

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

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

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

MEMORANDUM

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

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

**Documents provided:**

➤ **July 27, 2010 agenda and map.**

1. Approval of the minutes from the July 13, 2010 meeting.

**Documents provided:**

➤ **July 13, 2010 minutes**

2. Citizen Communications.
3. A call for postponements.
4. Declaration of Violation for Mark Marlow of the Jefferson County Salvage Yard Ordinance for one (1) unlicensed/junk vehicles and debris on property designated as Parcel 104 on Tax Map 13E in the Harpers Ferry District as found in Deed Book 944 at Page 560.

**Documents provided:**

➤ **Letter of Salvage Yard Ordinance violation.**

5. Follow-up to issues raised by Chapel View residents discussed at the July 13, 2010 meeting.

**Documents provided:**

➤ **Draft of proposed Bonding Policy.**

6. Update on FOIA request regarding Brown Field Development District at Old Standard. Discussion of next steps and legal action.

**Documents provided:**

- **FOIA request to WV Development Office.**
- **Reply to FOIA request from Kelly Goes office.**
- **Request for copies fee quote for FOIA request.**

7. Presentation on the Draft Cell Tower Ordinance.  
**Documents provided:**
  - **Draft Cell Tower Ordinance.**
8. Blue Ridge Mountain Community Plan.  
**Documents provided:**
  - **Letter from Carl Shultz**
9. Reports from Legal Counsel and legal advice to the Planning Commission.
10. Planning Commission Training.  
**Documents provided:**
  - **Minutes from the County Commission meeting approving Planning Commissioner training.**
11. Director's Report.  
**Documents provided:**
  - **Director's Agenda.**
  - **Activity Report.**
  - **Zoning Ordinance Amendments Memo – Next Steps.**
12. County Commission Liaison Report.
13. Planning Commission Exchange.
14. President's Report.
15. Actionable Correspondence.
  - Letter to the Board of Health supporting an electronic database of septic field files.**Documents provided:**
  - **Letter to the Board of Health**
16. Non-Actionable Correspondence.  
**Documents provided:**
  - **Letter to John Maxey from Lewis Meadows, a resident on Route 230.**
  - **Email from Gil Garcia.**

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  
July 27, 2010

**PUBLIC MEETING PROCEDURE:**

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

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

The President may limit the presentation time of speakers.

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

PC members may ask questions at any time.

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

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

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

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5. Follow-up to issues raised by Chapel View residents discussed at the July 13, 2010 meeting.
6. Update on FOIA request regarding Brown Field Development District at Old Standard. Discussion of next steps and legal action.
7. Presentation on the Draft Cell Tower Ordinance.
8. Blue Ridge Mountain Community Plan.
9. Reports from Legal Counsel and legal advice to the Planning Commission.
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JEFFERSON COUNTY PLANNING COMMISSION  
JULY 27, 2010  
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12. County Commission Liaison Report.

13. Planning Commission Exchange.

14. President's Report.

15. Actionable Correspondence.

- Letter to the Board of Health supporting an electronic database of septic field files.

16. Non-Actionable Correspondence.

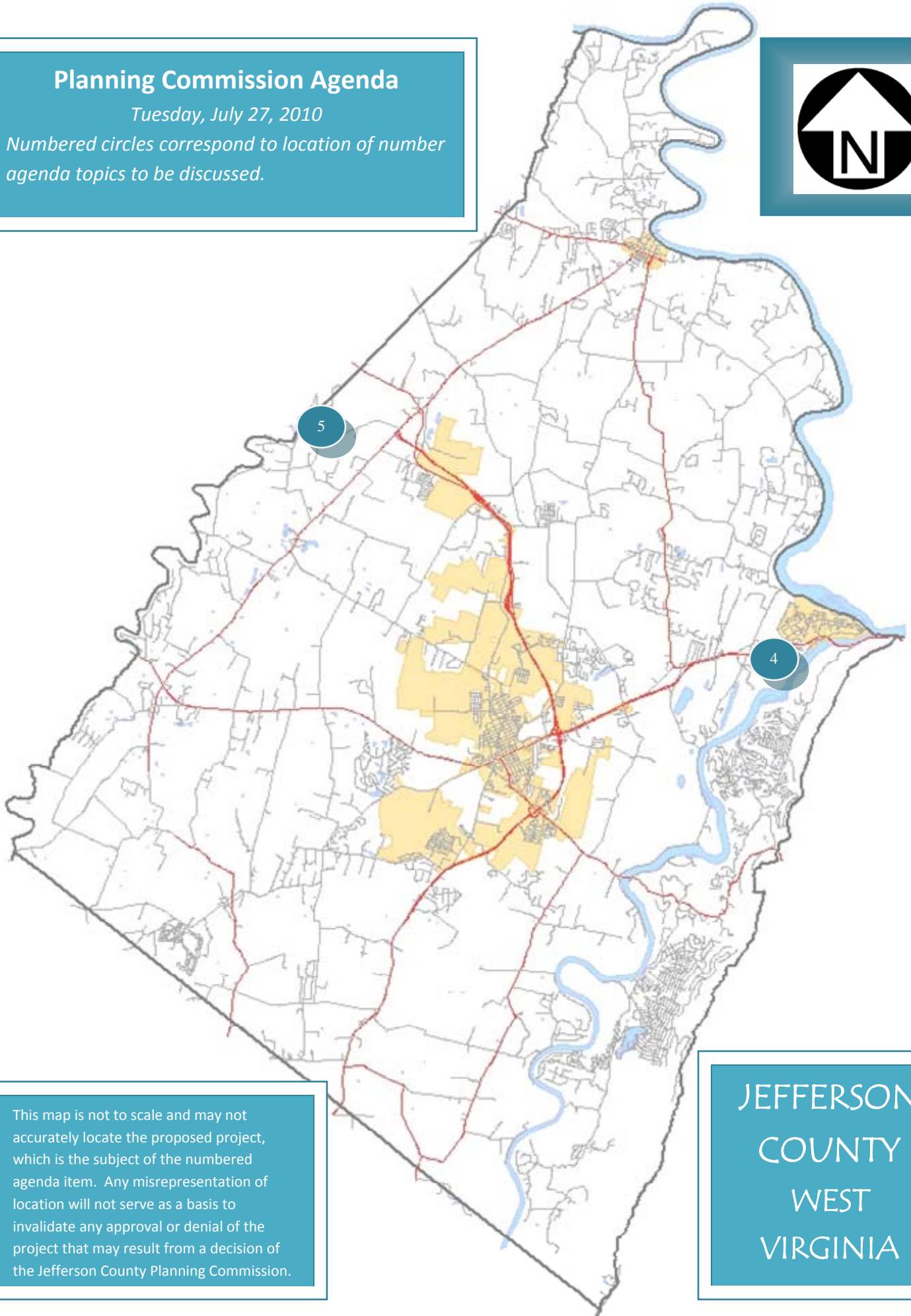
The Planning Commission welcomes written comments at any time. Our office is open Monday through Friday, 9:00 a.m. to 5:00 p.m., and is located at 116 East Washington Street, P.O. Box 338, Charles Town, WV 25414. Our phone number is (304) 728-3228; our fax number is (304) 728-8126; our email address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

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

# Planning Commission Agenda

Tuesday, July 27, 2010

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



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

JEFFERSON  
COUNTY  
WEST  
VIRGINIA

MINUTES  
JEFFERSON COUNTY PLANNING COMMISSION  
JULY 13, 2010

The Jefferson County Planning Commission met on Tuesday, July 13, 2010, with the following Commission members present: John Maxey, President; Thomas Trumble, Vice President; Morgan Eppers, Secretary; Arnold Dailey, Stephen Alemar, Daniel Hayes, Kelly Baty, and Gene Taylor. Staff members present included Jennifer Brockman, Director of Planning and Zoning; Seth Rivard, Planner; Steve Barney, Zoning Administrator; Jonathon Saunders, County Engineer; Julie Quodala, Planning and Zoning Office Manager; and Amy Puetz, Planning Clerk.

Frances Morgan was absent with notification.

Mr. Maxey called the meeting to order at 7:06 PM.

1. **Approval of minutes for the June 22, 2010 meeting:**

Mr. Trumble moved to approve the minutes of the June 22, 2010 meeting. Mr. Alemar seconded the motion which carried unanimously.

2. **Citizens Communication:** None.

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

Mr. Hayes and Mr. Dailey entered the room at 7:09 PM.

4. **Update on staff research related to the Chapel View Subdivision issues raised by Jennifer Syron at the June 22, 2010 Planning Commission meeting.**

Mr. Saunders presented his staff report providing the preliminary plat, photographs of road conditions, and a list of remaining bond items. Mr. Saunders stated that the Engineering staff has attempted to contact the developer with no response. He explained that bonding policies are currently being reviewed and that the proposed bonding policy would be stricter.

Mr. Baty entered the room at 7:24 PM.

Mr. Maxey opened the floor for public comment. Jennifer Syron and Barbara Fuller, both residents of Chapel View, provided a detailed presentation on conditions within the subdivision. Ms. Fuller provided the Planning Commission with a copy of the Letter of Credit given to Orchard Knolls, LLC for the Chapel View Subdivision and a map of road condition defects. A bond petition to call in the Letter of Credit was given to Mr. Maxey, who later submitted it to staff. Ms. Syron stated that two civil engineers, Stewart Benny and Cliff Conklin were consulted to investigate road conditions. A visual presentation of photographs and videos of the problem road conditions showed during Ms. Syron's report.

Chris Hicks, resident, confirmed that the roads problems were a result of the absence of dry utilities being placed before the pavement of the road. He stated that as residents contacted Richmond American, the builder, to provide utilities, portions of the road were cut and then

patched with cold asphalt mix. The cold asphalt mix has since settled causing depressions in the road.

Labeta Wade, resident, reaffirmed that the developer has been non-responsive and called for help from the County.

Jeff Fobbe, resident, reiterated conditions and explained that the utility lines were laid directly under the sod, not buried in the ground.

Ms. Fuller asked Mr. Saunders for explanation of why the bonding of the roads was released before houses were built. There was discussion about whether or not the top coat had been laid on the road. Several residents were told that the base and top coat of the roads had been done simultaneously.

Trevor Cole, resident, believes that no top coat has been done. He stated he was told by Richmond American that the top coat would be done later.

Mr. Maxey stated that the Planning Commission would contact our legal department and discuss our options to assist in correcting these conditions.

5. **Request by US Cellular for Approval of the Mitigation of the Visual Impact for a wireless communication tower. The property is designated as Tax District: Charles Town; Map: 20; Parcel: 3.1.**

Mr. Rivard read from the staff report and recommended approval.

Tim Stark, with Wireless Resources representing US Cellular, stated he has made several attempts to contact Mr. and Ms. Provost as per conditions of the Planning Commission meeting held June 8, 2010. Mr. Stark was hoping to schedule a meeting with the residents of the area to discuss the project, however, after leaving several messages he was unable to reach anyone.

Mr. Maxey opened the public hearing. There was no public comment. Mr. Maxey closed the public hearing.

Mr. Alemar moved to approve with the staff recommended motion (attached). Mr. Taylor seconded the motion which carried unanimously.

6. **Blue Ridge Mountain Community Plan:**

Mr. Rivard reported that the first public outreach meeting would be held on Thursday, July 15, 2010, with Down Stream Strategies facilitating.

