by the Federal Communications Commission, the Federal Aviation Administration, or [the Municipality], Monopoles shall have a galvanized silver or gray finish.

(2) Towers shall be subject to the following:

- (a) Towers shall be designed to accommodate at least four (4) telecommunications providers.
- (b) A compound area surrounding the Tower must be of sufficient size to accommodate Accessory Equipment for at least four (4) telecommunications providers.
- (c) Unless otherwise required by the Federal Communications Commission, the Federal Aviation Administration, or [the Municipality], Towers shall have a galvanized silver or gray finish.

(3) Stealth Telecommunications Facilities shall be designed to accommodate the Collocation of other Antennas whenever economically and technically feasible or aesthetically appropriate, as determined by the [Zoning Board] or [Zoning Administrator].

(4) Upon request of the Applicant, the [Zoning Board or Zoning Administrator] may waive the requirement that new Support Structures accommodate the collocation of other service providers if it finds that collocation at the site is not essential to the public interest, or that the construction of a shorter support structure with fewer Antennas will promote community compatibility.

(B) Setbacks.

- (1) Property Lines. Unless otherwise stated herein, Monopoles and Towers shall be setback from all property lines a distance equal to their height measured from the base of the structure to its highest point. Other Support

Structures shall be governed by the setbacks required by the underlying zoning district.

- (2) Residential Dwellings. Unless otherwise stated herein, Monopoles, Towers and other Support Structures shall be setback from all off-site residential dwellings a distance equal to the height of the structure. There shall be no setback requirement from dwellings located on the same parcel as the proposed structure. Existing or Replacement utility poles shall not be subject to a setback requirement.
- (3) Unless otherwise stated herein, all Accessory Equipment shall be setback from all property lines in accordance with the minimum setback requirements in the underlying zoning district. Accessory Equipment associated with an existing or Replacement utility pole shall not be subject to a setback requirement.
- (4) The [Zoning Board or Zoning Administrator] shall have the authority to reduce or waive any required setback upon the request of the applicant if the Telecommunications Facility or Support Structure will be less visible as a result of the diminished setback. The [Zoning Board or Zoning Administrator] must also find that the reduction or waiver of the setback is consistent with the purposes and intent of this Ordinance. The structure must still meet the underlying setback requirements of the zone.

(C) Height

- (1) In non-residential districts, Support Structures shall not exceed a height of one hundred ninety-nine (199) feet from the base of the structure to the top of the highest point. Any proposed Support Structure shall be designed to be the minimum height needed to meet the service objectives of the applicant.
- (2) In residential districts, Support Structures shall not exceed a height equal of one hundred fifty (150) feet from the base of the structure to the top of the highest point. Any proposed Support Structure shall be designed to be the minimum height needed to meet the service objectives of the applicant.
- (3) In all districts, the [Zoning Board] shall have the authority to reduce or waive the height restrictions listed in this section upon the request of the applicant and a satisfactory showing of need for a greater height. With its waiver request the Applicant shall submit such technical information or other justifications as are necessary to document the need for the additional height to the satisfaction of the [Zoning Board].

(D) Aesthetics.

- (1) Lighting and Marking. Telecommunications Facilities or Support Structures shall not be lighted or marked unless required by the Federal Communications Commission or the Federal Aviation Administration (FAA).
 - (2) Signage. Signs located at the Telecommunications Facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by government regulation. Commercial advertising is strictly prohibited.
 - (3) Landscaping. In all districts, the [Zoning Board or Zoning Administrator] shall have the authority to impose reasonable landscaping requirements surrounding the Accessory Equipment. Required landscaping shall be consistent with surrounding vegetation and shall be maintained by the facility owner. The [Zoning Board or Zoning Administrator] may choose to not require landscaping for sites that are not visible from the public right-of-way or adjacent property or in instances where in the judgment of the [Zoning Board or Zoning Administrator], landscaping is not appropriate or necessary.
- (E) Accessory Equipment, including any buildings, cabinets or shelters, shall be used only to house equipment and other supplies in support of the operation of the Telecommunication Facility or Support Structure. Any equipment not used in direct support of such operation shall not be stored on the site.
- (1) An equipment building, shelter or cabinet must not exceed five hundred sixty (560) square feet and twelve (12) feet in height, including the support structure for the equipment building.
 - (i) Exception to size restriction. A single equipment building or shelter may exceed five hundred sixty (560) square feet, if it: is located at ground level; is used by more than one telecommunication provider; and does not exceed one thousand five hundred (1500) square feet.
 - (ii) Exception to height restriction. Upon the Applicant's request, the [Zoning Board or Zoning Administrator] may waive the height restriction to allow for the stacking of equipment on top of each other. The [Zoning Board or Zoning Administrator] must find that there is a practical necessity for the stacking of the equipment and that any resulting impact on adjoining properties is minimal or may be minimized by the requiring of appropriate screening. [The Zoning Board or Zoning Administrator] may also waive the height restriction where a higher support structure is needed to raise the Equipment above a slope or flood plains.

- (2) If the Accessory Equipment is at ground level in a residential zone, the [Zoning Board or Zoning Administrator] may require that the building or shelter be faced with brick or other suitable material on all sides and that the compound area be surrounded by landscaping providing a screen of at least three (3) feet in height at installation. The Accessory Equipment must conform to the setback standards of the applicable zone. In the situation of stacked equipment buildings, additional screening/landscaping measures may be required by the [Zoning Board or Zoning Administrator].

VII. Miscellaneous Provisions.

(A) Safety.

- (1) Ground mounted Accessory Equipment and Support Structures shall be secured and enclosed with fence not less than six (6) feet in height as deemed appropriate by the [Zoning Board] or [Zoning Administrator].
- (2) The [Zoning Board or Zoning Administrator] may waive the requirement of Subsection (1) above if it is deemed that a fence is not appropriate or needed at the proposed location..

(B) Abandonment and Removal.

- (1) Abandonment. Any Telecommunications Facility or Support Structure that is not operated for a period of twelve (12) consecutive months shall be considered abandoned.
- (2) Removal. The owner of the Telecommunications Facility or Support Structure shall remove the Facility within six (6) months of its abandonment. The [Municipal Authority] shall ensure and enforce removal by means of its existing regulatory authority.

- (C) Multiple Uses on a Single Parcel or Lot: Telecommunications Facilities and Support Structures may be located on a parcel containing another principal use on the same site.

VIII. Telecommunications Facilities and Support Structures in Existence on the Date of Adoption of this Ordinance.

- (A) Telecommunications Facilities and Support Structures that were legally permitted on or before the date this Ordinance was enacted shall be considered a permitted and lawful use.
- (B) Non-Conforming Telecommunications Facility.

- (1) Non-conforming Antennas or Accessory Equipment: Ordinary Maintenance may be performed on Non-conforming Antennas and Accessory Equipment.
 - (2) Minor Modifications to non-conforming Telecommunications Facilities may be permitted upon the granting of Administrative Approval by the [Zoning Administrator].
 - (3) Major Modifications to non-conforming Telecommunications Facilities may be permitted only upon the granting of Special Permit approval by the [Zoning Board].
- (C) Non-Conforming Support Structures.
- (1) Non-conforming Support Structure: Ordinary Maintenance may be performed on a Non-conforming Support Structure.
 - (2) Collocation of Telecommunications Facilities on an existing non-conforming Support Structure is permitted upon the granting of Administrative Approval by the Zoning Administrator.
 - (3) Minor Modifications may be made to non-conforming Support Structures to allow for Collocation of Telecommunications Facilities. Such Minor Modifications shall be permitted by Administrative Approval granted by the [Zoning Administrator].
 - (3) Major Modifications may be made to non-conforming Support Structures only upon the granting of Special Permit approval by the [Zoning Board].

For Further Questions Please Contact:

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The DAS Forum
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TECHNOLOGY



A Colorado bison sports antenna panels.



The flag's real. The pole's a cellular tower.



Former sugar silos now hold phone gear.



The fruit of the palm: antenna panels.



A cross takes cell signals closer to heaven.

Cell Phonies To paraphrase Joyce Kilmer: "I think that I shall never see, a cell phone tower lovely as a tree." And that's not poetic license. Municipal officials and nature lovers are requiring camouflage because a naked tower with antenna panels and cables is deemed an eyesore, notes telecom lawyer Jonathan Kramer, and a "mono-pine" is a popular disguise. Cellular firms pay a price for fiberglass or foam fakery. A rooftop antenna enclosure starts at about \$3,000; a steeple can cost from \$15,000 to \$80,000 or more. If the tower is on private property, monthly rent ranges from \$500 to \$4,000. Some 20,000 to 50,000 stealth structures have been built in the U.S., and more communities are calling for concealment. But the average citizen may be blissfully unaware. "If you didn't notice it," says Shea Burman of Wireless Concealment Systems, "we did a good job." —*Marc Silver*



A mock rock lets Californians talk.



A cellular cactus curtails prickly reception.



A fake water tank stands on a parking lot.



Antennas haunt a house in a cemetery.



The red light alerts low-flying copters.

➤ **Cell Test** Identify the camouflage sites in a Photo Gallery at ngm.com/0709.

PHOTOS: JONATHAN L. KRAMER, KRAMER FIRM, INC.



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What is Clearwire?

Clearwire uses a state-of-the-art wireless modem that can be plugged into a desktop computer, laptop, or local network. It works by transmitting signals to and from nearby cellular towers instead of using a traditional phone line.

That means you have the flexibility to set up the wireless modem and enjoy high speed wireless internet anywhere in your home or office — upstairs or downstairs, inside or outside. Plus, your Clearwire wireless broadband connection is always on and always secure.



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Jefferson County, West Virginia

Department of Planning & Zoning

116 East Washington Street; 2nd Floor

P.O. Box 338

Charles Town, West Virginia 25414

Phone: (304) 728-3228

Fax: (304) 728-8126

Email: planningdepartment@jeffersoncountywv.org

MARCH 31, 2010

PRE-PROPOSAL CONFERENCE MEMORANDUM

MEETING DATE: MARCH 17, 2010 @ 11:30 a.m.