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

No attorney was present for report.

**8. Planning Commission Training.**

Ms. Brockman gave an overview of topics to be discussed during training that would take place under the Director's Report.

**9. Director's Report:**

- a) Ms. Brockman introduced Steve Barney, the new Zoning Administrator, who was approved by County Commission on July 8, 2010.
- b) Activity Report. Ms. Brockman distributed activity reports and an attachment detailing average monthly calls and walk-in customers and the amount of merger deeds and information requests submitted since the last Planning Commission meeting. Ms. Brockman described changes that have been made in clerical staff responsibilities. A short discussion on activity tracking ensued.
- c) Update on Land Development Fees. Ms. Brockman reported that a Roundtable Discussion was held July 8, 2010 by the County Commission. She discussed the questions raised at the meeting and stated that staff would research the information and report to the County Commission.
- d) Subdivision Regulation Amendments. Ms. Brockman notified the Planning Commission that two public hearings had been scheduled. The first would be held on Wednesday, August 4, 2010 at Blue Ridge Elementary School and the second would be held on Monday, August 9, 2010 in the Library Basement Community Room.

Mr. Maxey called for a break at 8:24 PM to allow staff to change the CD. Mr. Maxey called the meeting to order at 8:26 PM.

- e) Update on the effects of the local interpretation of Senate Bill 595. Ms. Brockman distributed a chart detailing the projects still outstanding and how SB 595 would apply to each. Three of the projects required discussion:
  - 1) Beallair West (PC file #07-30) and Allemont (PC file #07-21) had submitted their preliminary plat and the first review with comments had been completed. Ms. Brockman asked if this could be considered approved with conditions. Mr. Maxey moved that the Planning Commission accept approval with conditions as equivalent to preliminary plat approval and acceptable under the terms of the adopted policy for determination of the application of SB 595. Mr. Trumble seconded the motion which carried unanimously.
  - 2) Sloan Square Apartments (PC file #08-17) has not submitted a preliminary plat, however, had an approved Community Impact Statement on file. The Final Plat and Public Hearing were required by June 27, 2010 for this project. Ms. Brockman stated that a representative for this project had come to our office in late May/early June at which time, due to staff interpretation, the representative was told that SB 595 would apply to the project. Mr. Maxey stated that since no preliminary plat was submitted that the applicant could apply for a variance. Ms. Brockman explained that the file had expired and encouraged the Planning Commission to allow a waiver to reopen the file. Discussion ensued about whether a variance would be necessary or if staff's

verbal assurance should stand. Mr. Maxey moved that a variance be required for Sloan Square Apartments on the grounds that they did not meet the conditions of the Planning Commission's adopted policy. Mr. Alemar seconded the motion which carried 7 for and 1 against (Mr. Trumble).

- f) Old Standard Quarry. Ms. Brockman provided the Planning Commission with a recorded plat, a copy of State Code §5B-2-6a, a copy of HB 2816, and a print out of a web page advertising the Old Standard Quarry property. She explained that the property had been given a Brownfield status by the State of West Virginia which allowed them to circumvent the provisions of 8A and permitted them to record with the County Clerk's office without Planning and Zoning review.

Mr. Maxey moved to issue a Freedom of Information Act request to the West Virginia Development Office requesting any documents related to the designation of Old Standard as a Brownfield Economic Development District and to have that copied to the County Commission and to Stephanie Grove, Assisting Prosecuting Attorney. Mr. Trumble seconded the motion which carried unanimously.

- g) Public Service District Reports. Ms. Brockman presented the reports staff provided to the Public Service District. Mr. Maxey requested that staff draft a letter from the Planning Commission to the Board of Health supporting their intent to have files viewed electronically and to offer the Planning Commission's assistance with anything they may need.
- h) Planning Commission Training. Mr. Rivard and Ms. Brockman provided a brief training on the different types of projects and reviews that are processed through our office.

Mr. Maxey called for a break at 9:46 PM to allow staff to change the CD. Mr. Maxey called the meeting to order at 9:48 PM.

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

**11. Planning Commission Exchange:** None.

**12. President's Report:** Mr. Maxey reported that Good Shepherd Volunteer Caregivers had appeared before the County Commission to ask for a refund of their rezoning request instead of a waiver from the Conditional Use Permit Fees as originally expected.

**13. Actionable Correspondence:** None.

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

MINUTES  
JEFFERSON COUNTY PLANNING COMMISSION  
JULY 13, 2010  
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Mr. Alemar moved to adjourn at 9:52 PM. Mr. Taylor seconded the motion, which carried unanimously. A detailed transcript of the meeting may be found on CDs #\_\_, #\_\_ and #\_\_.  
These minutes were prepared by Amy Puetz, Planning Clerk.

**JEFFERSON COUNTY, WEST VIRGINIA**

**Department of Engineering**

116 East Washington Street

P.O. Box 716

Charles Town, West Virginia 25414

Phone: 304-728-3257

Fax: 304-728-3953

Email: [enineering@jeffersoncountywv.org](mailto:enineering@jeffersoncountywv.org)

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June 25, 2010

**VIOLATION NOTICE – DIRECTIVE TO CEASE & DESIST**

**CERTIFIED MAIL – 7008 1830 0003 3623 6792**

Mark Marlow  
P.O Box 2021.  
Harpers Ferry, WV 25425

Dear Mr. Marlow:

As of June 24, 2010, there still appears to be 1 unlicensed/junk vehicles and debris on your property designated as Parcel 104, on Tax Map 13E of the Harpers Ferry District. This property is recorded in your name(s) in Deed Book 944 at Page 560. This property appears to still qualify as a salvage yard as defined by the Jefferson County Salvage Yard Ordinance.

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

Pursuant to Article 5.1 of the Jefferson County Salvage Yard Ordinance, this cease and desist notice is being sent to you as the responsible party(s) for the salvage yard since you are the listed owner. Failure to comply with this directive to cease and desist shall be cause for the Planning Commission at their meeting to be held on **July 27, 2010**, to declare the violation a common nuisance. Upon such declaration the Planning Commission shall instruct the Land Development Coordinator to request the assistance of the County Prosecuting Attorney and:

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

OR

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

Any person violating any provision of this Ordinance, whether as principal, agent or employee, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars in accordance with Chapter 17, Article 23, Section 9 of the Code of West Virginia. Each month or portion of a month in which a violation of this Ordinance is committed, continued or permitted, shall constitute a separate offense.

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

Sincerely,

D. Mason Carter  
Ordinance Compliance Officer

JEFFERSON COUNTY

Land Development

**SITE IMPROVEMENTS BONDING & BOND SURETY POLICY**

Effective Date: \_\_\_\_\_

All required bonding shall be provided by the owner/developer, approved by staff, and in place prior to the recordation of the subdivision final plat or the issuance of a permit for a land development project, in accordance with this policy.

1. **Projects That Require Construction Bonds & Bond Surety:**

When required, the owner/developer shall provide a construction bond as a guarantee that the site improvements will be completed and installed in accordance with the approved plans. The construction bond shall be secured with an acceptable form of surety. Projects requiring a construction bond and bond surety are as follows:

- A. Approved subdivisions of land requiring site/infrastructure improvements; and
- B. Commercial (for-profit & non-profit), industrial, institutional, religious facilities, and multi-family residential development projects, etc., that require a site plan and site improvements.

2. **Bonding Arrangements:**

- A. Bonding arrangements cannot be made prior to Planning Commission approval of a project.
- B. The owner/developer's engineer of record shall provide a complete and accurate bond estimate in a format acceptable to the Chief County Engineer. The bond estimate shall be based on the estimated costs of the site improvements utilizing current market rates. However, in no event shall the estimated cost be less than the unit costs provided by the Jefferson County Engineering Department. The unit costs are subject to change from time to time, as deemed necessary by the Chief County Engineer.
- C. A 15% contingency amount shall be added to the bond estimate. However, for projects with estimated construction costs under \$100,000.00, the minimum bond contingency amount shall be \$15,000.00.
- D. After the Chief County Engineer approves the construction bond amount, the developer shall submit the bond surety to the Bonding Administrator. The Bonding Administrator will then prepare the

construction bond documents (**See Appendix A**). Upon notification by the Bonding Administrator that the construction bond and bond surety documents are in order and in accordance with this Construction Bond and Bond Surety Policy, the County Commission president or County Administrator may affix their signature to the bond; this will constitute acceptance by the County Commission of Jefferson County, with no additional approvals required by them. All such action shall be reported to the County Commission as an agenda information item at their next meeting.

3. Length of Construction Bonds:

The initial bond shall be effective for a 2-1/2 year period. The developer shall have 2-1/2 years to complete the site improvements and infrastructure work unless time extensions are granted in accordance with this policy.

4. Time Extensions of Construction Bonds:

Upon written request by the developer, the staff may grant two additional 1-1/2 year time extensions for completion of all site improvements, for a total of 5-1/2 years, provided that:

- A. All occupied dwelling units are served by a road that is totally improved with the exception of the top/finish coat of asphalt; and
- B. All erosion and sediment control measures are in place in accordance with the approved sediment and erosion control plan and functioning properly; and
- C. The stormwater management facilities are in place and functioning as either temporary sediment traps per the sediment and erosion control plan, or as permanent stormwater management basins that are protected from discharging sediment from undisturbed areas on the project site. In either case, the stormwater management facility shall itself be stabilized; and
- D. Existing infrastructure that has failed is satisfactorily reconstructed; or redesigned if necessary and additional surety provided; and
- E. Elements of the preliminary plat or site plan that are not constructed, are reviewed for compliance with the current design standards; and the preliminary plat or site plan elements not meeting current standards, at the discretion of the Chief County Engineer and where practical, are redesigned or modified to meet current standards; and
- F. The bond amount is re-evaluated to determine if the amount is still adequate; and
- G. The bond amount is increased and additional surety provided if the bond amount is determined to be inadequate; and

- H. The owner/developer paid the non-refundable processing fee for the bond time extension request, in accordance with the prevailing fee schedule.

Time extensions beyond the 5-1/2 year time period may only be considered by the County Commission and may be granted for justifiable reasons on a case-by-case basis.

5. Approved Forms of Bond Surety:

- A. Acceptable forms of bond surety are limited as follows:

- 1. Irrevocable Letter-of-Credit (see Appendix B) from any FDIC-insured bank or lending institution within 150 miles of Charles Town, West Virginia; or
- 2. Cash-in-Escrow (see Appendix B) that is escrowed at any FDIC-insured bank or lending institution within 150 miles of Charles Town, West Virginia; or
- 3. Performance/Surety Bond (see Appendix B) from an acceptable surety bond provider; shall be allowed for projects with estimated construction cost equal to or greater than \$50,000.

- B. Surety documents shall be formatted as required by this policy unless other format is approved by the County Administrator or the County Commission in writing.

- C. Parties other than the owner/developer may provide the surety and execute the construction bond; provided, however, that the third-party adds their signature to the statement of acceptance on the associated construction plans and plat.

6. Renewal of Bond Surety:

- A. Irrevocable Letters-of-Credit:

The owner/developer or surety provider is required to renew any surety before it expires and provide evidence of renewal to the Bonding Administrator a minimum of 30 days prior to the surety's expiration date.