APPLICANT : US CELLULAR
CONTACT: Attention: Tim Stark / Wireless Resources
(Mailing Address/Phone Number) 203 Hunting Creek Road
Canonsburg, Pennsylvania 15317
(850) 232-8777 tim.stark@wirelessresources.com

OWNER/DEVELOPER: Kenneth L. Wilt
(Name/Mailing Address) 1280 Wilt Road
Charles Town, West Virginia 25414
(304) 725-0645

SITE NAME & NUMBER: MT. MISSION_USF - #416449
SITE ADDRESS: 524 Mission Road, North
Charles Town, West Virginia 25414

PROPOSED PROJECT: NON-RESIDENTIAL SITE DEVELOPMENT
PRINCIPAL PERMITTED USE: Wireless Telecommunication Facility

DISTRICT/MAP/PARCEL: CHARLES TOWN TAX DISTRICT / MAP 20 / PARCEL 31
DEED BOOK: 1045 / PAGE: 445

PARCEL SIZE: 52.1 (-/+) acres
ZONING MAP DISTRICT: RURAL

MEETING DESCRIPTION:

- The meeting attendees included Zoning Administrator, Jennifer Snyder; County Planner, Seth Rivard County Engineer, Jonathan Saunders; and US Cellular Representative, Tim Stark, with Wireless Resources.
- Overview: The proposed project consists of the construction of a new 195' monopole tele-communications tower with a 60'x60' fenced compound area. The installation of a new 12'x24' equipment shelter, and 12' antennas with 12' coax lines will also be included.
- Potential environmental constraints and mitigation measures as required by Zoning Ordinance, Art. 4.
- Anticipated Time-Frame and Deadlines.
- Additional relevant information to be considered: The 52.1 acre parcel owned by Mr. Wilt is vacant - with the exception of housing an existing telecommunications tower that is owned by Shentel Communications. Per Mr. Stark, a WV Engineer has advised that the existing tower is structurally incapable of holding additional antennas.
- FEES: Upon submission, all applicable Site Plan and Building Permit fees, as required by the Engineering Department.
- Payment(s): **None Received**

FINDING:

Pursuant to Zoning Ordinance, Section 4.10, the ILP Ordinance and current Subdivision Regulations, the proposed plan concept will require a full Site Plan submission and may comply with the processing conditions for Minor Site Development, upon removing proposed offsite access. Per Section 4B.4(B) of the Zoning Ordinance: Wireless Telecommunication Facilities are permitted by right; however, mitigation of the visual impact of the tower shall be submitted for consideration by the Planning Commission.

EFFECT OF FINDING:

The first step in processing a Wireless Telecommunications Tower is to request, from the Planning Commission, approval of the mitigation of the visual impact that the tower will have. Thirteen (13) copies of the mitigation proposal material, addressing all criteria referenced in 4B.4(B)(2)(b) of the Zoning Ordinance, must be submitted. It is necessary that addresses from both adjoining and confronting property owners be provided. In addition to said proposal material, subsequent to Staff review, the mitigation proposal item will be scheduled on the Agenda for consideration at the next regular Planning Commission meeting. Upon approval, the processing of a Site Plan is required. Building Permits must be obtained, prior to the start of construction, and appropriate approvals from all Local, State and Federal Agencies, are necessary for the issuance of a Zoning Certificate.

Sincerely,

Jennifer Snyder
Zoning Administrator

JJS/clc

Cc: Mr. Tim Stark / Wireless Resources
Engineering & Permits Department

Subdivision Regulation Amendment Suggestions

May 18, 2010

Number	Topic	Sub Reg Section	Brief Description of Public Comment	Staff Recommendation			Not applicable to Subdivision Regulations
				Include now	Requires research or policy input	Postpone to future amendments	
1	Conservation Easements	20.107	concerned about the need to process a plat for a conservation easement if the entire property is being put in a conservation easement.	modified			
2	Minor Site Plan (MSP) Definition	26.100	Do single family uses need MSP? Add language to clarify.	modified			
3	Minor Site Plan size	20.203	Will take too long to process a "major" of only 5,000 sq ft.			needs policy input from PC	
4	Minor Site Plan size	20.203	Consider Industrial Park or Commercial Subdivision			appropriate to consider at this time	
5	Outdoor recreation	General	Define; parking standards? Gravel parking?			appropriate to consider at this time	also needs clarification in zoning ordinance
6	Churches	General	Occasional special event? Overflow parking? Grasscrete - SWM requires gravel to be impervious due to Ches. Bay Standards.			appropriate to consider at this time	
7	Subdivision Plat General Review Standards, Natural Resources	20.302.B	Remove wetlands and flood plain listings b/c feds take care of this already.			needs policy input from PC and further research	
8	Protection of Resources	22.504	Change how slope is calculated or add wording that gives the County Engineer discretion (or other methods as approved by County Engineer)	modified			
9	Subdivision Plat General Review Standards, Natural Resources	20.302.B	Remove PC's ability to make comment @ Concept Plan stage because there are no definable standards for natural resources/protection.			consider quantifiable definition	
10	Final Plat process	21.114	remove this from the public hearing process			state law does not appear to permit this	

Subdivision Regulation Amendment Suggestions

May 18, 2010

Number	Topic	Sub Reg Section	Brief Description of Public Comment	Staff Recommendation			
				Include now	Requires research or policy input	Postpone to future amendments	Not applicable to Subdivision Regulations
11	Site capacity calculations	page 11	Remove since there are none	modified			
12	Block	Div. 21.100	topography not conducive to block layout. Restrictiveness of lots per block also not workable			need to research application in rural areas	
13	SWM Easements	21.402.B	Give cubic feet per second (CFS) for stormwater easements.	modified			
14	Streams definition	22.504.B.3	Change ephemeral to intermittent - Split and define	modified			
15	Elk Branch/watershed	22.504.B.3	Increased standards for the Elks Run watershed may be excessive.			needs further research/policy input	
16	Elk Branch/watershed	22.504.B.3	Strengthen buffer restrictions for the Elk Run/Branch watershed areas to 500-1000 ft.			needs further research/policy input	
17	SWM	General	Include Chesapeake Bay requirements - Clarify intent of easement			needs further research - Region 9 developing model SWM regs	
18	Agency Responses	General	How do you get agencies to respond? What if they don't? Review tied up? Timeframes?			needs further research	
19	Incomplete subdivisions	General	How to protect current taxpayers from the burden of incomplete subdivisions where the developer cannot afford to finish. (Phasing)			needs policy input from PC to include possible phasing	

Subdivision Regulation Amendment Suggestions

May 18, 2010

Number	Topic	Sub Reg Section	Brief Description of Public Comment	Staff Recommendation			
				Include now	Requires research or policy input	Postpone to future amendments	Not applicable to Subdivision Regulations
20	Master Plan	24.107	A concept plan is only good for 2 years. It would not be feasible for a major development to be completed in this timeframe. A master plan/full build out would be more beneficial built slowly over time. Existing water/sewer plants? Self served communities?			may be appropriate to consider at this time but requires policy input -- should relate to non-CUP properties only	
21	Pervious	General	Pervious is defined but not used. Use the term to encourage water control measures	See App B Section 4.3 D appears to be addressed			
22	Vesting	20.105	separate the terms site plan and preliminary plat	modified			
23	Vesting	20.105	Include language that recognizes the vested rights of subdivisions that predate the Sub Regs.	modified			
24	Vesting	SB 595	Include language that clarifies the extension process.	modified			
25	Natural Resources are not defined	20.302.B.2	Naturals "areas"			Requires significant policy discussion	
26	Define HOA	General	Add references to the WV State Code in definitions section of the Subdivision Regulations.	modified			
27	Rural Development	20.203	Clarify LID techniques	modified			

Subdivision Regulation Amendment Suggestions

May 18, 2010

Number	Topic	Sub Reg Section	Brief Description of Public Comment	Staff Recommendation			
				Include now	Requires research or policy input	Postpone to future amendments	Not applicable to Subdivision Regulations
28	Cul-de-sac	22.206.B	Longer than 800 feet length; define.			appropriate to clarify definition of where cul de sac measurement begins	
29	Street lighting	22.209	Eliminate requirement for lights at intersections.			requires more research	
30	Roof drain Discharge Points	22.401.B	Require erosion control; make grading part of ordinance			requires more research	
31	Erosion	General	Prevention of erosion for Chesapeake Bay Initiative			needs further research - Region 9 developing model SWM regs	
32	Modulation	General 20.302.J & 20.303.G	Modulation: remove definition since there are no definable standards. Remove from sub reg text.	modified			
33	Zoning ordinance changes	24.109-24.112	Zoning ordinance changes made after the preliminary plat is approved should not be made conditions of approval of the final plat.			needs policy input	
34	Public Easements	21.402	The County is trying to dictate easements between private parties.			needs more research	
35	Public Easements	21.402.B	Require storm drainage easements when conveying channel is in excess of 2 cfs during 10 yr storm.	requires additional research and input from engineering		↑	
36	Sideways	22.208	Do not require sidewalks in all non-residential developments.			needs policy input	

Subdivision Regulation Amendment Suggestions

May 18, 2010

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

Subdivision Regulation Amendment Suggestions

May 18, 2010

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

Subdivision Regulation Amendment Suggestions

May 18, 2010

Number	Topic	Sub Reg Section	Brief Description of Public Comment	Staff Recommendation			
				Include now	Requires research or policy input	Postpone to future amendments	Not applicable to Subdivision Regulations
Suggestions from Historic Landmarks Commission - Subdivision Regulation related							
HLC1	Wording Change	23.203.C	Change the phrase "historical landmarks" to "historic resources"	modified			
HLC2	Major Subdivision Submission contents	24.110	Include Phase I Archaeological study & historic resources impact study	modified			
HLC3	Definition of "historic resources"	App. B, 4.4	Define historic resource	modified			
HLC4	Electronic Signage	App. B., 9.3	Disallowance of electronic signage			Signs to be considered during ZO review	
HLC5	Demo Permit Requirement	General	Require a demolition permit for historic structures				Info provided to engineering or considered in ZO review



Jefferson County Planning Commission
P.O. Box 338
Charles Town, WV 25414

April 26, 2010

Planning Commissioners,

The Jefferson County Historic Landmarks Commission would like to make a few comments and suggestions regarding proposals for the county's Draft Subdivision Regulation Amendments.

Item 1 - Pg. 43 (Sec. ²43.203 C) Jefferson County Historic Landmarks Commission
We would recommend changing the phrase "historical landmarks" to "historic resources."

Item 2 - Pg. 59 (Sec 24.110) We would suggest that the Major Subdivision submission contents include:

1. Phase I Archaeological Study of the site area
2. Historic resources impact study

Both of these could be reviewed by the landmarks commission who could report its comments to the Planning Commission.

Item 3 - Pg. 176 (Sec. 4.4) There is no definition of "historic resource"
The definition should read: A historic resource is an site, structure, area, or district possessing historic importance as defined by the U. S. Department of Interior, West Virginia State Historic Preservation Office, Jefferson County Historic Landmarks Commission, or other governmental agency.

Item 4 - Section 9.3 Signing

We would suggest not allowing electronic signage in the county. LED signs have begun to be erected around the county and are not compatible in the rural zones or



around the historic communities. These signs disturb the visual character of the county. In addition, they are distracting to motorists and far too bright at night.

Item 5 - Lastly, the HLC would strongly urge adoption of a demo permit requirement for historic structures as outlined in the repealed ordinance. This would go along way to protecting our historic resources and landscapes.

Thank you for the opportunity to give input in this very important issue.

Sincerely,

John C. Allen, Jr.
Chairman, JCHLC

cc: Jennifer Brockman

Recommended Changes to Subdivision Regulation Amendments after Planning Commission Review

May 18, 2010

1	<p><u>Sec. 20.107 Conservation Easements</u></p> <p>All easements created and approved by the Jefferson County Farmland Protection Board, or any other land viewshed, wildlife, water, or historic conservation agency or group, for the purpose of preservation shall process a deed with a corresponding exhibit detailing the boundary of the conservation area through the Departments of Planning and Zoning prior to recordation. The extinguishment and retention of any development rights shall be detailed in the deed and on the exhibit.</p>
2	<p>Minor Site Development Plan. A plan that follows the minor site development process and that will not require the development of new infrastructure or the extension of existing off-tract infrastructure, that proposes one or more of the following and follows the minor development process:</p> <ul style="list-style-type: none">A. Building(s), both proposed and additions to existing, where all structures located on the parcel total less than 5,000 20,000 square feet Gross Floor Area (GFA) on any undeveloped site.B. Addition(s) to existing development of less than ten percent of existing GFA or additions less than 10,000 50,000 square feet GFA, whichever is less.C. Subdivision that creates less than four lots.D. Apartment or multi-family development of less than ten dwelling units. <p>Minor Site Plans do not include the design, erection or addition to detached single family dwelling units when only one dwelling unit is located on an established lot.</p> <p>Site Plan, Minor. A plan that follows the minor development process and will not require the development of new infrastructure or the extension of existing off-tract infrastructure, that proposes one or more of the following:</p> <ul style="list-style-type: none">A. Building(s), both new and additions to existing, where all structures located on the parcel total less than 5,000 square feet Gross Floor Area (GFA) on any site.B. Addition(s) to existing development of less than ten percent of existing GFA or additions less than 10,000 square feet GFA, whichever is less.C. Apartment or multi-family development of eight or less dwelling units. <p>Minor Site Plans do not include the design, erection or addition to detached single family dwelling units when only one dwelling unit is located on an established lot.</p>

8

Sec. 22.504 Protection of Resources

The protection of natural resources shall comply with all environmental protection requirements in Article 4, Environmental Protection, of the Zoning Ordinance and these Regulations. Division 4.300, Site Capacity Calculations, indicates the required amount of land set aside for each type of natural resource. Before construction begins, these areas shall be protected from siltation. Staff shall inspect the proposed means of protection prior to permitting the construction to proceed.

A. Hillside Development.

...

The weighted average slope shall be determined using the grid cell method or other method as approved by the County Engineer. A grid of cells each scaled at 200' x 200' shall be placed over the subdivision topographic map. Within each cell the average slope shall be determined by measurement using the longest line that can be drawn perpendicular to topographic contour lines passing through the cell. Measured slopes for the grids will be averaged to obtain the mean. If grids vary in size, the averaging will include weighting based on grid sizes.

11

Sec. 20.302 Subdivision Plat General Review Standards

...

K. **Density.** In reviewing a subdivision plat plan pursuant to A through I above, no requirement shall lower the density or floor area except as provided in 1 to 3 below. The review of subdivision plat and site development is ministerial. There is no discretion to alter density downward if the plan meets all zoning standards. The preliminary or concept plan reviews are intended to encourage or require plan modifications that improve design. The Zoning Ordinance sets the maximum density and site capacity calculations, and includes the environmental regulations to ensure that a site is not over-developed based on its unique conditions. The design review shall focus on revising the site plan subdivision plat by *altering* roads, lots, landscaping, or other plat plan elements, but not by *altering* development intensity unless it exceeds zoning ordinance standards as indicated by the staff review.

Sec. 20.303 Site Plan Development General Review Standards

...

H. **Intensity.** In reviewing a site plan pursuant to A through G above, no requirement shall lower the permitted floor area except as provided in 1 to 3 below. The review of subdivision and site plans development is ministerial. There is no discretion to alter density or intensity of development downward if the plan meets all zoning standards. The preliminary or concept plan reviews are intended to encourage or require site plan modifications that improve design. The Zoning Ordinance sets the maximum intensity and site capacity calculations, and includes the environmental regulations to ensure that a site is not over-developed based on its unique conditions. The design review shall focus on revising the site plan by altering building configuration, circulation and parking design, landscaping, or other site plan elements, but not by altering development intensity unless it exceeds Ordinance standards as indicated by the staff review.

11
Cont'd

Sec. 24.103 Pre-Proposal Conference or Review

...

C. Discussion Items.

...

3. Presentation of tentative density calculations ~~site capacity calculations~~ based on the zoning district in which it will be located ~~Article 4 of the Zoning Ordinance~~.

Sec. ~~24.105~~ 24.106 Major Subdivision Concept Plan - Submission

...

B. Submission Contents.

...

3. **Zoning Information.** This shall include:
 - a. Determination of the zoning district in which the proposed subdivision or development project is situated.
 - b. Site capacity Density calculations.

Sec. ~~24.109~~ 24.110 Major Subdivision Preliminary Plat ~~Site Development Plan~~ Application – Application Submission

...

B. Submission Contents.

...

2. Site Capacity Density Calculation and Site Resource Map.

Sec. ~~24.113~~ 24.114 Major Subdivision Final Plat ~~Site Development Plan~~ Application – Application - Submission

...

B. Submission Contents.

...

2. Site Capacity Density Calculation and Site Resource Map.

Sec. 24.119 Major Site Plan Concept Plan –Submission

...

B. Submission Contents.

...

3. **Zoning Information.** This shall include:
 - a. Determination of the zoning district in which the proposed site plan project is situated.
 - b. Density calculations.

11 Cont'd	<u>Sec. 24.123 Major Site Plan Application – Submission</u>
	... B. <u>Submission Contents.</u>
	... <u>2. Density Calculation and Site Resource Map.</u>
13 (35)	Sec. 21.402 Public Easements
	... B. Stormwater. All stormwater facilities shall be located on open space land, on easements on the lots, or on public rights of way. Easements shall run in favor of the <u>County homeowner association, business owners association</u> and any of the public service providers using the easement. Drainage easements shall be provided <u>on all lots</u> to ensure that stormwater channels remain clear of development. <u>Where attached housing types are involved and yards are enclosed or very narrow, drainage easements shall be placed on lots to convey surface water to storm sewers located on the street or to surface drainage channels located in easements or open spaces as topography and grading dictate.</u> Easements shall be designed for a 10 year storm event and in no case shall be less than 15 feet wide.
14	Ephemeral Stream or Intermittent Stream. A channel that holds water only during or immediately after periods of precipitation. See also <i>Intermittent Stream or Ephemeral Stream.</i> Intermittent Stream or Ephemeral Stream. A well-defined channel with banks and a bed within which concentrated water flows only part of the year and is dry other parts during normal hydrologic conditions. See also <i>Ephemeral Stream.</i>
21	No action needed.
22	See Director's Memo.
23	See Director's Memo.
24	See Director's Memo.
26	Homeowner's Association (HOA) or Business Owner's Association (BOA). An incorporated nonprofit organization operating under a recorded land agreement through which: (a) each lot owner is automatically a member; and (b) each lot is automatically subject to a proportionate share of the expense for the organizations activities, such as, but not limited to maintaining drives, streets, roads, and other common property. Homeowner's Associations and the Uniform Common Interest Ownership Act of West Virginia are interchangeable and reversible terms. The most recent Uniform Common Interest Ownership Act of West Virginia shall prevail. Business Owner's Association (BOA). See <i>Homeowner's Association (HOA).</i> Uniform Common Interest Ownership Act of West Virginia (UCIOA). See <i>Homeowner's Association (HOA).</i>

27

Sec. 20.203 Minor Site Development

...

D. Rural Site Plan Required. The primary function of the Rural/Agricultural zoning district is to preserve the rural character of the County and the agricultural community...

...

3. Rural Storm Drainage and Management. Development which is proposed in the Rural/Agricultural zoning district which wishes to take advantage of the Rural Site Plan Standards are required to utilize Low Impact Development techniques to minimize the impact of impervious surfaces and retain the rural character of the area. These techniques are identified in Appendix B, Section 4.3.D, *Other Systems for Retention or Detention.*

32

Sec. 20.302 Subdivision Plat General Review Standards

...

C. Natural Resources.

...

a. Determine if it is generally desirable that one on-site resource be protected at a greater level than another on-site resource due to the unique conditions of the property. The Planning Commission may recommend the developer seek a waiver modification of the resource protection standards in order to provide greater protection for the identified on-site resource. ~~the resource with the highest quality resource protection level (Article 4, Environmental Protection, of Zoning Ordinance) receive the most protection. Where a resource has several categories, such as slope or woodlands, the Planning Commission may seek to protect more of the most valuable resource and less of the less valuable resource by recommending the developer seek modulation of the resource standards (Article 4, Environmental Protection, of the Zoning Ordinance).~~

...

~~**J. Improvement through Modulation.** The plan review shall seek to determine if modulations in zoning or infrastructure design would assist in improving the development's quality, better preserve natural resources, better protect neighbors, or result in community-wide benefits. This is a tool the Planning Commission can use to improve design, layout, and configuration of site plans or subdivisions~~

~~1. The Planning Commission may recommend the developer work with staff to use a modulation technique to improve the plan.~~

~~2. A developer may be urged to use a greater degree of clustering that provides more open space.~~

...

K. Density.

...

4. The Zoning Ordinance and these subdivision and land development regulations provide flexibility and incentives for good design as well as ways to relax-waive specific standards in certain circumstances. The Planning Commission's role is to work with the developer to achieve the best plan for the property at the densities that are permitted by the Zoning Ordinance.