Approximately 90 days prior to the expiration of a letter-of-credit, the Bonding Administrator will notify the developer and the bank that an irrevocable letter-of-credit is due to expire and needs to be renewed by the bank. However, failure on the County's part to provide 90 days notice shall not preclude the County from their right to call-in sureties in

the form of a letter-of-credit prior to their expiration. The onus is on the owner/developer to renew the letter of credit before it expires.

B. Cash-in-Escrow:

Surety in the form of cash-in-escrow will not have an expiration date and shall run for the duration of the construction bond/project.

C. Surety Bonds:

Surety in the form of a surety bond shall be in effect for a minimum of one (1) year and shall automatically renew for additional minimum terms of one (1) year unless, and until, the surety provider shall give sixty (60) days prior written notice by certified mail, return receipt requested, to:

Bonding Administrator  
Jefferson County Engineering Department  
116 East Washington Street, Suite 100  
Charles Town, WV 25414

of its intent to terminate the surety bond at the expiration of the sixty (60) day period.

7. Land Development Site Inspections:

After the initial installation of the erosion and sediment control devices have been inspected and approved, all subsequent land development milestone site inspections, re-inspections, and legitimate complaint inspections shall be performed at a cost to the owner/developer in accordance with the prevailing fee schedule. County discretionary inspections shall not be assessed the fee.

8. Bond Reductions & Bond Releases:

A. As installation of the site improvements progresses, the owner/developer may make written request for periodic bond reductions. Bond reduction requests shall be for a minimum of \$100,000 of work but not more than 3 requests may be submitted per calendar year. The developer's engineer shall submit an itemized bond reduction request in a format acceptable to the Chief County Engineer.

For projects under \$100,000, the full \$15,000 contingency amount shall remain in full force until the project's bond is fully released; and

For bond estimates equal to or less than \$333,333, the full initial bond contingency amount (\$15,000 min to \$50,000 max) shall remain in force until the project's bond is fully released; and

*Higher Contingency amounts stay in place until 100% of work is completed.*

*DRAFT 06/10/4/20/10*

For bond estimates greater than \$333,333, the initial contingency amount may be reduced in a pro-rated manner along with periodic bond reductions; but, the total bond amount shall never be reduced to less than \$50,000 or 10% of the total original bond amount, whichever is greater, and shall remain in force until the work is 100% complete and the project's bond is fully released.

- B. Upon completion of all site improvements, the owner/developer may make a written request for final release of the remaining bond amount. The owner/developer's engineer shall submit an itemized bond release request in a format acceptable to the Chief County Engineer.

In the event that a previously approved and released component of the site improvements has failed before the final bond release, no further bond reductions or final bond release shall occur until the developer has corrected, repaired, or replaced the failed site improvement, or re-posted the bond surety necessary to cover the costs of the repair or replacement of the failed component, to the satisfaction of the Chief County Engineer.

New →

- C. Upon review and approval of the bond reduction request or the bond release request by the staff, the Bonding Administrator will submit a County Commission agenda item request in accordance with the County Commission's policy. The County Commission will schedule the item on their agenda and the staff will appear before the County Commission at their regularly scheduled meeting and present the request to them for their consideration and approval.
- D. The owner/developer shall pay a non-refundable processing fee for each bond reduction request and bond release request, in accordance with the prevailing fee schedule.

9. Default by the Owner/Developer:

In the event the owner/developer defaults in their obligation to complete the required site improvements and infrastructure work, the County Commission may "call-in" the bond and use the surety to complete the project. All costs incurred by the County shall be recoverable and are considered valid charges against the surety; this includes, but is not limited to, construction costs, administrative costs, and legal fees, including costs incurred for both in-house and/or contracted services.

10. Tolling of Bonding:

During periods of economic downturn (i.e., downturn in housing market due to economic conditions, loss of source of project financing/capitol necessary to begin the project, etc.), as determined by the Jefferson County Commission, the owner/developer may defer construction and obtain temporary partial

release of construction bond and surety on projects that are recorded and bonded, but have not started construction of site improvements and/or sold any lots or portions of the subdivided parcel. This is known as "Tolling of Bonding. Tolling of Bonding shall only be allowed to occur one time on each phase of each subdivision project. A bond of \$10,000 shall remain in place during the course of any tolling of bonding agreement.

The "Agreement Regarding Bonding Obligations and Declaration of Covenants, Conditions and Restrictions" (see **Appendix C**) shall be executed by the developer.

The tolling of construction shall require that no construction and installation of site improvements shall be allowed to start until the developer has re-posted the full bond amount, and that the bond amount shall be in accordance with the bonding unit cost figures in effect at that time; and

The tolling of construction shall require the recording of a document in the County Clerk's office - for purposes of notifying the public through title search - that the lots are restricted from being sold, and that no building permits will be issued on these lots until the developer has restored the full bond amount and the restriction is lifted by the Jefferson County Commission via a document recorded in the County Clerk's Office; and

The tolling of bonding shall have a sunset provision whereby the lots shall be un-platted (merged) upon expiration of the sunset provision, unless the bond and surety are re-posted in its entirety prior to the sunset provision expiration date. The owner/developer shall execute a merger deed at the time of executing the agreement. The merger deed shall be held by the Bonding Administrator and only recorded in the Office of the County Clerk upon expiration of the sunset provision and upon directive of the County Commission of Jefferson County, unless the bond and surety are re-posted in its entirety prior to the sunset provision expiration date; and

The tolling of construction shall not apply to projects where construction of the site improvements has already begun.

The Owner/Developer, or their agent, acknowledges receipt of the Jefferson County Construction Bonding and Bond Surety Policy.

(Owner/Developer/Agent)

\_\_\_\_\_ (print name)

\_\_\_\_\_ (title)

\_\_\_\_\_ (company/organization name)

\_\_\_\_\_ (mailing address)

\_\_\_\_\_ (city) \_\_\_\_\_ (state) \_\_\_\_\_ (zip code)

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

DRAFT 06/10/2010

# JEFFERSON COUNTY, WEST VIRGINIA

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

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

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

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July 14, 2010

Executive Director Kelley Goes  
West Virginia Development Office  
West Virginia Department of Commerce  
Capitol Complex, Bldg. 6, Room 525  
Charleston, WV 25305-0311

Dear Ms. Goes:

This is a request under the West Virginia Freedom of Information Act, West Virginia Code Section 29B-1-1, *et seq.*

As we are sure you are aware, West Virginia Code Section 5B-2-6a authorized the creation of Brownfield Economic Development Districts that are administered by your agency. We are informed that pursuant to that enactment, an entity known as Old Standard LLC applied for and created such a District for the approximately 400-acre Old Standard Quarry property in Jefferson County and, on or about July 13, 2010, filed a "plat" with the Jefferson County Clerk subdividing said property for commercial and industrial development.

With regard to this designation, we request that your agency provide the following:

1. All records of communications by and between your agency and any person or entity seeking to formulate legislation exempting Brownfield Economic Development Districts from the provisions of West Virginia Code Chapter eight-a (as presently enacted in West Virginia Code Section 5B-2-6a), or leading to the adoption of rules implementing such Districts pursuant to 145 CSR 11.
2. All records of communications by and between your agency and any person or entity seeking to formulate or influence the contents or provisions of 145 CSR 11.
3. All records, including without limitation, applications, summaries, exhibits, addenda, contracts, letters of support, and agreements relating to the designation or creation of the Old Standard Brownfield Economic Development District in Jefferson County.

This request includes all responsive records whether in electronic or hard copy form including, but not limited to, letters, emails, reports, applications, memoranda, notes and any other record that is reasonably responsive to the categories of records requested.

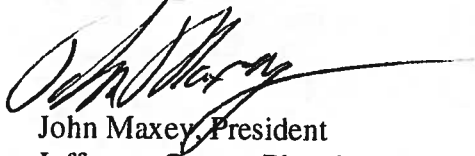
In addition, we are requesting all records, whether in electronic or hard copy form, including but not limited to, letters, emails, reports, applications, memoranda, or notes relating to 145 CSR 11 or to any proposed or requested Brownfield Economic Development District in Jefferson County.

Time is of the essence with respect to this request and, thus, as required by Section 29B-1-3(4) of the Act, we will expect your response within five (5) days. Should your agency deem that an entire record, or a portion of any record, is exempt from disclosure under the West Virginia Freedom of Information Act, or any other statute or regulation, we request that you cite the specific exemption upon which you are relying in each such case and provide an index of all such records in a way that they can be clearly identified.

As a public agency we believe that we are exempt from the provisions of Section 29B-1-3(5) that allow an agency to establish fees for the cost of making copies of records. Should you disagree we respectfully request that you so inform us.

Please let us know how we may assist you in responding to this request. Should you have any questions you may contact our Director of Planning & Zoning, Jennifer Brockman, at (304) 728-3228. We thank you in advance for your cooperation and assistance.

Sincerely,



John Maxey, President  
Jefferson County Planning Commission

CC: Lynn Widmyer, President, Jefferson County Commission  
Tim Boyde, Jefferson County Administrator



*State of West Virginia*  
*Joe Manchin III*  
*Governor*

Kelley Goes, Secretary  
Department of Commerce  
State Capitol  
Building 6, Room 525  
Charleston, WV 25305-0311

Telephone: (304) 558-2234  
Toll Free: (800) 982-3386  
Fax: (304) 558-1189  
Email: Kelley.M.Goes@wv.gov  
www.wvcommerce.org

**July 20, 2010**

**Mr. John Maxey**  
**President**  
**Jefferson County Planning Commission**  
**116 East Washington Street, 2<sup>nd</sup> Floor**  
**P.O. Box 338**  
**Charles Town, West Virginia 25414**

**Dear Mr. Maxey:**

**I am writing in response to your Freedom of Information Act request dated July 14, 2010, wherein you requested copies of any or all documents pertaining to the Old Standard LLC's brownfield district.**

**Our file on this particular project is approximately 2,000 pages or four reams of paper. Therefore, I wanted to advise you that our office charges 25 cents to copy each page. However, you are most welcome to visit our office at your convenience to review the documents of interest at no charge.**

**The West Virginia Code provides that a response to a Freedom of Information Act request be supplied within five (5) business days, not to include weekends or legal holidays. Please note that this response is timely under the Act.**

**Sincerely,**

**Jon Amores**  
**Deputy Secretary/General Counsel**

**JA/db**

**RECEIVED**  
**JUL 20 2010**  
**JEFFERSON COUNTY**  
**PLANNING, ZONING AND ENGINEERING**

**JEFFERSON COUNTY, WEST VIRGINIA**

**Department of Planning**

116 East Washington Street, 2<sup>nd</sup> Floor

P.O. Box 338

Charles Town, West Virginia 25414

Phone: (304) 728-3228

Fax: (304) 728-8126

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

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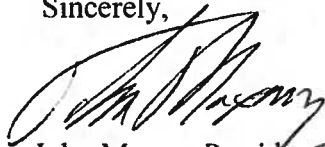
July 22, 2010

Mr. Jon Amores, Deputy Secretary/General Counsel  
West Virginia Department of Commerce  
State Capitol  
Bldg. 6, Room 525  
Charleston, WV 25305-0311

Dear Mr. Amores:

In response to your letter agreeing to supply the information requested in the Freedom of Information Act Request with a charge of \$0.25 per page, please proceed. Advise our office as soon as possible as to the total number of pages and total dollar amount required. We will issue a check and send it via mail as soon as possible. If at all possible we would prefer to receive the information requested in scanned electronic format, rather than paper. If you should need any additional information, please contact Julie Quodala, Office Manager at (304) 724-6291.

Sincerely,



John Maxey, President  
Jefferson County Planning Commission

July 20, 2010

# DRAFT

Proposed Zoning Ordinance Amendment

Wireless Telecommunication Facilities

Article 4B

Jefferson County Planning Commission

**WIRELESS TELECOMMUNICATION FACILITIES ORDINANCE  
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## ARTICLE 4B. WIRELESS TELECOMMUNICATION FACILITIES

07/20/10 Version

### Section 4B.1 Purpose and Legislative Intent

The purpose of this Wireless Telecommunications Ordinance is to balance the needs of residents of and visitors to Jefferson County for reliable access to wireless telecommunications networks and services with the community's desire to preserve the essential aesthetics of the County's rural, historic and agricultural character and the quality of its residential neighborhoods.

To accomplish these objectives and to ensure that the placement, construction or modification of wireless telecommunication facilities complies with Federal law, and is consistent with Jefferson County's land use policies and Comprehensive Plan, this Ordinance is being adopted to regulate the construction, placement and operation of wireless telecommunication facilities within Jefferson County.

This Ordinance establishes parameters for the siting of Wireless Telecommunication Facilities. By enacting this Ordinance it is Jefferson County's intent to:

- (1) Ensure access to reliable wireless communications services throughout Jefferson County consistent with the aforementioned aesthetic objectives;
- (2) Encourage the use of existing structures such as buildings, water towers, silos, church steeples, monopoles, lattice towers, utility poles, electric distribution and transmission structures and other existing structures for the collocation of Wireless Telecommunication Facilities;
- (3) Encourage the location of new Wireless Telecommunication towers in non-residential areas, with taller towers limited to the Industrial-Commercial zoning district;
- (4) Minimize the number of new Wireless Telecommunication Towers that would otherwise need to be constructed by providing incentives for the use of existing structures;
- (5) Encourage the location of new Wireless Telecommunication Towers, to the greatest extent possible, in areas where the adverse impact on the community will be minimal; and by encouraging the use of camouflage or concealment to create structures such as silos, faux trees and flagpoles that mimic elements that typically are found on Jefferson County's agricultural landscape and that appear in scale and context with their surroundings.

- (6) Minimize or mitigate the potential adverse visual effects associated with the construction of Wireless Telecommunication 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.

#### **Section 4B.2. Definitions**

For the purposes of this Wireless Telecommunication Facilities ordinance the following terms, phrases, words and their derivations shall have the meaning given herein.

<b>Accessory Equipment</b>	Any equipment serving or being used in conjunction with a Wireless Telecommunications Facility. 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.
<b>Administrative Approval</b>	Zoning approval that the Zoning Administrator or his/her designee is authorized to grant after Administrative Review.
<b>Alternative Structure</b>	For antenna-mounting purposes, a structure which is not primarily constructed for the purpose of holding antennas but on which one or more antennas may be mounted. The term Alternative Structure includes, but is not limited to, buildings, silos, water tanks, pole signs, lighting standards, steeples and electric distribution, electric transmission or other utility poles.
<b>Antenna</b>	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 as panels, microwave dishes and satellite dishes, and omni directional antennas, such as whip antennas.
<b>Antenna Array</b>	Two or more antennas that operate as components of a complete antenna suite for a single Wireless Telecommunication Facility.

- Antenna, Concealed** An antenna that is designed and/or erected on or in a building or alternative structure in such a way that it blends in with the existing façade and/or is located in such a way that it is not readily visible or discernible to the average individual at the adjacent street level.
- Antenna, Dual-Band** An antenna with separate elements for two or more commercial wireless service frequency bands (i.e., Cellular and PCS or specialized Mobile Radio).
- Appalachian Trail Overlay District** For purposes of the Wireless Telecommunication Facilities Ordinance, the area within one thousand (1000) feet of the Centerline of the Appalachian Trail.
- Broadcast Tower** A structure situated on a lot that is intended for transmitting television or AM/FM radio signals.
- 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.
- Collocation** For purposes of regulating commercial wireless telecommunication facilities, collocation means the placement of additional antennas or antenna arrays on an existing or approved telecommunication tower (or alternative structure or Concealed Telecommunication Support Structure), the sharing of an antenna or antenna array, or otherwise sharing a common location by two or more FCC licensed providers of personal wireless services. Collocation includes antennas, combiners, transmitters, receivers and related electronic equipment, cabling, wiring, equipment enclosures and other components or improvements associated with a wireless telecommunication facility.
- Combiner** An electronic device which allows two or more wireless service providers to share an antenna or antenna array by combining signals being transmitted, and splitting signals being received.
- Commercial Wireless Service Provider** Persons or entities who operate radio systems requiring an FCC license and who employ those facilities to provide point-to-point microwave links for wireline communication services (or connectivity between adjacent antenna sites), fixed wireless

(including microwave), or mobile wireless communication services to third parties for compensation. Commercial Wireless Service Providers include, but are not limited to Cellular, Personal Communication Services (PCS), Specialized Mobile Radio (SMR), Enhanced Specialized Mobile Radio (ESMR), paging, Competitive Local Exchange Carriers (CLEC) utilizing point-to-point microwave, and other point-to-point microwave links for wireline communication services.

<b>Conditional Use</b>	A use which because of special requirements or characteristics may be permitted in a particular zoning district only after review by the Board of Zoning Appeals and upon issuance of a conditional use permit, and subject to the limitations and conditions specified in the zoning ordinance.
<b>Conditional Use Permit</b>	A permit issued upon completion of the Development Review System which allows for the proper integration of compatible uses into the community.
<b>Discernible</b>	Capable of being distinguished with the eye or mind from its surroundings as a telecommunications tower.
<b>Distributed Antenna Systems (DAS)</b>	A wireless telecommunication facility where one or more commercial wireless providers share common antenna arrays associated with microcells connected by fiber optic cables strung along existing utility poles to a common location where ground-based equipment enclosures are connected to a combiner.
<b>Electric Distribution Poles</b>	Metal, wooden or concrete towers and poles used to suspend wires transporting electricity between substations at the terminus of transmission lines and individual customer premises.
<b>Electric Transmission Towers</b>	Metal, wooden or concrete towers and poles used to suspend wires transmitting electricity between generating plants and substations supplying electricity to distribution and feeder lines.
<b>Equipment Enclosure</b>	For purposes of regulating Wireless Telecommunication Facilities, equipment enclosure means a building, cabinet or shelter used to house transmitters, receivers and other electronic equipment and accessories.
<b>FAA</b>	Federal Aviation Administration
<b>FCC</b>	Federal Communications Commission

<b>Functionally Equivalent Services</b>	FCC licensed providers of Commercial Mobile Radio Services (CMRS) classified as Cellular, Personal Communication Services (PCS), Paging, Specialized Mobile Radio (SMR) and Enhanced Specialized Mobile Radio (ESMR).
<b>Governmental User</b>	Federal, state or local governments, or agencies or instrumentalities thereof, volunteer fire departments or rescue squads which operate radio systems (including microwave) requiring an FCC license, and which employ those facilities exclusively for intra-governmental or inter-governmental public service, public safety or administrative purposes.
<b>Harpers Ferry Overlay District</b>	For purposes of the Wireless Telecommunication Facilities Ordinance, an area bounded on the north by a line running west from the Potomac River shore to and along Engle Switch Road to its intersection with Route 230; thence south along Route 230 to its intersection with the CSX Railroad Valley Line; thence south along said railroad to Milepost 4 on the railroad at its intersection with Millville Road; thence east from that point to and across the Shenandoah River to a point 1000 feet distant on the eastern shore of the said Shenandoah River; then following a line 1000 feet inland from that opposite shore of the Shenandoah River to its confluence with the Potomac River; then along a line 1000 feet inland from the Potomac river shore running east to the Virginia state line; thence north to the Potomac River shore; thence west along the shore of the Potomac River to the point of origin.
<b>Historic Site/Property</b>	Any lot, parcel, structure, or designated area which is eligible for listing on, or which is listed on the National Register of Historic Places; is listed on a register of significant historic resources by the State of West Virginia; or is designated as a significant historic resource by the Jefferson County Historic Landmarks Commission.
<b>Lattice Tower</b>	A support structure constructed of vertical metal struts and cross braces forming a triangular or square structure which often tapers from the foundation to the top.
<b>Major Modification</b>	Improvements to existing Wireless Telecommunications Facilities or Support Structures that result in a substantial change to the Facility or Structure. Collocation of new antenna arrays 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/or replacement of the structure.

<b>Minor Modification</b>	Improvements to existing Wireless Telecommunication 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.
<b>Microcell</b>	A Wireless Telecommunication Facility for which all electronics (if not located within an existing and approved building) are contained in equipment enclosures which, together, occupy less than 25 cubic feet, and for which all antennas are less than three (3) feet in height and have a combined surface area of less than ten (10) square feet.
<b>Monopole</b>	A support structure constructed of a self-supporting hollow metal tube securely anchored to a foundation.
<b>Neighborhood</b>	An area generally confined to a one-mile radius from the perimeter of a proposed development.
<b>PCS</b>	Personal Communication Services.
<b>Primary Public Safety Provider</b>	An FCC licensed governmental user that uses wireless telecommunication facilities to provide primary communications for law enforcement, fire, ambulance or related emergency services. Primary Public Service Provider does not include Commercial Wireless Service Providers, or Competitive Local Exchange Carriers (CLEC), who provide telecommunication services on a commercial basis to Primary Public Service Providers, or who deliver emergency calls or messages from its customers to a Public Safety Answering Point (PSAP).
<b>Private Business User</b>	Persons or entities which operate radio facilities (including microwave) requiring an FCC license solely for intra-company communications and who do not employ those facilities to offer fixed or mobile wireless communication services, or point-to-point microwave links for commercial wireline communication services, to third parties for compensation.
<b>Support Structure</b>	A structure designed to support Wireless Telecommunication Facilities including, but not limited to, monopoles, lattice towers, utility poles and other freestanding self-supporting structures.

<b>Tower Base</b>	The foundation, usually concrete, on which a telecommunication tower is situated. For measurement calculations, the tower base is the actual or geometric center of the tower. For structures lacking a foundation the tower base is the ground elevation of the structure.
<b>Tower Height</b>	The vertical distance measured from the tower base to the highest point on a telecommunication tower, including any antennas or other equipment affixed thereto, but excluding any lightning protection rods extending above the tower and attached equipment.
<b>Tower Site</b>	The land area (including any associated easement areas) that contains, or will contain, any proposed telecommunication tower, related equipment enclosures and other improvements; together with any tower fall zone.
<b>Utility Poles</b>	Metal, wooden or concrete poles used to suspend wires or cables for electric, telephone or television cable services.
<b>Vegetative Canopy</b>	Trees which create a roof-like layer of spreading branches.
<b>Visible</b>	Capable of being seen by the unaided eye in the daylight.
<b>Wireless Telecommunication Antenna</b>	The physical device through which electromagnetic, wireless telecommunications signals authorized by the Federal Communications Commission are transmitted or received. Antennas used by amateur radio operators are excluded from this definition.
<b>Wireless Telecommunication Equipment Shelter</b>	The structure in which the electronic receiving, transmitting and relay equipment for a wireless telecommunications facility is housed.
<b>Wireless Telecommunication Facility</b>	A facility consisting of the equipment and structures involved in transmitting or receiving telecommunications or radio signals to or from a mobile radio communications source and transmitting those signals to a central switching computer which connects the mobile unit with the land-based telephone lines.
<b>Wireless Telecommunication Facility, Co-Located</b>	A wireless telecommunication facility, other than a concealed or microcell wireless telecommunication facility, located on (or proposed to be located on) an existing telecommunication tower.