Sec. 20.303 Site Plan Development General Review Standards

A. Natural Resources.

...

- c. ~~If it~~ is generally desirable that one on-site resource be protected at a greater level than another on-site resource due to the unique conditions of the property. The Planning Commission may recommend the developer seek a waiver modification of the resource protection standards in order to provide greater protection for the identified on-site resource. the resource with the highest quality resource protection level (Article 4 of Zoning Ordinance) receive the most protection. Where a resource has several categories, such as slope or woodlands, the Planning Commission may seek to protect more of the most valuable resource and less of the less valuable resource by recommending the developer seek modulation of the resource standards (Article 4 of the Zoning Ordinance).

...

~~G. Improvement through Modulation. The plan review shall seek to determine if modulations in zoning or infrastructure design would assist in improving the development's quality, better preserve natural resources, better protect neighbors, or result in community wide benefits. This is a tool the Planning Commission can use to improve design, layout, and configuration of site plans or subdivisions. The Planning Commission may recommend the developer work with staff to use a modulation technique to improve the plan.~~

...

H. Intensity.

...

4. The Zoning Ordinance provides flexibility and incentives for good design and provides for ways to relax waive specific standards in certain circumstances. The Planning Commission's role is to work with the developer to achieve the best site plan for the property at the densities or intensity of uses that are permitted by the Zoning Ordinance.

Sec. 21.305 Block Length

The maximum length of blocks is set to provide connectivity between adjoining parcels as they develop separately over time. There are conditions that can exist that warrant longer lengths. Such conditions should be addressed by requesting a waiver from these requirements. Any request for a waiver modulation of the lengths shall meet the criteria below. Maximums shall not exceed those in A and B below, as measured on both sides of the street.

32
Cont'd

Sec. 23.202 Department of Planning

The Departments of Planning, Zoning and Engineering are the County's lead in ensuring that all regulations are met in the review of subdivisions plans and site plans development. They are specifically charged with the following review responsibilities:

A. **Zoning Compliance.** The Department shall review all plat or development site plan applications for zoning compliance. They shall provide the Planning Commission with a written opinion as to whether the plat or development site plan complies with the Zoning Ordinance. If the staff determines that waivers modulations are appropriate, staff shall approve recommend approval of these modulations waivers to the Planning Commission or recommend that the plat or plan be amended to comply.

...

C. **Written Opinion Staff Report.** The Department shall provide a written opinion memorandum staff report to the Planning Commission. Such memorandums report, shall accompany concept plans, preliminary plats, and final plan plats and major site plan submissions. The opinion report shall indicate one of the following:

...

3. **Approval with Conditions.** The Department may recommend approval with conditions if there are easily changed elements of the plat or plan or minor nonconformities that can be corrected or modulated.

Modulation. Adjustments in design or layout of lots or infrastructures that are determined by staff or the Planning Commission to improve the quality of development.

35	Address partially under comment #13. Needs additional research and input from Engineering.
38	<p><u>Sec. 24.119 Major Site Plan Concept Plan –Submission</u></p> <p>...</p> <p>C. <u>Submission Contents.</u> The submission shall contain the following elements in the number of copies indicated by staff.</p> <p>...</p> <p>5. <u>Traffic Impact Data.</u> This shall include:</p> <p>...</p> <p>e. <u>If a use is not listed in the table above, the most current edition of the Institute of Transportation Engineers Trip Generation Manual or Handbook shall be referenced to determine appropriate trip generation figures.</u></p>
45	Addressed throughout.
47	<p>Sec. 20.102 Applicability</p> <p>A. General. All subdivisions, resubdivisions, site developments plans, lot mergers, vacating of streets, right-of-ways, easements of access or for utilities or drainage shall be subject to the provisions of this Ordinance these Regulations. No recordation of such documents with the Department of Planning or Zoning County Clerk shall be permitted until such documents have been reviewed and approved in accordance with this Ordinance these Regulations.</p>
48	Decision to leave text as is.
49	<p><u>Sec. 24.502 Maintenance Bond</u></p> <p><u>A maintenance bond shall be provided to repair any damage sustained during the subdivision's or development's construction and for two years after acceptance of facilities. The amount of surety or maintenance bond and/or bond for improvements shall be determined as outlined in Section 24.503, Amount of Surety.</u></p>

HCL1	<p>Sec. 23.203 County Agencies</p> <p>...</p> <p>C. Jefferson County Historical Landmarks Commission. This body shall submit a report and findings on whether historical <u>landmarks resources</u> exist on the site of the proposed subdivision of site development. If there are, they shall submit findings on whether the proposal meets the requirement of zoning with respect to such structures or places.</p>
HCL2	<p>Sec. 24.109 <u>24.110</u> Major Subdivision Preliminary <u>Plat Site-Development-Plan Application</u> – <u>Application</u> Submission</p> <p>...</p> <p>B. Submission Contents.</p> <p>...</p> <p><u>10. Historic Resource Preservation. A Phase I archaeological study is required. A historic resources impact study shall also be included.</u></p>
HCL3	<p><u>Historic Resource. A site, structure, area, or district possessing historic importance as defined by the U.S. Department of Interior, West Virginia State Historic Preservation Office, Jefferson County Historic Landmarks Commission, or other governmental agency.</u></p>

Subdivision Regulation Amendment Suggestions

May 18, 2010

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



3. Mortgages;

4. Deeds of partition under or pursuant to an order of Court;

5. Real estate transferred by will or intestacy.

d. A parent or a child may receive only one such exempt lot within the County after July 19, 1979.

e. Parents who are married are entitled to only one such parcel.

B. Non-Residential.

The re-subdividing of a lot located in an approved industrial park or existing major non-residential subdivision shall be permitted to follow the minor non-residential subdivision process. When non-residential development is provided for in the Rural district, such development may utilize the minor non-residential subdivision provisions provided only one parcel is being subdivided off and only one use will be established on the lot. All minor non-residential subdivisions shall contain, but are not limited to, the following criteria:

1. **Lots.** A minor non-residential subdivision divides the property into more than one lot.
2. **Access.** All lots shall front on an existing internal subdivision road built to county grade road standards and having a minimum right-of-way width of 50 feet. Lots having direct access to a state road are not permitted to process as a minor, except for those proposals utilizing the non-residential permitted uses in the Rural District.
3. **Water/Well or Sewer/Septic.** Potable water and sewer shall be provided according to the requirements of Appendix B, *Engineering Standards*. All submissions shall provide a plat approved by the Department of Health.

SEC 20.201
MINOR
SUBDV.

Where, in the judgment of staff, a residential or non-residential proposal does not comply with the minor subdivision requirements and/or the intent of these Regulations, the proposed subdivision shall be classified as a major subdivision. The reason for such a determination shall be provided to the applicant in writing. The determination may be appealed to the Planning Commission for consideration and classification.

Sec. 20.202 Rural Subdivision

The rural subdivision is intended to provide a streamlined method for the creation of a small number of lots for family members or to provide income for farms without the investment in significant infrastructure. Rural subdivisions may only be developed in the Agriculture (AG) or Countryside (CS) districts.

A. Number of lots permitted. In the Agriculture (AG) district, the total maximum number of lots shall be 25 percent of those permitted by the site capacity calculations in the Zoning Ordinance (Division 4.300) or four, whichever is less. In the Countryside (CS) district, it shall be 20 percent of the lots permitted by the site capacity calculations or four, whichever is less. Staff shall decide the number of lots by applying the Zoning Ordinance. Such subdivisions shall be approved by



L2
+
L3

of the full use of the easement shall be permitted. A note to this effect shall be placed on the plat or plan.

Sec. 21.402 Public Easements

~~A. General. The County shall require~~ All easements for all public (water, sewer, stormwater management or storm drainage facilities) or public service type facilities (telephone, electric, gas, cable) that serve the subdivision or site development shall be set forth on the plat or in the deed. Such easements shall be located in street right-of-ways, alleys, or side or rear yards as determined by the County in accordance with the particular plans and layout of the utility or other service providing company. All easements shall provide for access without notification to the property owner for the maintenance, repair, or other work needed in the easement or to the facility in the easement. The following standards shall apply to easements:

- A. Utility Easements. A utility easement shall be a minimum of 12 feet wide or a width acceptable to grantor and grantee. Easements that fall on shared side or rear lot lines, unless specifically authorized by the County, shall be of equal dimensions on both lots involved. Where attached housing types are involved and yards are enclosed or very narrow, easements shall be in front or rear yards.
- B. **Stormwater.** All stormwater facilities shall be located on open space land, on easements on the lots, or on public rights of way. Easements shall run in favor of the County homeowner association, business owners association and any of the public service providers using the easement. Drainage easements shall be provided on all lots to ensure that stormwater channels remain clear of development. Where attached housing types are involved and yards are enclosed or very narrow, drainage easements shall be placed on lots to convey surface water to storm sewers located on the street or to surface drainage channels located in easements or open spaces as topography and grading dictate. Easements shall be designed for a 10 year storm event and in no case shall be less than 15 feet wide.
- C. ~~Public Access.~~ All easements shall provide for access without notification to the property owner for the maintenance, repair, or other work needed in the easement or to the facility in the easement.
- D. C. Open Space Deed Restrictions and Covenants. ~~The County shall require~~ Deed restrictions and covenants ~~to~~ shall preserve open space, protect natural resources, and protect land held in common or used for recreation and/or open space. All areas subject to deed restrictions or covenants shall be restricted from further residential development and shall run in favor of all lot owners in the development or the homeowner association Jefferson County.
- E. **D. Encroachments, Structures and Landscaping.** ~~No structures, fences or landscaping shall be located in the easements. No permanent encroachments, structures, fences or landscaping shall be allowed to be located within any~~ stormwater management or drainage easement area. The homeowner association, business owners association and any of the public service providers shall have the right to remove any encroachment, structures, landscaping, fencing or any other improvements placed upon such public easements.
- F. **E. Maintenance Access Easements.** These easements shall be a minimum 15 feet wide and are primarily intended to provide access to public utilities or drainage areas that need to be maintained regularly. They are not intended to be used as access to a lot or parcel. The exception

L2

L3



21.402 PUBLIC EASEMENTS

to this would be to avoid landlocking a parcel that has no other means of access. Should the County homeowner association, business owners association, any of the public service providers or other agency with facilities in the easement need to do work in an easement, an attempt shall be made to notify the resident and owner, if feasible. If time allows, the landowner shall be permitted to remove any structure or planting. However, since the work may involve an emergency, the County homeowner association, business owners association, any of the public service providers or other contractor may do the work, including removal or destruction of structures or landscaping. The only obligation the contractors have is to restore the ground cover if that has been disturbed in the process of the work. Any other costs shall be borne by the landowner.