**Wireless Telecommunication Facility, Concealed** A wireless telecommunication facility with all antennas camouflaged to match or complement the color and architectural treatment of the surface of an existing structure upon which they are mounted, or which have all facility components concealed behind a façade or parapet wall.

**Wireless Telecommunication Facility, Microcell** A wireless telecommunication facility for which all electronics, if not placed within an existing or approved building, are contained in equipment enclosures which, together, occupy less than 25 cubic feet and for which all antennas are less than three (3) feet in height and have a combined surface area of less than ten (10) square feet.

**Wireless Telecommunication Tower** A structure intended to support equipment and antennas used to transmit and/or receive telecommunications signals including monopoles, guyed and lattice construction steel structures.

### **Section 4B.3 Classification of Wireless Telecommunication Facilities**

For purposes of administering this Ordinance, Wireless Telecommunication Facilities shall be classified as follows:

1. Exempt Facilities
2. Microcellular Wireless Telecommunication Facilities
3. Distributed Antenna Systems (DAS)
4. Concealed Wireless Telecommunication Facilities
5. Co-located Wireless Telecommunication Facilities
6. Temporary Wireless Telecommunication Facilities
7. Wireless Telecommunication Towers

Exempt Facilities are allowed by right. Provided administrative review demonstrates that an applicant has met the submittal and design criteria set out below, the Zoning Administrator may issue a Location Improvement Permit for all of the other categories of Wireless Telecommunication Facilities set forth above except for Wireless Telecommunication Towers. Wireless Telecommunication Towers shall require a Conditional Use Permit (CUP).

### **Section 4B.4 Exempt Facilities Allowed by Right**

This section covers antennas other than those associated with commercial wireless telecommunication facilities, governmental users, television and radio broadcast facilities, and private business users requiring an antenna support structure of twelve feet or less. Antennas allowed by right subject to special requirements of this section include:

1. Amateur radio facilities mounted on supporting structures less than 100 feet in height, provided however, that commercial wireless providers and private

business users may not co-locate antennas on an amateur radio tower irrespective of its height.

2. Residential antennas for receiving television or AM or FM radio broadcast signals.
3. Residential or business customer premise antennas for receiving microwave, satellite or broadcast television signals, provided such antennas are less than one meter (39.4 inches) in diameter and are mounted on a support structure less than twelve (12) feet in height.

#### **Section 4B.5 Microcellular Wireless Telecommunication Facilities**

Microcellular Wireless Telecommunications Facilities are permitted in all zoning districts. The Zoning Administrator may issue a Location Improvement Permit for a Microcellular Wireless Telecommunication Facility consistent with the following terms and conditions:

1. Microcellular Wireless Telecommunication Facilities are permitted on buildings and other existing structures which do not require an increase in height to accommodate the facility.
2. Microcellular Wireless Telecommunication Facilities may be co-located on existing nonconforming structures if the Zoning Administrator determines that such co-location would reduce visual impacts, would be a preferable alternative to location of a new telecommunication tower, and would not interfere with decommissioning of other structures.
3. All antennas associated with a microcellular wireless telecommunication facility (other than on a utility pole) shall be flush-mounted against the side of the building or structure and camouflaged to match or complement the color and architectural treatment of the surface on which they are mounted, or placed within a radome to conceal them from view.
4. Antennas associated with a Microcellular Wireless Telecommunication Facility mounted on a utility pole must be mounted atop the pole in a compact unicellular arrangement, or flush mounted against the sides of the pole, and shall be colored to match or complement the color of the utility pole and shall be mounted in as unobtrusive a manner as possible. Utility poles may be extended up to twenty (20) feet in height to accommodate antennas for a Microcellular Wireless Telecommunication Facility.
5. For applications involving utility pole height increases in the Harpers Ferry Overlay District, the Zoning Administrator shall refer the application to the Jefferson County Historic Landmarks Commission for review and comment before issuing a Location Improvement Permit.
6. For applications involving utility pole height extensions in the Appalachian Trail Overlay District the Zoning Administrator shall refer the application to the Appalachian Trail Conservancy and the National Park Service for review and comment prior to issuance of a Location Improvement Permit.

7. Antennas associated with a microcellular wireless telecommunications facility may not be co-located on a tower or other support structure used by an amateur radio operator.
8. Equipment enclosures associated with Microcellular Wireless Telecommunication Facilities mounted on a building or other associated existing structure (other than a utility pole) shall be mounted inside the building or structure, attached to an exterior surface, or placed underground or on a concrete pad on the ground outside the building or structure. If mounted on an exterior surface, the enclosures shall be colored or camouflaged to match or complement the color and architectural treatment of the surface on which they are mounted. If placed on a concrete pad on the ground, the enclosures shall be screened so as to make them unobtrusive.
9. If any equipment associated with a Microcellular Wireless Telecommunication Facility is placed on the ground a site plan that complies with Section 11.3 of the Subdivision Ordinance is required. When other provisions of any County Ordinance are in conflict with Section 11.3, the provisions in Section 11.3 shall be controlling.
10. Equipment enclosures associated with Microcellular Wireless Telecommunication Facilities mounted on utility poles shall be secured in a manner so that the enclosure shall be resistant to tampering and vandalism and so as to minimize electrical hazards.
11. All cabling and wiring connecting antennas, equipment enclosures, and other components of Microcellular Wireless telecommunication Facilities shall be colored or concealed in a manner that renders them unobtrusive.

#### **Section 4B.6 Distributed Antenna Systems (DAS)**

Distributed Antenna Systems (DAS) allow all licensed commercial wireless providers in a given locale to share common antenna arrays deployed with microcells on existing utility poles. These microcells, in turn, are connected via fiber optic cables on those poles to a location where individual provider equipment cabinets are connected to these microcells through a combiner that combines signals being transmitted by each provider, and splits signals being received for routing to each provider.

DAS networks are the optimal and preferred method of deploying wireless infrastructure throughout the Harpers Ferry Overlay District.

Before an application for a Wireless Telecommunications Tower within the Harpers Ferry Overlay District may be approved, wireless providers must submit propagation studies demonstrating why a DAS network would not provide effective radio signal coverage throughout this area, and an economic analysis comparing DAS deployment costs with those for tower deployment, and demonstrating why a DAS network would not be economically feasible for its network. If an applicant believes a DAS network would not be economically feasible for a single carrier, an economic model shall be presented showing the number of carriers that would be required for a viable DAS network in this vicinity.

If any equipment associated with a Distributed Antenna System is placed on the ground, a site plan that complies with Section 11.3 of the Subdivision Ordinance is required. When other provisions of any County Ordinance are in conflict with Section 11.3, the provisions in Section 11.3 shall be controlling.

#### **Section 4B.7 Concealed Wireless Telecommunication Facilities**

Concealed Wireless Telecommunication Facilities are permitted in all zoning districts. The Zoning Administrator may issue a Location Improvement Permit for a Concealed Wireless Telecommunication Facility consistent with the following terms and conditions:

1. Concealed Wireless Telecommunication Facilities are permitted on buildings and alternative structures (other than telecommunication towers).
2. For purposes of this section antennas mounted on electric transmission towers shall qualify as Concealed Wireless Telecommunication Facilities provided that antennas associated with such facilities do not extend more than twenty (20) feet above the top of the supporting structure, nor more than two (2) feet from the sides of the structure. Equipment enclosures associated with such facilities may be mounted on the structure, placed underground or on the ground. If placed on the ground, equipment enclosures shall be placed on a concrete pad and screened so as to make them unobtrusive.
3. For purposes of this section antennas mounted on an electric distribution pole, utility or street lighting pole or traffic light pole shall qualify as a Concealed Wireless Telecommunication Facility provided antennas associated with such facilities shall not extend more than twenty (20) feet above the top of the existing support structure, nor more than two (2) feet from the sides of the structure, and equipment enclosures associated with such facilities shall occupy less than sixty (60) cubic feet.
4. Utility poles may be extended up to twenty (20) feet in height to accommodate antennas for a Concealed Wireless Telecommunication Facility.
5. For any utility pole height increases in the Harpers Ferry Overlay District, the Zoning Administrator shall refer the application to the Jefferson County Historic Landmarks Commission for review and comment before issuing a Location Improvement Permit.
6. Applications for such utility pole height extensions in the Appalachian Trail Overlay District shall be referred by the Zoning Administrator to the Appalachian Trail Conservancy and the National Park Service for review and comment prior to issuance of a Location Improvement Permit.
7. If any equipment associated with a Microcellular Wireless Telecommunication Facility is placed on the ground a site plan that complies with Section 11.3 of the Subdivision Ordinance is required. When other provisions of any County Ordinance are in conflict with Section 11.3, the provisions in Section 11.3 shall be controlling.
8. Antennas associated with Concealed Wireless Telecommunication Facilities shall not exceed six (6) feet in height. If flush-mounted on the side of a building or

alternative structure, antennas shall be camouflaged to match or complement the color and architectural texture of the surface. Antennas extending above the roof line of a building shall be concealed behind a radio frequency (RF) transparent parapet wall or façade which is camouflaged to match or complement the color and architectural treatment of the building or structure. Such parapet walls or facades shall not extend more than ten (10) feet above the roof line.

9. Antennas associated with a Concealed Wireless Telecommunications Facility shall not be co-located on a tower or other support structure used by an amateur radio operator.
10. Equipment enclosures associated with Concealed Wireless Telecommunication Facilities may be placed inside a building or, if placed on a rooftop, all equipment enclosures shall be mounted behind a parapet wall or façade which is camouflaged to match or complement the color and architectural treatment of the building. If antennas are placed on a structure other than a building, equipment enclosures associated with the facility may be mounted on the structure or placed underground or on a concrete pad. If placed on the ground on a concrete pad such equipment enclosures shall be screened so as to make them unobtrusive.
11. All cabling and wiring connecting antennas, equipment enclosures, and other components of Concealed Wireless Telecommunication Facilities shall be colored or concealed in a manner that renders them unobtrusive.
12. Generators may not be used as a primary electrical power source. Backup generators shall only be operated during power outages or for testing and maintenance purposes. Testing and maintenance shall only take place on weekdays between 8:00 a.m. and 5:00 p.m.

#### **Section 4B.8 Co-located Wireless Telecommunication Facilities**

Co-located Wireless Telecommunications Facilities are permitted within all zoning districts. The Zoning Administrator may issue a Location Improvement Permit for a Co-located Wireless Telecommunication Facility consistent with the following terms and conditions

1. Before approving a Co-located Wireless Telecommunication Facility, the Zoning Administrator shall consider the desirability of replacing, relocating, decommissioning, modifying or otherwise concealing the existing facility.
2. Antennas associated with a Co-located Wireless Telecommunications Facility shall not be co-located on a support structure used by an amateur radio operator.
3. Co-located Wireless Telecommunication Facilities shall meet the following design standards:
  - a. Use of dual-band/multi band antennas (to allow sharing of antennas or antenna arrays by wireless providers using different frequency bands); or by using combiners (to allow antenna sharing by multiple users) is encouraged in order to minimize the height of support structures and the visual impact of multiple co-located antennas or antenna arrays. Applications should include a narrative discussion addressing this criteria.

- b. Use of dual-polarized antennas (that electronically combine the functions of two or more antennas separated by physical space between them into one antenna to transmit and receive signals in a single sector of an antenna array) are encouraged to minimize the visual cross-section of a co-located facility.
- c. Antennas associated with a Co-Located Wireless Telecommunication Facility shall be mounted so as to present the smallest possible silhouette, profile or cross-section. Preferred antenna mounting scenarios are, in order of descending preference:
  - i. Compact dual-polarized antennas in a cylindrical unicell arrangement less than two feet in diameter mounted atop the support structure;
  - ii. Panel antennas flush-mounted against the support structure;
  - iii. Antennas mounted at the end of straight or curved davit arms or brackets extending from the sides of the tower
- d. No co-located Wireless Telecommunication Facility located on a telecommunications tower shall have constructed thereon, or attached thereto in any way, any platform, catwalk, crow's nest, triangular framework, or like structures or equipment, except during periods of construction or repair.
- e. Curved or straight davit arms or brackets used for antenna mounting shall be connected to the support structure at the base of the arms or brackets only and such arms or brackets (and any antennas or hardware mounted thereon) shall not be physically interconnected with any similar arm or bracket.
- f. All equipment enclosures and other improvements accessory to a co-located Wireless Telecommunication Facility shall be architecturally designed to blend in with the surrounding environment and shall be maintained in good appearance and repair. No equipment enclosure may exceed twelve (12) feet in height. Ground mounted equipment shall be screened from view by suitable vegetation, except where a design of non-vegetative screening better reflects and complements the architectural character of the surrounding neighborhood.
- g. If any equipment associated with a Microcellular Wireless Telecommunication Facility is placed on the ground a site plan that complies with Section 11.3 of the Subdivision Ordinance is required. When other provisions of any County Ordinance are in conflict with Section 11.3, the provisions in Section 11.3 shall be controlling.
- h. Generators may not be used as a primary electrical power source. Backup generators shall only be operated during power outages or for testing and maintenance purposes. Testing and maintenance shall only take place on weekdays between the hours of 8:00 a.m. and 5:00 p.m.
- i. Equipment enclosures and other improvements shall be enclosed within a security fence consisting of chain link fencing at least eight (8) feet in height. The fence may be topped with barbed wire. The Zoning Administrator may require as a condition of approval that the

fencing be screened by appropriate landscaping or other means. The Zoning Administrator may waive or modify the fencing requirement if he or she determines that doing so will enhance the overall appearance of the facility without any compromise in safety or security.

- j. Signage at any ground-based portion of a Co-located Wireless Telecommunication Facility site shall conform to the following provisions:
  - i. A sign listing the name of the wireless telecommunication provider operating the site, the site name or number and an emergency telephone number shall be posted at or near the entrance to the site so as to be readily visible to persons outside the site's security fencing;
  - ii. Equipment hazard warning and informational signs are permitted;
  - iii. The posting of any other signs or advertising is prohibited at any Wireless Telecommunication Facility or upon any Wireless Telecommunications Tower.
- k. The Zoning Administrator may require any other conditions deemed necessary or desirable to ameliorate the impact of a co-located Wireless Telecommunication Facility on the adjacent properties and uses.
- l. Before an application for a Co-located Wireless Telecommunications Facility can be processed, a copy of the applicant's FCC license must accompany its application. If FCC licenses for the applicant have been provided to the Jefferson County Department of Planning & Zoning in conjunction with previous wireless facility applications, the applicant may certify that such licenses remain in full force and effect.
- m. Co-located Wireless Telecommunication Facilities shall not be constructed or operated unless the wireless provider has general liability coverage of at least \$1,000,000. The owner or operator of a Co-located Wireless Telecommunication Facility shall provide the Zoning Administrator with a certificate of insurance showing evidence of such coverage and the certificate shall contain a requirement that the insurer notify the Zoning Administrator thirty (30) days prior to the cancellation, modification or failure to renew the required insurance coverage.

#### **Section 4B.9 Temporary Wireless Telecommunication Facilities**

Temporary Wireless Telecommunication Facilities are permitted in all zoning districts. The Zoning Administrator may issue a Location Improvement Permit for a Temporary Wireless Telecommunication Facility consistent with the following terms and conditions:

1. Temporary Wireless Telecommunication Facilities, including but not limited to Cell-on-Wheels (COW), may be placed at or near the location of an existing, proposed or approved Wireless Telecommunication Facilities for periods up to

- seventy-two (72) hours for equipment or signal propagation testing purposes or, where an existing facility is temporarily unavailable due to scheduled or unscheduled maintenance, without any requirement for a permit.
2. In the event of a natural disaster, catastrophic event or public emergency that either renders an existing Wireless Telecommunication Facility unusable, or creates an urgent need for supplemental capacity to manage the emergency, temporary facilities may be placed for periods of up to one week upon the authority of an appropriate public official. Public officials who may grant such approvals include the Zoning Administrator, County Administrator, and the Director of the Office of Homeland Security and Emergency Management. Permits for temporary facilities may be extended for successive one week periods for the duration of the emergency by those same officials.
  3. Permits may be issued by the Zoning Administrator for up to one week for temporary facilities needed in conjunction with scheduled special events at specific locales that are likely to generate a need for additional capacity at the event which is expected to exceed existing installed capacity.
  4. Fees for permits for Temporary Wireless Telecommunication Facilities shall be in accordance with the Department of Planning and Zoning schedule of fees and charges.

#### **Section 4B.10 Wireless Telecommunication Towers**

##### **Section 4B.10.1 Conditional Use Permit Required**

Wireless Telecommunication Towers are permitted in all zoning districts subject to the provisions of this section. A Conditional Use Permit (CUP) shall be required for all new Wireless Telecommunication Towers, as well as for Major Modifications to an existing Wireless Telecommunication Facility or Support Structure that results in a substantial change to the Facility or Structure. Application and other fees associated with an application for a CUP shall be in accordance with the Department of Planning & Zoning's schedule of fees and charges.

##### **Section 4B.10.2 Retention of Consultants**

The Zoning Administrator may elect to retain outside consultants or professional services to review a Conditional Use Permit application for a Wireless Telecommunication Tower and to make recommendations on relevant issues including, but not limited to, verification of the applicant's due diligence, analysis of alternatives, proof of technical need, conditions of approval, and compliance with State and Federal rules and regulations at the applicant's expense. An application shall not be deemed complete until the applicant has posted a bond or other security satisfactory to the Zoning Administrator in accordance with the Department of Planning & Zoning's schedule of fees and charges. Private Business Users operating a single Wireless Telecommunication Facility at their principal place of business, and Governmental Users are exempt from this bond requirement.

### **Section 4B.10.3 Applicant's Burden of Proof**

The applicant for a Conditional Use Permit for any Wireless Telecommunication Tower bears the burden of demonstrating by substantial evidence in a written record that a *bona fide* need exists for the proposed structure at its proposed height and location, and that no reasonable combination of locations, techniques and/or technologies will obviate the need for, or mitigate the height or visual impact of, the proposed structure.

### **Section 4B.10.4 Proof of Eligibility**

Speculative Wireless Telecommunication Towers are prohibited in Jefferson County. Before an application for a Wireless Telecommunications Tower can be processed, a copy of the applicant's FCC license must accompany its application. If the applicant is not an FCC licensee, the applicant must demonstrate that it has binding commitments from one or more FCC licensees to utilize the tower and must submit a copy of each such wireless provider's FCC license. If such FCC licenses have been provided to the Jefferson County Department of Planning & Zoning in conjunction with previous tower applications, the applicant may certify that such licenses remain in full force and effect.

### **Section 4B.10.5 Demonstration of Need**

As part of its application submission for a Conditional Use Permit the applicant shall be required to submit propagation maps demonstrating a technical need for its proposed tower and justifying the height of its antennas on the structure. One propagation map shall depict existing coverage without the proposed site and another depicting coverage with the proposed site. Such maps shall identify all adjacent sites whether existing, approved or proposed. The Zoning Administrator may require the applicant to submit similar propagation maps at successively lower elevations to determine the point at which radio frequency (RF) signal propagation becomes ineffective or uneconomical. Each propagation map shall be accompanied by an engineer's affidavit attesting to the parameters or variables used to create the map.

Such propagation studies shall be submitted in both hard copy and in electronic Form to facilitate information sharing, inclusion on the county's web site and to otherwise maximize public awareness.

### **Section 4B.10.6 Balloon Test**

1. An applicant shall conduct a balloon or crane test to simulate the height of the proposed tower. Photo simulations of such tests taken from at least five different locations shall be submitted with the application for a Conditional Use Permit in both hard copy and electronic form.

2. Notice of the dates and times of such tests shall be mailed to all property owners within a one-quarter mile (1320 feet radius) from the proposed location at least ten (10) days prior to such tests. Such notices shall designate a primary date and an alternate date in case of inclement weather. The Zoning Administrator shall review and approve the sufficiency of the notice prior to mailing. An affidavit of mailing accompanied by a list of recipients shall be included in the application file.
3. Such notice shall also be published in the legal advertisements section of a newspaper of general circulation in Jefferson County at least ten (10) days prior to such tests. Such notices shall designate a primary date and an alternate date in case of inclement weather. The newspaper's affidavit of publication shall be submitted as part of the application file.
4. In the event the applicant seeks to increase the height of the proposed tower, or move its location more than fifty (50) feet laterally, from that stated in its original notices, additional notice shall be required to be given consistent with the above requirements.

#### **Section 4B.10.7 Co-location Policy**

It is the policy of Jefferson County to encourage co-location and the use of existing structures where appropriate. In furtherance of that policy, the following provisions shall apply to an application for a Conditional Use Permit for a Telecommunication Tower:

1. A Conditional Use Permit for a Telecommunication Tower shall not be issued unless the tower is designed structurally, electrically, mechanically and in all other respects to accommodate at least one (1) additional wireless user. An application for a Conditional Use Permit shall not be deemed complete until the applicant submits:
  - a. A letter of intent agreeing to make all of its wireless telecommunication facilities in Jefferson County (including existing facilities) available to providers of functionally equivalent services at commercially reasonable rates;
  - b. A copy of an executed lease for the proposed tower site that allows co-location, or leasing or sub-leasing, to other providers of functionally equivalent services.
2. Applicants are encouraged to meet co-location requirements by using dual-band/multi-band antennas to allow sharing of antennas or antenna arrays by wireless providers using different frequency bands or by using combiners to allow sharing by users of the same frequency band.
3. It is the policy of Jefferson County to encourage co-location of antennas on existing electric transmission towers before approving the construction of a new Telecommunications Tower. A Conditional Use Permit for a Telecommunication Tower shall not be approved if an electric transmission tower is located above, or within twenty-five (25) feet below, the ground elevation of, and within a one quarter mile radius laterally, of a proposed Telecommunication Tower, unless the applicant can demonstrate that:

- a. sufficient easements or other interests in real property cannot be obtained to accommodate the Wireless Telecommunication Facility on the electric transmission tower, or;
  - b. That the electric utility owning the electric transmission tower is unwilling to allow its use for wireless facilities.
4. Antennas may extend up to twenty (20) feet above the height of existing electric transmission towers if such height extensions are preferable to placement of a new Telecommunication Tower.
5. It is the policy of Jefferson County that, where suitable electric transmission towers are not available for co-location of antennas, that all other existing structures be considered and discussed in the application before a Telecommunication Tower shall be approved. A Conditional Use Permit for a Telecommunication Tower shall not be approved unless the equipment planned for the proposed tower cannot be accommodated on existing or approved towers, buildings or alternative structures more than thirty (30) feet in height (after first considering electric transmission towers) within a one-quarter mile (1320 foot) radius of the proposed Telecommunication Tower due to one or more of the following reasons:
  - a. The planned equipment would exceed the structural capacity of the existing or approved tower, building or alternative structures, as documented by a qualified and licensed West Virginia professional engineer, and the existing or approved tower, building or structure cannot be reinforced, modified or replaced to accommodate planned or functionally equivalent equipment at a reasonable cost;
  - b. The planned equipment would cause interference materially impacting the usability of other existing or planned Wireless Telecommunication Facilities, as documented by a qualified and licensed West Virginia radio frequency (RF) engineer, and the interference cannot be prevented at a reasonable cost;
  - c. Existing and approved towers, buildings or other structures within the search radius, or combinations thereof, cannot accommodate the planned equipment at a height necessary to function reasonably, as documented by a qualified and licensed West Virginia professional engineer; or
  - d. Other unforeseen reasons that make it infeasible to locate the planned telecommunications equipment upon existing or approved towers, buildings or alternative structures.
6. Antennas associated with a Wireless Telecommunication Facility may not be co-located on a tower or other support structure used by an amateur radio operator.
7. Before approving co-location of a Wireless Telecommunication Facility on a nonconforming Telecommunication Tower, the Planning Commission may consider the desirability of replacement, relocation, decommissioning, modification, or concealment of such nonconforming structure.

### **Section 4B.10.8 Insurance**

Wireless Telecommunication Towers shall not be constructed or operated unless the wireless provider has general liability coverage of at least \$1,000,000. As part of its application, the owner or operator of a proposed Wireless Telecommunication Tower shall provide the Zoning Administrator with a certificate of insurance showing evidence of such coverage and the certificate shall contain a requirement that the insurer notify the Zoning Administrator thirty (30) days prior to the cancellation, modification or failure to renew the required insurance coverage.

### **Section 4B.10.9 Cultural and Historic Resources Review**

If a Wireless Telecommunication Tower is proposed within a one-mile radius of a structure or property listed, or eligible for listing, on the National Register of Historic Places, or a state or county designated historic site or structure, the applicant shall provide both visual impact analysis and justification as to why the tower could not be sited elsewhere.

All applications for a Wireless Telecommunication Tower shall be referred to the Jefferson County Historic Landmarks Commission for review and comment.

If a proposed Wireless Telecommunication Tower is within one-mile of the Appalachian Trail, the application shall be referred to the Appalachian Trail Conservancy and the National Park Service for review and comment.

### **Section 4B.10.10 Design Criteria**

Wireless Telecommunication Towers shall comply with the following design criteria:

#### **1. Site Plan.**

A site plan that complies with Section 11.3 of the Subdivision Ordinance is required for all Wireless Telecommunication Towers. When other provisions of any County Ordinance are in conflict with Section 11.3, the provisions in Section 11.3 shall be controlling.

#### **2. Height Restrictions**

- a. The height of any proposed support structure shall not exceed the minimum height necessary to meet the coverage objectives of the wireless facility.
- b. Wireless Telecommunication Towers in the Industrial-Commercial zoning district shall not exceed 199 feet. Towers in all other zoning districts may not exceed 100 feet.

### **3. Fall Zone**

- a. Wireless Telecommunication Towers shall be set back from all property lines a distance equal to their height measured from the base of the structure to its highest point. Additional easements may be acquired on adjacent properties to meet the fall zone requirement.
- b. No residential dwellings may be located in the fall zone on either the primary parcel or in any easement area on adjacent parcels.

### **4. Visual Cross Section**

Antennas and antenna arrays located on a Wireless Telecommunication Tower shall be mounted so as to present the smallest possible silhouette, profile or visual cross-section. Preferred antenna mounting scenarios are, in order of descending preference:

- a. Compact dual-polarized antennas in a cylindrical unicast arrangement less than two feet in diameter mounted atop the support structure;
- b. Panel antennas flush-mounted against the support structure;
- c. Antennas mounted at the end of straight or curved davit arms or brackets extending from the sides of the tower

### **5. Signage**

Signage at any ground-based portion of a Wireless Telecommunication Facility site shall conform to the following provisions:

- a. A sign listing the name of the wireless telecommunication provider operating the site, the site name or number and an emergency telephone number shall be posted at or near the entrance to the site so as to be readily visible to persons outside the site's security fencing;
- b. Equipment hazard warning and informational signs are permitted;
- c. The posting of any other signs or advertising is prohibited at any Wireless Telecommunication Facility or upon any Wireless Telecommunication Tower.

### **6. Lighting & Marking**

Wireless Telecommunication Towers shall not be lighted or marked unless Required by the Federal Communications Commission (FCC) or by the Federal Aviation Administration (FAA).

### **7. Electrical Supply**

Generators may not be used as a primary electrical power source. Backup generators shall only be operated during power outages or for testing and maintenance purposes. Testing and maintenance shall only take place on weekdays

between the hours of 8:00 a.m. and 5:00 p.m..

#### **8. Fencing**

Wireless Telecommunication Towers, equipment enclosures and other Improvements shall be enclosed within a security fence consisting of chain link fencing at least eight (8) feet in height. The fence may be topped with barbed wire. The Planning Commission may require as a condition of approval that the fencing be screened by appropriate landscaping or other means. The Planning Commission may waive or modify the fencing requirement if it determines that doing so will enhance the overall appearance of the facility without any compromise in safety or security.

#### **9. Tower Color**

Wireless Telecommunication Towers shall have a flat gray or galvanized finish unless the Planning Commission determines that another color scheme would be a preferable aesthetic alternative.

#### **Section 4B.11 Maintenance & Removal Bonds**

As part of its application each applicant for a Wireless Telecommunications Facility shall be required to execute a standard Maintenance/Removal agreement binding the applicant and its successors and assigns to properly maintain the exterior appearance of, and to ultimately remove such facilities, upon abandonment or cessation of operations. The applicant shall be required to post a bond for this purpose in accordance with the Department of Planning & Zoning schedule of fees and charges. The applicant shall be required to continue such bond or other security until such time as the facility has been removed and all other requirements of the Maintenance/Removal agreement have been satisfied. Private business users operating a single wireless telecommunications facility at their principal place of business and Governmental Users are exempt from this bond requirement.

#### **Section 4B.12 Abandonment & Removal**

1. Any Wireless Telecommunication Facility or Support Structure that is not operated for a period of twelve (12) consecutive months shall be considered abandoned.
2. The owner or operator of any Wireless Telecommunication Facility or Support Structure shall remove the Facility within six (6) months of its abandonment. In the event the owner or operator shall fail to remove said facility in a timely manner, Jefferson County may remove the facility and the cost of removal shall be charged against the owner or operator's Maintenance & Removal bond.

July 16, 2010

TO: Ms. Jennifer Brockman, Director, Planning and Zoning  
✓ Mr. John Maxey, President, Planning Commission

FROM: Carl Schultz, Keyes Ferry Acres resident

SUBJECT: Mountain Communities Watershed Plan

I attended the July 15 meeting of the Mountain Communities Watershed Plan Meeting. If the major concerns in this watershed are phosphorous, nitrogen, and sediment flow into the Shenandoah River, then the solutions are fairly obvious:

1. Formulate a septic ordinance that mandates biannual septic tank pump out.
2. Empower the Jefferson County Health Department to conduct inspections of septic systems, starting with the oldest and working up to the most recently installed.
3. Sediment—work toward obtaining federal or state grants to finance improvement of the road systems on the mountain. This would be a big ticket item and would require outside financial assistance.

The most serious watershed concern not directly addressed at the meeting is the potential for growth on the mountain. John Maxey regards this as a serious issue, but Lee Snyder does not. Who is right? The land records are available and should be reviewed to develop an idea as to what the Blue Ridge would look like if completely built out. If the growth potential in this fragile ecosystem is great, then provision should be made in future zoning/land use ordinances to control and limit that growth.

Located on the western slope of the Blue Ridge Mountain, these communities should be subject to strict growth controls without which unimpeded growth would result in flows of nitrogen, phosphorous and sediment that would make the present flow look inconsequential.

## Amy Puetz

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**From:** Jennifer Brockman [jbrockman@jeffersoncountywv.org]  
**Sent:** Thursday, July 22, 2010 5:12 PM  
**To:** 'Seth Rivard'; 'Steve Barney'; 'Jennilee Hartman'; 'Amy Puetz'; 'Julia Quodala'; 'Christine Chalmers'  
**Cc:** sgroh@jeffersoncountywv.org; 'John Maxey'  
**Subject:** FW: PC Training

FYI

Jennie Brockman, Director  
Jefferson County Department of Planning and Zoning Office (304) 728-3228

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

From: Sandy McDonald [mailto:sandy@jeffersoncountywv.org]  
Sent: Thursday, July 22, 2010 3:55 PM  
To: jbrockman@jeffersoncountywv.org  
Subject: Re: PC Training

Jennie,

Here is the section from the 7-22-10 minutes

Training for Persons Appointed to the Planning Commission:

Ms. Noland voiced her agreement with the training and suggested that prior to the first meeting the appointees should attend an APA Webinar, with continuing education once a year thereafter. She recommended that the County should provide funds necessary for this training.

Discussion followed with all Commissioners in agreement as to the necessity for the training. Mr. Morgan suggested that the Planning Commission should look into web-based training also.

Ms. Widmyer made a motion that the training be required to occur "within 90 days of taking office." It was requested that the Planning Commission be asked to review the policy that each person appointed to the Planning Commission be required to attend training within 90 days of their appointment by the APA or someone recommended by the APA. Each year thereafter the appointee shall attend continuing education which shall be paid for by Jefferson County. Ms. Morgan seconded the motion and it was unanimously approved.