~~G. F. Standards for easement width are subject to change when staff determines, based on their review, that conditions warrant a different width.~~

Division 21.500 Mapping and Monuments

All preliminary plats shall identify the following:

- A. The location of monuments and markers according to type and whether "found," "set," or "to be set." A key to all symbols referencing such markers shall be provided.
- B. The location of benchmarks used in the survey, if available.
- C. The location and description of permanent concrete control monuments acceptable to the County Engineer. (The Engineer shall be provided with a plan of projected permanent concrete monumentation. Where possible, permanent concrete monuments shall be intervisible; at least 750 feet apart; away from future roadwork; and, at least 2 per section or block.)
- D. Lot boundary lines with distances. Lot boundaries shall be established by a network of traverse control having a relative error of closure of 1:7500 or better.
- E. A number to identify each lot.
- F. Tic marks in State Plane Coordinate System, WV North NAD83.
- G. If the survey is based on global positioning system measurements, the relative positional accuracy of the survey measurements shall not be less than that which is specified in D above.
- H. When the standards for mapping and monuments contained in this Division conflict with the standards in Appendix B, *Engineering Standards*, the provisions of Appendix B shall prevail.



- C. **All other areas.** In all other residential developments, requirements for curbs, right of ways, and pavement widths shall be in accordance with the provisions of Appendix B, Section 2.2.K, *Curb, Gutters & Sidewalks*. Width shall be measured from gutter pan to gutter pan.
- D. **Parkways.** The subdivider may choose to use parkways or landscaped medians in residential streets, in which case the right-of-way shall be enlarged so that the parkway or median width is added to the right-of-way.
- E. **Natural Areas.** In areas where resource protection is necessary or desired, narrower right-of-ways may be approved and drainage accomplished in a manner that provides for the minimum width, while accommodating the stormwater movement. The County Engineer or a designee shall assist in developing a cross-section that minimizes environmental impact.

Sec. 22.205 Non-residential Streets.

The standards contained in Appendix B, Section 2.2, *Streets*, shall govern all non-residential street construction.

Sec. 22.206 Cul-de-Sacs

- A. **General.** Cul-de-sac streets shall be carefully managed to ensure they are not over-used. Connectivity is preferred.
- B. **Where permitted.** Cul-de-sac streets may be used if:
 - 1. Natural resources, such as topography, floodplains, open space, or stream systems make standard blocks inefficient;
 - 2. Cul-de-sac streets serve no more than 24 lots or are no more than 800 feet in length, whichever results in a shorter street segment; and
 - 3. The pedestrian circulation system provides for direct, non-vehicular access between cul-de-sac ends where:
 - a. Two lots or fewer are situated between them; and
 - b. The distance between them, measured along street centerlines, is more than 650 feet.
- C. **Dimensional standards.** All cul-de-sacs shall be designed to permit vehicles to turn around without backing, except as may be provided for in Appendix B, Section 2.2, *Streets*. Cul-de-sac standards are listed in Appendix B, *Engineering Standards*, Table 2.2-1, *Roadway Design Standards*.

Sec. 22.207 Private Roads

Private roads shall be permitted in accordance with this Section.

- A. **Private Roads.** Private roads may be developed if all of the following are demonstrated:
 - 1. A homeowners association is created that will be responsible for the **ownership and** maintenance of the road.
 - 2. The plat and all lot plans in the subdivision contain a note that indicates that the County shall not take ownership or be responsible for maintenance of private roads.

Staff requires input from the PC and Legal prior to recommending any language changes to the following table.

Table 22.504	
Retention of Land in Hillside Development	
<u>Weighted Average Slope of Land Percent</u>	<u>Percentage of Land To Be Maintained in a Natural Condition</u>
<u>Less 10</u>	<u>No land required</u>
<u>10 – 14.9</u>	<u>25%</u>
<u>15 – 19.9</u>	<u>40%</u>
<u>20 – 24.9</u>	<u>55%</u>
<u>25 – 29.9</u>	<u>70%</u>
<u>30 – 34.9</u>	<u>85%</u>
<u>35+</u>	<u>100</u>



quality for both surface flows and subsurface recharge. The County Engineer shall be responsible for advising whether the plan and drainage facilities meet the required standards. The Planning Commission may seek to use natural surface drainage or encourage the use of low impact development techniques (see Section 22.405, *Other Systems for Retention or Detention*) wherever possible.

E. **Streets.** All street and circulation patterns shall provide for the safe, efficient, and convenient movement of vehicular and pedestrian traffic. Within the context of overall community development, the internal circulation system should promote and encourage the increased use of pedestrian and bicycle movement among residential areas, local shopping, schools, and other areas. Road connections shall be made to existing subdivisions or stub streets to avoid external vehicle trips.

1. The West Virginia Division of Highways (WVDOH) is responsible for all roads, except those intended to remain private and/or maintained by a Homeowners Association. WVDOH shall determine the safety of the roads, access locations, and off-site improvements. Staff shall coordinate with the WVDOH to make all determinations of safety. Likewise, the capacity of the adjoining roads is a technical issue to be determined by WVDOH. At the approval of concept plans, the Planning Commission may require the developer to work with WVDOH to specifically address off-site or capacity issues or concerns.
2. The Planning Commission and staff shall review the pattern of streets and blocks to advise if the design promotes pedestrian and bicycle movement, calms traffic in appropriate locations, and provides for connections to existing subdivisions or stub streets or accommodates future connections to future subdivisions to avoid unnecessary external vehicle trips.
3. Connectivity is intended to ensure an adequate movement of traffic within superblocks, provide multiple means or routes of emergency access, and reduce loadings on arterial or collector roads that bound the superblock. The Planning Commission and staff shall work with the County Engineer with regard to the safety and desirability of connections between subdivisions and/or to existing stubs.
4. Where a superblock or area currently has no internal streets, the Planning Commission shall work with the developer and the staff to develop a sound approach to connectivity within the superblock being developed by recommending a superblock street pattern to guide future development.

SEC 20.302
SUBDV
PLAT
GENERAL
REVIEW
STDS.

F. **Utilities.** Provisions for adequate sewer and water.

1. The determinations of adequacy or availability shall be made **by the Planning Commission** after consultation with appropriate agencies responsible for providing water and wastewater treatment for the area in which the proposed subdivision or development project is located.
2. The Planning Commission may request that specific problems be considered and addressed by the agencies in the recommendations of the concept plan.



SEC. 20.302 (K)
SUBDV. PLAN GEN. REV. STDS.

- 2. A denial is also possible where ~~the Planning Commission determines that~~ public or community sewer and/or water facilities are required and the agencies responsible for water and sewer find that these services cannot be provided by the developer or another provider in accordance with acceptable standards.
- 3. The Planning Commission may impose conditions for a lower density when proffered by the developer.
- 4. The Zoning Ordinance and these subdivision and land development regulations provide flexibility and incentives for good design as well as ways to relax specific standards in certain circumstances. The Planning Commission's role is to work with the developer to achieve the best plan for the property at the densities that are permitted by the Zoning Ordinance.

Sec. 20.303 Site Plan Development General Review Standards

The site plan development process occurs on existing lot(s) with no public roads being built but where private drives, circulation, and parking will be needed. Utility systems that the County will rely on to serve the new development and drainage are also required. Site plans development creates an area where people will live and work. Site plan development review involves the technical and engineering aspects of the proposed site development plan in order to ensure that a safe and efficient neighborhood is created. The design of the site is also important to ensure that the site plan achieves the intended results. This section sets forth the design review criteria and the body charged with making the determination. In conducting a review, the staff shall make a report and recommendations on design, and the Planning Commission shall make a decision, based on the following:

- A. **Natural Resources.** The site plan works with the natural conditions of the property so as to minimize destruction of the natural resources and maximize the value of the lots for the developer and eventual residents or users. The site plan protects the site's natural resources as required by the Zoning Ordinance.
 - 1. Staff shall advise whether the minimum standards are met.
 - 2. The Planning Commission shall review:
 - a. The lot and internal circulation layout to better achieve the level of protection by maintaining linked open space.
 - b. Adjust the location of the open space or landscaped surface area to protect areas of the resource that are most valuable or of highest quality. The location may also be adjusted to protect water quality by better buffering streams or water bodies.
 - c. If it is generally desirable that one on-site resource be protected at a greater level than another on-site resource due to the unique conditions of the property. The Planning Commission may recommend the developer seek a modification of the resource protection standards in order to provide greater protection for the identified on-site resource. the resource with the highest quality resource protection level (Article 4 of Zoning Ordinance) receive the most protection. Where a resource has several categories, such as slope or woodlands, the Planning Commission may seek to protect more of the most valuable resource and less of



the less valuable resource by recommending the developer seek modulation of the resource standards (Article 4 of the Zoning Ordinance).

- B. **Adjoining Properties.** The plan promotes the best design for the use of the property in relation to the development's function and nearby existing or **anticipated in-process** developments.
 - 1. Staff shall advise whether the minimum bufferyard standards of the Zoning Ordinance are met.
 - 2. **During the concept plan stage, the** The Planning Commission may review as follows:
 - a. The site plan to see if an alternative layout would provide greater compatibility by increasing the distance of a development from neighbors where feasible.
 - b. Where an alternative distribution of plant material within a bufferyard would better protect a specific area.
- C. **Drainage.** The drainage shall be efficiently and unobtrusively integrated into the design and shall avoid off-site impacts. The standards for stormwater management cover both quantity and quality for both surface flows and subsurface recharge.
 - 1. The County Engineer shall be responsible for advising whether the **site** plan and drainage facilities meet the required standards.
 - 2. The Planning Commission may seek to use natural surface drainage or encourage the use of Low Impact Development (LID) techniques (see Section 22.405, *Other Systems for Detention or Retention*) wherever possible.
- D. **Internal Circulation.** All internal roads or parking lots create a circulation pattern which shall provide for the safe, efficient, and convenient movement of vehicular and pedestrian traffic. Within the context of overall community development, the internal circulation system should promote and encourage the increased use of pedestrian and bicycle movement among residential, local shopping, schools, and other areas. Where adjoining developments have stubbed streets the connections shall be made, and the Planning Commission shall require them.
- E. **Utilities.** Adequate provisions are made for sewer and water.
 - 1. The determinations of adequacy shall be made **by the Planning Commission** after consultation with appropriate agencies responsible for providing water and wastewater treatment for the area in which the proposed subdivision or development project is located.
 - 2. The Planning Commission may request that specific problems be considered and addressed by the agencies in the recommendations of the concept plan.
- F. **Landscaping.** The **development site plan** landscaping layout shall promote the zoning classification's qualities and character and meet or exceed the landscaping standards of the Zoning Ordinance. *Bufferyard* landscaping shall be located to achieve the screening objectives and, where possible, enhance open space objectives beyond the minimum requirements.
 - 1. The staff shall advise whether the zoning standards are met.
 - 2. The Planning Commission shall work to ensure that required landscaping is located to best achieve the screening, protection, and overall character to enhance the value of the

Sec. 20.303
SITE PLAN
GENERAL
REVIEW STDS.



property. It may authorize moving plant material around, but not require more plant material than required by zoning.

G. **Improvement through Modulation.** The site plan review shall seek to determine if modulations in zoning or infrastructure design would assist in improving the development's quality, better preserve natural resources, better protect neighbors, or result in community wide benefits. This is a tool the Planning Commission can use to improve design, layout, and configuration of site plans or subdivisions. The Planning Commission may recommend the developer work with staff to use a modulation technique to improve the site plan.

SEC. 20.303
SITE PLAN
GENERAL
REVIEW
STDS.

H. **Intensity.** In reviewing a site plan pursuant to A through G above, no requirement shall lower the permitted floor area except as provided in 1 to 3 below. The review of subdivision and site plans development is ministerial. There is no discretion to alter density or intensity of development downward if the plan meets all zoning standards. The preliminary or concept plan reviews are intended to encourage or require site plan modifications that improve design. The Zoning Ordinance sets the maximum intensity and site capacity calculations, and environmental regulations ensure that a site is not over-developed based on its unique conditions. The design review shall focus on revising the site plan by altering building configuration, circulation and parking design, landscaping, or other site plan elements, but not by altering development intensity unless it exceeds Ordinance standards as indicated by the staff review.

1. A street extension planned in existing development runs through the property.
2. A denial is also possible where the Planning Commission determines that public or community sewer and/or water facilities are required and the agencies responsible for water and sewer find that these services cannot be provided by the developer or another provider.
3. The Planning Commission may impose conditions for a lower intensity when proffered by the developer.
4. The Zoning Ordinance provides flexibility and incentives for good design and provides for ways to relax specific standards in certain circumstances. The Planning Commission's role is to work with the developer to achieve the best site plan for the property at the densities or intensity of uses that are permitted by the Zoning Ordinance.



~~maintained regularly. They are not intended to be used as access to a lot or parcel. The exception to this would be to avoid landlocking a parcel that has no other means of access.~~

~~F. **Encroachments.** No permanent encroachment or structures shall be allowed to be located within any County easement area. The County shall have the right to remove any encroachment, structures, landscaping, fencing or any other improvements placed upon such public easements. The County may assess the cost of removing an unauthorized improvement from an easement against the landowner, including the placing of a lien on the property.~~

~~G. Standards for easement width are subject to change when staff determines, based on their review, that conditions warrant a different width.~~

Sec. 21.106 21.105 Requirements for Parkland

This Section is designed to satisfy needs for park facilities in future neighborhoods.

- A. **Visual Access.** Visual access to parkland shall be encouraged from both lots and streets.
- B. **Greenways.** Parkland shall be designed to provide greenways along drainage corridors, streams, or in accordance with a County trail plan. The landscaping along corridors shall be designed to enhance the filtering of surface and subsurface water flows. Trails shall provide access along the greenway and to the residents of the development.
- C. **Design.**
 1. Parkland shall be integrated into the development design to bring significant open space to the maximum number of properties. Small, odd, left-over open space areas shall be avoided. Landscaping may be required to enhance the value of such spaces where they cannot be avoided, and staff may require the concentration of required plant material. The reservation of land for park and recreation purposes shall be in a suitable, convenient location and shall be of a size, dimension, topography, and character conducive to use as a park, playground, playfield, or similar use.
 2. Land reserved for park and recreation purposes shall be reasonably level and dry and shall be maintained by the property owners' associations in a useable condition as part of an overall maintenance program for the subdivision. Land reserved for neighborhood park and recreation purposes, shall be clearly identified on the final plat and shall be for the use and enjoyment of property owners within the subdivision. Land reserved for greenways and trails for public use shall be clearly identified on the Final Plat. The County **Commission** may accept donation of all or a portion of parkland, greenways, or trails for use by the public.
 3. Open spaces/parkland shall be designed to provide areas of focus within the development. In the **Agricultural (AG) and Countryside (CS) districts Rural District**, such spaces shall be minimal **unless a Conditional Use Permit (CUP) has been obtained**. In the **Estate (ES), Residential (RS), and Townscape (TS) Residential-Light Industrial-Commercial and Residential Growth Districts**, open spaces/parkland shall be provided in accordance with Table **21.106 21.105**. Residential Land area is determined by adding the square footage of all proposed residential lots. **The use of small public greens shall be encouraged to satisfy up to 60% of this requirement may be met with passive open space in the Residential (RS) and Townscape (TS) Residential-Light Industrial-**



of the full use of the easement shall be permitted. A note to this effect shall be placed on the plat or plan.

Sec. 21.402 Public Easements

A. General. ~~The County shall require~~ **All** easements for all public (water, sewer, stormwater management or storm drainage facilities) or public service type facilities (telephone, electric, gas, cable) that serve the subdivision or site development shall be set forth on the plat or in the deed. Such easements shall be located in street right-of-ways, alleys, or side or rear yards as determined by the County in accordance with the particular plans and layout of the utility or other service providing company. All easements shall provide for access without notification to the property owner for the maintenance, repair, or other work needed in the easement or to the facility in the easement. The following standards shall apply to easements:

- A. **Utility Easements.** A utility easement shall be a minimum of 12 feet wide or a width acceptable to grantor and grantee. Easements that fall on shared side or rear lot lines, unless specifically authorized by the County, shall be of equal dimensions on both lots involved. Where attached housing types are involved and yards are enclosed or very narrow, easements shall be in front or rear yards.
- B. **Stormwater.** All stormwater facilities shall be located on open space land, on easements on the lots, or on public rights of way. Easements shall run in favor of the ~~County~~ **homeowner association, business owners association** and any of the public service providers using the easement. Drainage easements shall be provided on all lots to ensure that stormwater channels remain clear of development. Where attached housing types are involved and yards are enclosed or very narrow, drainage easements shall be placed on lots to convey surface water to storm sewers located on the street or to surface drainage channels located in easements or open spaces as topography and grading dictate. Easements shall be designed for a 10 year storm event and in no case shall be less than 15 feet wide.
- C. **Public Access.** All easements shall provide for access without notification to the property owner for the maintenance, repair, or other work needed in the easement or to the facility in the easement.
- D. **~~C.~~ Open Space Deed Restrictions and Covenants.** ~~The County shall require~~ Deed restrictions and covenants ~~to~~ shall preserve open space, protect natural resources, and protect land held in common or used for recreation and/or open space. All areas subject to deed restrictions or covenants shall be restricted from further residential development and shall run in favor of all lot owners in the development or ~~the homeowner association~~ **Jefferson County.**
- E. **D. Encroachments, Structures and Landscaping.** ~~No structures, fences or landscaping shall be located in the easements. No permanent encroachments, structures, fences or landscaping shall be allowed to be located within any ~~stormwater management or drainage~~ easement area. The homeowner association, business owners association and any of the public service providers shall have the right to remove any encroachment, structures, landscaping, fencing or any other improvements placed upon such public easements.~~
- F. **E. Maintenance Access Easements.** These easements shall be a minimum 15 feet wide and are primarily intended to provide access to public utilities or drainage areas that need to be maintained regularly. They are not intended to be used as access to a lot or parcel. The exception



- A. **Approval.** If the final ~~plan plat~~ application is consistent with the preliminary ~~plan plat~~ application and meets all other requirements of ~~this Ordinance these Regulations~~ and the Zoning Ordinance and has received sign-off from the agencies specified in Section 24.114(3), the Planning Commission shall approve the subdivision ~~or site-development plan~~ application. If any review agency failed to respond, they shall be deemed by ~~this Ordinance these Regulations~~ to have approved the plan.
- B. **Denial.** Denial can only be done on the following basis:
 - 1. The plan (plan, plat, final engineering, or final landscaping) is inconsistent with the approved preliminary plan or conditions of said approval.
 - 2. Failure to provide surety.
- C. **Plat Signing.** The Planning Commission President shall authorize the signing of the plat.
- D. **Effect and Vesting.** The approval of the final ~~plan plat~~ application and signing of the plat makes the document recordable.

Sec. 24.117 24.118 Major Subdivision Final Plat - Site-Development-Plan Recording

The applicant shall have 180 days after approval to file and record the final ~~site-development plan plat~~ for lots to be recorded, together with any deed restrictions as may be required, in accordance with W.Va. Code §39-1-13. The approval shall become void if it is not ~~filed recorded~~ within the 180 day period. The following documents shall be submitted to the Department of Planning:

- A. ~~Two (2) One (1)~~ mylar ~~copies copy~~ of the Final ~~Plat Site-Development-Plan~~ suitable for recordation and acceptable to the Clerk of Jefferson County;
- B. Three (3) paper copies of the Final ~~Plat Site-Development-Plan~~;
- C. One (1) digital copy of the Final ~~Plat Site-Development-Plan~~ compatible with the Jefferson County GIS, as specified by the Jefferson County GIS requirements; and
- D. One (1) digital and ~~two (2) one (1)~~ paper copies of any deed restrictions/covenants in a form suitable to the Department.