Sandy

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

From: <jbrockman@jeffersoncountywv.org>  
To: "Sandy" <Sandy@jeffersoncountywv.org>  
Cc: <tboyde@jeffersoncountywv.org>  
Sent: Thursday, July 22, 2010 3:47 PM  
Subject: PC Training

> Sandy -  
> Can you tell me what happened with Patsy's PC training requirement agenda

- > item last week?
- > Thanks
- > Jennie
- > Sent on the SprintR Now Network from my BlackBerryR

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

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

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

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**Director's Report**  
**July 27, 2010**  
**Planning Commission meeting**

- 1) Activity Report (attached)
- 2) Reminder:  
Subdivision Regulation Amendments -- Public Hearings:  
Wednesday, August 4, 2010 – Blue Ridge Elementary School, 7:00 – 7:30  
overview; 7:30-9:30 public comments  
Monday, August 9, 2010 -- Library Basement Community Room, 7:00 – 7:30  
overview; 7:30 – 9:30 public comments
- 3) Update on Zoning Ordinance Amendment efforts (memo attached)
- 4) Update on the SB 595 letters
- 5) Planning Commissioner Training

## **Christine Chalmers**

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**To:** PLANNING COMMISSION  
**Subject:** WEEKLY CALENDAR

### **MONDAY, JULY 19, 2010**

9:30 am MEETING / RE: FILE ROOM  
11:00 am JENNIE, SETH & JULIE – TELEPHONE CONFERENCE / RE: GRANT FUNDING  
3:00 pm – 5:00 pm JENNIE – “WAC” MEETING @ LIBRARY

### **TUESDAY, JULY 20, 2010**

9:30 am STAFF MEETING  
11:00 am – 12:30 pm JENNIE, STEVE & JENNILEE – WEEKLY ZONING DEPT. REVIEW  
1:30 pm – 2:30 pm JENNIE & SETH – WEEKLY PLANNING DEPT. REVIEW  
2:30 pm - 5:00 pm JENNIE – “EDA” BOARD MEETING  
3:30 pm SETH – MEETING WITH RICHARD HARRISON / CLARIFICATION OF COMMENTS  
RE: BARBARA FRYE M/S PLAT NOTES

### **WEDNESDAY, JULY 21, 2010**

LOCATED IN ENGINEERING CONFERENCE ROOM:  
10:00 am SETH, STEVE & JONATHAN – PPC MEETING / RE: JERRY DILLOW  
11:00 am JENNIE – MEETING WITH TOM BAYUZIK  
2:00 pm – 3:00 pm JENNIE – DEPT. HEAD MEETING / RE: HEALTH INSURANCE DISCUSSION  
4:00 pm JENNIE, JULIE, SETH, STEVE – TREE CANOPY GRANT MEETING WITH KATIE & SARAH  
4:00 pm – 5:00 pm JENNILEE – STAFF REP MEETING / RE: HEALTH INSURANCE DISCUSSION

### **THURSDAY, JULY 22, 2010**

9:00 am - COUNTY COMMISSION MEETING  
9:30 am JENNIE, SETH, STEVE & JENNILEE – MEETING WITH CHARLES RYAN  
RE: VERIZON CELL TOWER AREA BUILD-OUTS  
NOON – 2:30 pm JENNIE, SETH, JULIE & STEVE – MEETING WITH JENNIFER SNYDER / RE: FEE DISCUSSION

### **FRIDAY, JULY 23, 2010**

## Christine Chalmers

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To: PLANNING COMMISSION  
Subject: WEEKLY CALENDAR

### MONDAY, JULY 26, 2010

10:00 am JENNIE, SETH & STEVE – MEETING / RE: CEDAR MEADOW AIRPARK  
11:00 am JENNIE (?) SETH & STEVE – MEETING WITH DON VIRTS  
RE: COUNTRY ROAD MARKET  
1:00 pm JENNIE, SETH & JULIE – MEETING WITH ANGIE BANKS, ASSESSOR

### TUESDAY, JULY 27, 2010

10:00 am NO STAFF MEETING  
SETH, STEVE, JULIE, JENNILEE & CHRISTINE – PURCHASING CARD MEETING  
11:30 am – 12:30 pm JENNIE, STEVE & JENNILEE – WEEKLY ZONING DEPARTMENT REVIEW  
1:00 pm AMY – PURCHASING CARD MEETING  
1:30 pm – 2:30 pm JENNIE & SETH – WEEKLY PLANNING DEPARTMENT  
REVIEW  
7:00 pm PLANNING COMMISSION MEETING

### WEDNESDAY, JULY 28, 2010

9:30 am JENNIE - REGION 9 STORMWATER STEERING COMMITTEE MEETING  
10:00 am – 11:00 am SETH, STEVE, JONATHAN – PPC MEETING / RE: ARLENE WASHINGTON M/S  
11:00 am – 12:00 SETH, STEVE, JONATHAN – PPC MEETING / RE: ROCK FERRY & SHEP. LIBRARY  
1:30 pm STAFF DISCUSSION / RE: PLANNING COMMISSION MEETING

### THURSDAY, JULY 29, 2010

9:00 am - COUNTY COMMISSION MEETING

### FRIDAY, JULY 30, 2010

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

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

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

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**MEMO**

**TO:** Planning Commission Members  
**FROM:** Jennifer M. Brockman, AICP, Director, Planning and Zoning  
Steve Barney, Zoning Administrator  
**DATE:** July 27, 2010  
**RE:** Next Steps – Proposed Strategy for Zoning Ordinance Amendments

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Now that Steve Barney is on board, one of the first substantial tasks that he will be heading up is the review and potential rewrite of sections of the Zoning Ordinance. The following is a modified version of a table provided to the Planning Commission in May. As previously discussed, the first staff efforts will be directed at correcting all references to the old Subdivision Regulations, minor edits of typos, grammar and formatting, and making updates related to the state law. The Commission has also initiated the proposed amendment to the cell tower provisions to be considered immediately.

Once these tasks are accomplished, we are recommending that the other proposed amendments be addressed as separate amendments that may be under consideration at the same time, but are recommended independently of each other. This will allow opportunity for policy input and addressing of concerns or public comment on a topic by topic basis. As with the Subdivision Regulations amendments that are currently underway, final action is required after a public hearing by the County Commission.

There are numerous concerns regarding the Zoning Ordinance and its interpretation. Discussion of some of the following zoning issues may also result in proposed amendments to the Subdivision Regulations. Staff recommends the following scenario for addressing the zoning issues:

<b>Time Frame</b>	<b>Topic</b>	<b>Possible Subcommittee</b>
August – October 2010	Clean up language that references 1979 Subdivision Ordinance and replace with references to 2008 Subdivision Regulations  Reformat for ease of use and clean up typographical errors  Add language that includes relevant portions of SB 595, the urban growth boundary provisions, and other relevant sections of WV Code as advised by legal counsel  Create a clear section that delineates the WV Code provisions regarding the Board of Zoning Appeals' roles and responsibilities and the Planning Commission's roles and responsibilities,	The BZA is interested in holding a joint meeting to examine issues with the Zoning Ordinance and in particular to assist with the section of the ordinance that addresses their responsibilities

	including provisions of Article 3	
Mid - July – Mid – Sept. 2010	Amendments to Cell Tower Provisions	Recommend kicking off with a meeting inviting representatives of the industry to give feedback on a new draft ordinance
Mid – September – end of November 2010	Rewrite of Sign Regulations	Recommend a subcommittee including a representative of the PC, the BZA and at least one “stakeholder” type open meeting for input
September – October 2010	Strengthen provisions related to Historic Preservation and protection of freestanding historic structures	Recommend a working committee that includes representation from the Historic Landmarks Commission to work with staff on a proposal
October – December 2010	Address Rural/Agricultural Zone Issues	Recommend a working committee that includes representation of the agricultural community to work with staff on a proposal that clarifies the intent of the ordinance as currently written and proposes wording to clarify intent
November – January 2011	Review Parking Requirements and consider alternatives that meet the Chesapeake Bay goals	Planning and Engineering staff
November – January 2011	Consider amending Nonconforming Use provisions	Recommend a working committee that includes representation from the PC, the BZA, and the development community
December – February 2011	Review Proposed and Conditional Uses and design standards (ie: height, setbacks, lot size) in all non-Rural Zoning Districts (Residential Growth, Commercial/Industrial and Residential/Light Industrial/Commercial and Village zoning districts)	
November – February 2011	Address Environmental Concerns including steep slopes	Recommend developing a stakeholders committee that includes representation of a variety of interest groups
January - March 2011	Home Occupation and Cottage Industries	Recommend a working committee that includes representation from home-based business operators and the PC

January - April 2011	Review of Articles 6 and 7 DRS system	Recommend a working committee that includes representation from the PC and the development community
On-going throughout	Review and Amend Definitions	Staff

**JEFFERSON COUNTY, WEST VIRGINIA**

**Department of Planning**

116 East Washington Street, 2<sup>nd</sup> Floor

P.O. Box 338

Charles Town, West Virginia 25414

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

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

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

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July 14, 2010

Dr. Robert Johnson, Chairman  
Jefferson County Board of Health  
1948 Whiltshire Road, Suite 1  
Kearneysville, WV 25430

Dear Dr. Johnson:

On behalf of the Jefferson County Planning Commission, I would like to extend my support to the Jefferson County Board of Health in meeting their goal to electronically scan the septic field files. I think this initiative is a worthwhile endeavor that will aid other departments by providing them with a database of useful information. Additionally, I know that providing the septic field files in electronic format will allow that information to be more widely used in making sound land use planning decisions within Jefferson County. Please let us know if we can provide any information to aid you through your process.

Sincerely,



John Maxey, President  
Jefferson County Planning Commission

155 Spring Retreat Lane  
Shenandoah Jct., WV 25442  
June 23, 2010

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

Attention: Mr. John Maxey, President

Dear Mr. Maxey,

I received the copy of your letter to Mr. Thorne in Burlington and the presentation surely was well covered and to the point. The severity of the intersection of Route 230 and 17 was well described. There certainly exists a definite hazard to all travelers and needs immediate study and correction. Due to the nature of the roads, they would be much safer for all the existing families if there was "no passing zone" on Route 230.

I am very pleased with your letter and passed it on to other homeowners in our area. We surely support your views and hope the Department of Transportation will realize our dilemma and begin correcting it.

Thank you for all your interest in this important project and if my input will help as a resident on Route 230, I am available.

Sincerely,



Lewis E. Meadows

RECEIVED

JUN 28 2010

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

**Re: Draft Planning Commission Agenda 7-27-10**

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From: gil narro garcia [Add to Address Book](#)  
To: planningdepartment@jeffersoncountywv.org  
CC: lynwidmyer@gmail.com  
Date: Monday, July 19, 2010 11:52:33 AM  
Subject: Re: Draft Planning Commission Agenda 7-27-10

I am sending these notes for the 3rd time. It is obvious that have no intention of ever acting on my strong suggestion that you post hot links for the result of discussions and votes on key agenda items. I urge you not to ignore this simple request.

**Sent in the past-----**

I am resending a past note that I copied to Lynn regarding the issue I raise below. I urge you to stop your cavalier attitude toward full disclosure of important agenda items that merely get listed. Citizens NEVER see the results, at least they are not readily found on your convoluted web site. If you don't know how to prepare a hot link, I'll take time off to show you.

Sincerely,

Gil N Garcia  
Harpers Ferry  
304-535-2235

**----- Original Message -----**

**From:** [gil narro garcia](#)  
**To:** [info@jeffersoncountywv.org](mailto:info@jeffersoncountywv.org)  
**Cc:** [lynwidmyer@gmail.com](mailto:lynwidmyer@gmail.com)  
**Sent:** Sunday, June 27, 2010 10:38 AM  
**Subject:** Re: Planning Commission Agenda

As per your invitation that concerned citizens respond to agenda items, please consider this repeat recommendation seriously and act on it: The 6/22 agenda includes items of some importance. For example, items #5, 6 and 10--if addressed properly during the meeting, should result in information and documents that under every circumstance should be public. Thus, I urge you to post hot-links to the reports or statements related to at least these items within 24 hours of the meeting. This way, concerned citizens can access them and perhaps even understand the constructive or outrageous rulings made by the Planning Commissioners. Jefferson County just hired a \$90K salaried Director. Surely he can act to remedy this dismal dissemination of activities funded with our tax dollars.

I have copied Lynn because the Commission is equally negligent.

Sincerely,

Gil N Garcia  
Harpers Ferry  
304-535-2235