~~Sec. 24.118 Single lot subdivision in certain circumstances~~

~~Notwithstanding the other provisions of this Ordinance and the Zoning Ordinance, a subdivision of land creating one (1) new lot may be permitted under the following circumstances:~~

- ~~A. **Agricultural (AG) District.** Within the Agricultural (AG) District, any parcel existing prior to the effective date of this ordinance which is between 10 and 18 acres in size shall be permitted to subdivide a single lot, provided that no new lot so created is smaller than two acres in land area.~~
- ~~B. **Countryside (CS) District.** Within the Countryside (CS) District, any parcel existing prior to the effective date of this ordinance which is between seven and twelve acres in size shall be permitted to subdivide a single lot, provided that no new lot so created is smaller than three acres in land area.~~

~~Such single lots so created may, but need not be, provided to accommodate parent to child transfers in ownership. The provisions of Section 24.104 for review and approval of Minor and Rural Subdivision shall govern the process for review and approval of any single lot subdivision.~~

A copy of the
Subdivision Regulation
Amendments Draft has
been emailed to you. If
you would like a paper
copy provided to you
please call the office
(304) 728-3228.

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
May 18, 2010
Planning Commission meeting

- 1) Activity Report (attached)
- 2) Shenandoah Professional Center Zone Change Request – CC workshop 5/27/10
- 3) Land Development Fees – Stakeholders Meeting scheduled for 5/19/10 2 – 4 pm
- 4) Urban Growth Boundary Update (legislation attached)
 - a) Shepherdstown Meeting 5/6/10
- 5) Chesapeake Bay TMDL Update
 - a) Regional Water Resources Policy Committee Meeting (5/6/10)
Northern Shenandoah Valley Regional Commission, Strasburg, VA
- 6) Local Implication of SB 595, Vested Property Rights (legislation attached; memo to be distributed at meeting)

Christine Chalmers

To: PLANNING COMMISSION
Subject: WEEKLY CALENDAR

MONDAY, MAY 03, 2010

11:00 am - 1:00 pm JENNIE – LUNCH MEETING WITH MARK DYCK, DAVE MILLS, FRED BLACKMER & LANE DONLEY
RE: IMPACT FEES @ EDA
2:00 pm JENNIE, SETH & JENNILEE – WEEKLY SUBMISSIONS MEETING (PLANNING)

TUESDAY, MAY 04, 2010

9:00 – 11:30 am JENNIE & SETH – WEBINAR / RE: CHESAPEAKE BAY
11:30 am - STAFF MEETING

WEDNESDAY, MAY 05, 2010

8:00 am JENNIE – DEPARTMENT HEAD MEETING @ HUNTER HOUSE
10:00 am JENNIFER, SETH, JONATHAN – MEETING WITH DAVID RAWLINGS /
RE: PAYNES FORD STATION
11:00 am JENNIE, JENNIFER & STEPHANIE GROVE – MEETING WITH HERB JONKERS /
RE: THORN HILL
2:00 pm JENNIFER, SETH & JONATHAN – SITE PLAN PPC MEETING with JAMES TAYLOR
RE: BRIGGS ANIMAL ADOPTION CENTER
3:00 pm JENNIE & JENNIFER – MEETING WITH TIM BOYDE AND GAYE SNYDER

THURSDAY, MAY 06, 2010

9:00 am - COUNTY COMMISSION MEETING
10:00 – NOON JENNIE – TMDL MEETING AT STRASBURG TOWN HALL
2:00 pm SETH – MEETING WITH ATTORNEY GLENN / RE: EASEMENT MATTER
6:30 pm JENNIE – MEETING @ ENTLER HOTEL, SHEPHERDSTOWN – MIKE ABSHIRE

FRIDAY, MAY 07, 2010

10:00 am JULIE – MEETING WITH JENNILEE, AMY & CHRISTINE / RE: ADMIN. ASSIST. MEETING
10:00 am JENNIE, JENNILEE & SETH – SUBDIVISION REGULATIONS MEETING
NOON – 1:30 pm JENNIE, SETH & JENNIFER – BUSINESS LUNCH WITH ROGER GOODWIN
2:00 pm ALL STAFF ATTENDANCE – SHARED PLANNING DRIVE

Christine Chalmers

To: PLANNING COMMISSION
Subject: WEEKLY CALENDAR

MONDAY, MAY 10, 2010

10:00 am JENNIE, SETH & JENNILEE – WEEKLY SUBMISSIONS MEETING (PLANNING)
11:00 am JENNIE, JENNIFER & SETH – MEETING WITH IRF APPLICANT, DAN ROWZIE / RE: REZONING
2:00 pm JENNIE & JENNIFER – WEEKLY ZONING MEETING

TUESDAY, MAY 11, 2010 PRIMARY ELECTION DAY – OFFICES CLOSED

WEDNESDAY, MAY 12, 2010

-
ALL DAY JENNIE – LEADERSHIP JEFFERSON MEETING
4:00 pm - 5:30 pm JENNIFER, SETH, & JENNILEE – RANSON / RE: DESIGN GRAFICS FOR PLANNING

THURSDAY, MAY 13, 2010

9:00 am - COUNTY COMMISSION MEETING
10:00 am JENNIE, JENNIFER, SETH, JONATHAN, NORMA – MEETING/ RE: DANIELS FOREST
11:30 am – NOON COUNTY COMMISSION – RE: ZONE CHANGE
3:00 pm - 6:00 pm JENNIE – MEETING WITH JOHN MAXEY / RE: AGENDA REVIEW

FRIDAY, MAY 14, 2010

9:00 am - 11:00 am JENNIE – MEETING WITH JOHN MAXEY
11:00 am - 12:30 pm JENNIE , SETH & JULIE - DEDICATION OF JCESAO BUILDING

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 256

(SENATOR SNYDER, *original sponsor*)

[Passed April 11, 2009; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated '8-6-4a; and to amend and reenact '8A-7-2 of said code, all relating to urban growth boundaries; definitions; providing new procedures for annexation without election and annexation by minor boundary adjustment for municipalities in growth counties that have an adopted countywide zoning ordinance which includes urban growth boundaries; setting requirements; and permitting urban growth boundaries in zoning ordinances.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated '8-6-4a; and that '8A-7-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 6. ANNEXATION.

PART III - ANNEXATION WITHOUT ELECTION.

'8-6-4a. Annexation without election for municipalities in counties that have an adopted countywide zoning ordinance which includes urban growth boundaries.

(a) This section applies to municipalities in counties that have adopted a countywide zoning ordinance with designated urban growth boundaries and, prior to January 1, 2009, have adopted local impact fees pursuant to the provisions of article twenty, chapter seven of this code that want to annex additional property without an election.

(b) For purposes of this section only:

(1) AContiguous@ means property that is next to, abutting and having a boundary that is coterminous with the municipality=s designated urban growth boundary. The length of a street, highway, road or other traffic or utility easement, streams, rivers or other natural topography are not to be used to determine if a property is contiguous: *Provided*, That the width of a street, highway, road or other traffic or utility easement, streams, rivers or other natural topography may be used to determine contiguous boundaries.

(2) AUrban growth boundary@ means a site-specific line, delineated on a zoning map or a written description in a zoning ordinance identifying an area around and outside the corporate limits of a municipality within which there is a sufficient supply of

developable land within the boundary for at least a prospective twenty-year period of municipal growth based on demographic forecasts and the time reasonably required to effectively provide municipal services to the identified area. The urban growth boundary may be called by any name chosen by the county commission, but the word *Boundary* shall be used in the name of the boundary. The boundary shall be established by the county commission in agreement with each individual municipality regarding that municipality's boundary. If the county commission and municipality cannot agree upon the location or size of the boundary, either party may file for declaratory judgment relief in the circuit court which shall submit the dispute to mediation or arbitration prior to final resolution by the circuit court. Once a county has adopted an urban growth boundary by its designation on an adopted county zoning map, the gross area inside the boundary may not be reduced without written consent of the municipality. The county commission shall review each urban growth boundary at a period not to exceed ten years or upon request of the individual municipality.

(c) Procedure for a municipality to annex property within an urban growth boundary. --

(1) If the proposed property to be annexed by a municipality is entirely within the municipality's designated urban growth boundary, then the municipality may annex without an election the

proposed property pursuant to the provisions of section four of this article. Agreement with the county commission is not required.

(2) If the proposed property to be annexed by minor boundary adjustment by a municipality is entirely within the municipality=s designated urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of section four of this article if the provisions of section five of this article are followed, except that agreement with the county commission is not required.

(d) Procedure for a municipality to annex property within urban growth boundaries of two or more municipalities. --

If the proposed property to be annexed by a municipality is partially or wholly within another municipality=s urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of section four of this article if the two municipalities have executed an intergovernmental agreement regarding the annexation of the subject property. Agreement with the county commission is not required.

(e) Procedure for a municipality to annex contiguous property outside an urban growth boundary. --

(1) If the proposed property to be annexed by a municipality is outside the municipality=s designated urban growth boundary, then the municipality may annex without an election the proposed property

pursuant to the provisions of section four of this article, if:

(A) The proposed property to be annexed is contiguous to the municipality, as defined in this section; and

(B) The municipality has the county commission=s agreement.

(2) Prior to the agreement of the county commission to the annexation of the proposed property the county commission shall:

(A) Hold a public hearing;

(B) Place a notice on the subject property, which notice shall be the same as that required for property to be rezoned; and

(C) At least fifteen days prior to the public hearing, publish a notice of the date, time and place of the public hearing as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code.

(f) Procedure for a municipality to annex noncontiguous property outside an urban growth boundary. --

(1) If the proposed property to be annexed by a municipality is entirely outside the municipality=s designated urban growth boundary and is not contiguous to the municipality, as defined in this section, then the municipality may annex without an election the proposed property pursuant to the provisions of section four of this article if the municipality has the county commission=s agreement and, prior to the agreement of the county commission to the annexation of the proposed property, the county commission shall:

(A) Hold a public hearing;

(B) Place a notice on the subject property, which notice shall be the same as that required for property to be rezoned; and

(C) At least fifteen days prior to the public hearing, publish a notice of the date, time and place of the public hearing as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code.

(2) After the public hearing and on-site notice, if the county commission finds, by a written record, that the proposed annexation is for the good of the county as a whole, then the county commission may agree to the annexation.

(g) Prior to the county commission entering an order for any annexation pursuant to this section, the annexed property shall be surveyed by a licensed professional surveyor and a metes and bounds description of the annexed property must be provided to the county commission in which the property is located.

(h) After a municipality has annexed property pursuant to this section and the property has been surveyed, the county commission shall enter an order. After the order is entered, the corporate limits of the municipality include the annexed property.

CHAPTER 8A. LAND USE PLANNING.

ARTICLE 7. ZONING ORDINANCE.

'8A-7-2. Contents of zoning ordinance.

(a) The following must be considered when enacting a zoning ordinance:

(1) Promoting general public welfare, health, safety, comfort and morals;

(2) A plan so that adequate light, air, convenience of access and safety from fire, flood and other danger is secured;

(3) Ensuring attractiveness and convenience is promoted;

(4) Lessening congestion;

(5) Preserving historic landmarks, sites, districts and buildings;

(6) Preserving agricultural land; and

(7) Promoting the orderly development of land.

(b) A zoning ordinance may include the following:

(1) Regulating the use of land and designating or prohibiting specific land uses;

(2) Authorizing flexible planning standards to create, redevelop, reuse, protect and enhance the physical qualities of the community;

(3) Designating historic districts and regulating the uses of land and the design of buildings within the historic district;

(4) Establishing corridor overlay districts to achieve land design goals and regulating the uses of land within the corridor overlay districts;

(5) Establishing design standards and site plan approval procedures;

(6) Dividing the land of the governing body into different zone classifications regulating the use of land, establishing performance standards for various land uses when dividing is not desired or any combination of both;

(7) Authorizing overlay districts and special design districts within which specific additional development standards for each permitted, accessory and conditional use shall apply;

(8) Regulating the height, area, bulk, use and architectural features of buildings, including reasonable exterior architectural features and reasonable aesthetic standards for factory-built homes;

(9) Authorizing a process and standards for factory-built homes: *Provided*, That a governing body is prohibited from establishing a process and standards for regulating factory-built homes that is more restrictive than a process and standards for site-built homes;

(10) Preserving green spaces and requiring new green spaces, landscaping, screening and the preservation of adequate natural light;

(11) Regulating traffic flow and access, pedestrian flow and access, parking and loading;

(12) Identifying flood-prone areas subject to periodic flooding

and regulating with specific control the permitted use, type of construction and height of floor levels above base flood elevation permitted in the area so as to lessen or avoid the hazards to persons and damage to property resulting from the accumulation of storm or flood waters;

(13) Designating an airport area and establishing land-use regulations within a specific distance from the boundaries of the airport;

(14) Authorizing planned unit developments to achieve more efficient use of land and setting standards and regulations for the developments; and

(15) Identifying, establishing and designating urban growth boundaries, as defined in section four-a, article six, chapter eight of this code, for municipalities.

(c) A zoning ordinance shall:

(1) Create a board of zoning appeals;

(2) Specify certification requirements for zoning district maps that are consistent with the governing body's comprehensive plan;

(3) Adopt procedures and requirements for nonconforming land uses;

(4) Adopt procedures and requirements for variances; and

(5) Adopt procedures and requirements for conditional use permits.

ENROLLED

Senate Bill No. 595

(By Senators McCabe and Minard)

[Passed March 11, 2010; in effect from passage.]

AN ACT to amend and reenact §8A-4-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §8A-5-12 of said code, all relating to subdivisions; extending the approval term of certain uses and permits associated with a subdivision plan or plat and extending the vesting period for a subdivision or land development plan or plat.

Be it enacted by the Legislature of West Virginia:

That §8A-4-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §8A-5-12 of said code be amended and reenacted, all to read as follows:

ARTICLE 4. SUBDIVISION AND LAND DEVELOPMENT ORDINANCE.

§8A-4-2. Contents of subdivision and land development ordinance.

- (a) A subdivision and land development ordinance shall include the following provisions:
- (1) A minor subdivision or land development process, including criteria, requirements and a definition of minor subdivision;
 - (2) The authority of the planning commission and its staff to approve a minor subdivision or land development;
 - (3) A major subdivision or land development process, including criteria and requirements;
 - (4) The authority of the planning commission to approve a major subdivision or land development;
 - (5) The standards for setback requirements, lot sizes, streets, sidewalks, walkways, parking, easements, rights-of-way, drainage, utilities, infrastructure, curbs, gutters, street lights, fire hydrants, storm water management and water and wastewater facilities;
 - (6) Standards for flood-prone or subsidence areas;
 - (7) A review process for subdivision or land development plans and plats by the planning commission;
 - (8) An approval process for subdivision or land development plans and plats by the planning commission, including the authority to approve subdivision or land development plans and plats with conditions;
 - (9) A process to amend final approved subdivision or land development plans and plats;
 - (10) A requirement that before development of the land is commenced, subdivision and land development plans and plats must be approved by the applicable planning commission, in accordance with the comprehensive plan, if a comprehensive plan has been adopted;
 - (11) A requirement that after approval of the subdivision or land development plat by the

planning commission and before the subdivision or development of the land is commenced, the subdivision and land development plat shall be recorded in the office of the clerk of the county commission where a majority of the land to be developed lies;

(12) A schedule of fees to be charged which are proportioned to the cost of checking and verifying proposed plats;

(13) The process for granting waivers from the minimum standards of the subdivision and land development ordinance;

(14) Improvement location permit process, including a requirement that a structure or development of land is prohibited without an improvement location permit;

(15) The acceptable methods of payment to cover the cost of the water and sewer service infrastructure, which can include, but are not limited to, bonds, impact fees, escrow fees and proffers;

(16) The process for cooperating and coordinating with other governmental agencies affected by the subdivision and land development and use; and

(17) Penalties for violating the subdivision and land development ordinance.

(b) A subdivision and land development ordinance may include the following provisions:

(1) Establishing a board of subdivision and land development appeals with the same powers, duties and appeals process as set out for the board of zoning appeals under the provisions of article eight of this chapter;

(2) Requirements for green space, common areas, public grounds, walking and cycling paths, recreational trails, parks, playgrounds and recreational areas;

(3) Encourage the use of renewable energy systems and energy- conserving building design;

(4) Vested property right, including requirements;

(5) Exemptions of certain types of land development from the subdivision and land development ordinance requirements, including, but not limited to, single-family residential structures and farm structures; and

(6) Any other provisions consistent with the comprehensive plan the governing body considers necessary.

(c) All requirements, for the vesting of property rights contained in an ordinance enacted pursuant to this section that require the performance of any action within a certain time period for any subdivision or land development plan or plat valid under West Virginia law and outstanding as of January 1, 2010, shall be extended until July 1, 2012, or longer as agreed to by the municipality, county commission or planning commission. The provisions of this subsection also apply to any requirement that a use authorized pursuant to a special exception, special use permit, conditional use permit or other agreement or zoning action be terminated or ended by a certain date or within a certain number of years.

ARTICLE 5. SUBDIVISION OR LAND DEVELOPMENT PLAN AND PLAT.

PART I. MINOR SUBDIVISION OR LAND DEVELOPMENT PROCESS.

§8A-5-12. Vested property right.

(a) A vested property right is a right to undertake and complete the land development. The right is established when the land development plan and plat is approved by the planning commission and is only applicable under the terms and conditions of the approved land development plan and plat.

(b) Failure to abide by the terms and conditions of the approved land development plan and plat will result in forfeiture of the right.

(c) The vesting period for an approved land development plan and plat which creates the vested property right is five years from the approval of the land development plan and plat by the planning commission.

(d) Without limiting the time when rights might otherwise vest, a landowner's rights vest in a land use or development plan and cannot be affected by a subsequent amendment to a zoning ordinance or action by the planning commission when the landowner:

(1) Obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project;

(2) Relies in good faith on the significant affirmative governmental act; and

(3) Incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.

(e) A vested right is a property right, which cannot be taken without compensation. A court may award damages against the local government in favor of the landowner for monetary losses incurred by the landowner and court costs and attorneys' fees, resulting from the local government's bad faith refusal to recognize that the landowner has obtained vested rights.

(f) Any subdivision or land development plan or plat, whether recorded or not yet recorded, valid under West Virginia law and outstanding as of January 1, 2010, shall remain valid until July 1, 2012, or such later date provided for by the terms of the planning commission or county commission's local ordinance or for a longer period as agreed to by the planning commission or county commission. Any other plan or permit associated with the subdivision or land development plan or plat shall also be extended for the same time period. *Provided, That* the land development plan or plat has received at least preliminary approval by the planning commission or county commission by March 1, 2010.

Jefferson County, West Virginia

Department of Planning

116 East Washington Street, 2nd Floor

P.O. Box 338

Charles Town, West Virginia 25414

Phone: (304) 728-3228

Fax: (304) 728-8126

Email: planningdepartment@jeffersoncountyvwy.org

APRIL 29, 2010

MINOR SUBDIVISION and SITE DEVELOPMENT DETERMINATION

APPLICATION SUBMISSION DATE: Thursday, April 15, 2010

CONTACT NAME / COMPANY NAME: Jefferson County Development Authority (EDA)
Attn.: Tom Bayuzik, Jr. / tom@jcda.net
(Address/Phone Number) P.O. Box 237
Charles Town, West Virginia 25414

PHYSICAL ADDRESS: NORM THOMPSON BUILDING /
BURR INDUSTRIAL PARK

PROPOSED PROJECT: MINOR SUBDIVISION

DISTRICT/MAP/PARCEL: CHARLES TOWN TAX DISTRICT /MAP 1/ PARCEL 53
2002 ZONE DISTRICT: INDUSTRIAL / COMMERCIAL
TOTAL LOT SIZE: Approximately 23.265 acres
INDIVIDUAL PARCEL SIZES: Lot #1: 11.6325 acres and remaining Residue: 11.632 acres

CRITERIA CHECK-LIST

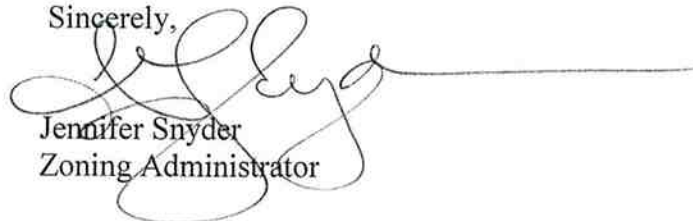
The proposed Project:

- 1. does not require the development of new or the extension of existing off-track infrastructure.
- 2. divides the property into individual lots with remaining reserve (Residue) parcel.
- 3. results in the creation of four (4) or fewer new lots from a parent tract.
- 4. provides front access to all lots, by way of a fifty (50) foot wide easement, that remains part of the Residue parcel.

Accordingly, the proposed Project:

- 1. meets the referenced criteria, and is hereby determined to be a Minor Subdivision.
- 2. does not meet the referenced criteria, and is hereby determined not to be a Minor Subdivision.

Sincerely,



Jennifer Snyder
Zoning Administrator

NOTES: _____