

AGENDA  
JEFFERSON COUNTY PLANNING COMMISSION  
**SEPTEMBER 28, 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 to approve, disapprove, or impose conditions on the application .

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

1. Approval of the minutes from the September 14, 2010 Planning Commission meeting.
2. Citizen Communications.
3. A call for postponements.
4. Presentation by Mr. Don Burgess, Boardmember of the Harpers Ferry Historic Town Foundation requesting the Planning Commission's involvement in a Harpers Ferry Foundation sponsored event discussing historic preservation and land-use issues.
5. Postponed from the September 14, 2010 Planning Commission Meeting: Request by Alpha Associates, Inc. for a variance from Section 6.3 of the Subdivision Ordinance to allow for the project file to re-open and a variance from Section 6.3 of the Subdivision Ordinance to allow for an extension of time to complete the subdivision process from 24 months, which expired June 27, 2010 to July 1, 2010. This property is located south of Beauregard Boulevard in Patrick Henry Estates at the end of Gates Way and abuts Spring Run Apartments on the west side and Patrick Henry Plaza Shopping Center to the south. This project is to consist of 13 single bedroom apartments and 24 two bedroom apartments in five separate on story garden style apartment buildings. This property is designated as Tax District:2, Map:8, Parcel: 29.1.
  - ❖ The public hearing may be re-opened.
6. Response to staff analysis on case study for Chapel View.
7. Update on Old Standard Quarry requests.
8. Discussion on the Draft Amendments to Article 4B, Wireless Telecommunications Facilities.
9. Blue Ridge Mountain Community Plan

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10. Reports from Legal Counsel and legal advice to PC.
11. Director's Report.
12. County Commission Liaison Report.
13. Planning Commission Exchange.
14. President's Report.
15. Actionable Correspondence.
16. Non-Actionable Correspondence.

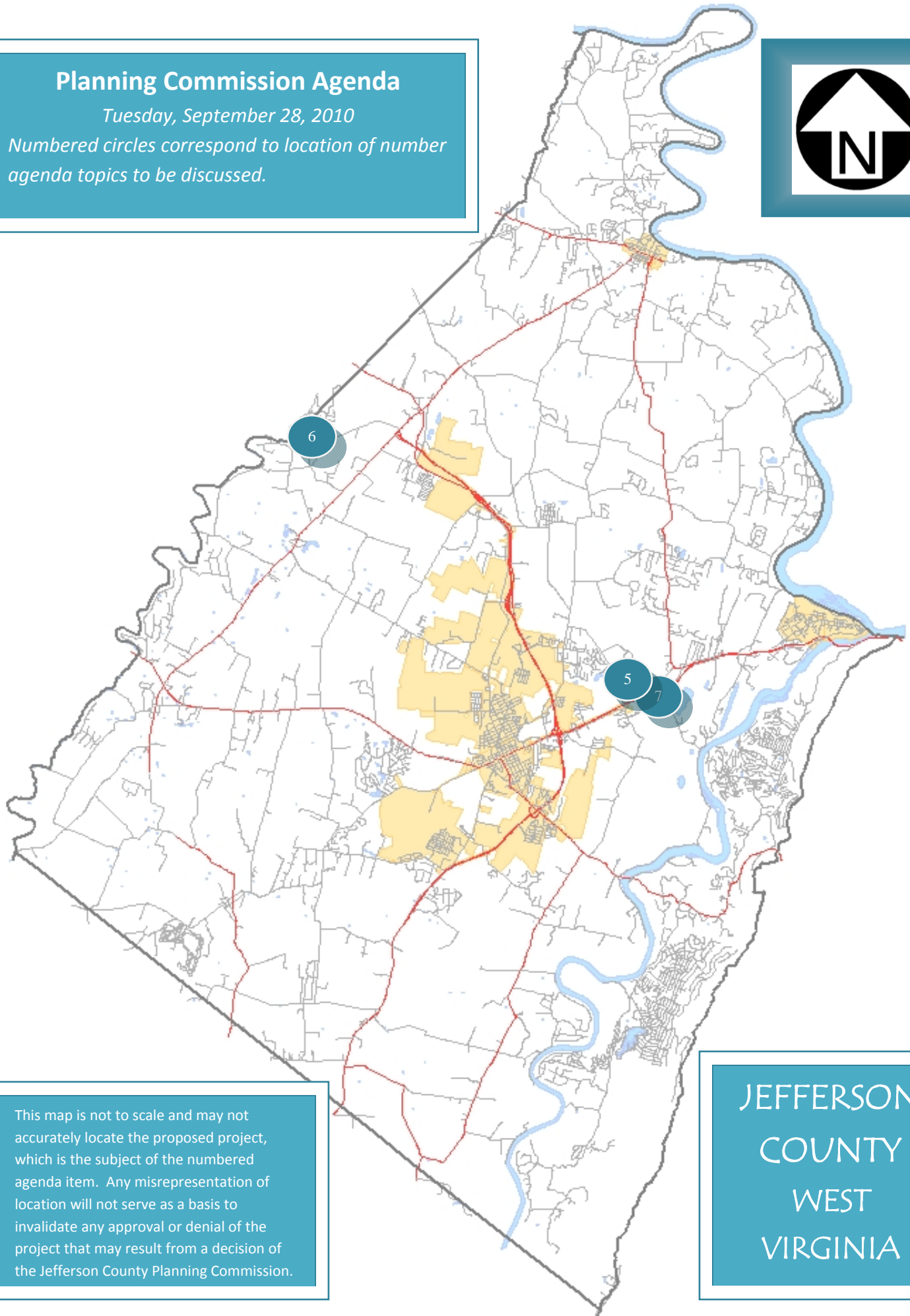
The Planning Commission welcomes written comments at any time. Our office is open Monday through Friday, 9:00 a.m. to 5:00 p.m., and is located at 116 East Washington Street, P.O. Box 338, Charles Town, WV 25414. Our phone number is (304) 728-3228; our fax number is (304) 728-8126; our email address 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, September 28, 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  
SEPTEMBER 14, 2010

The Jefferson County Planning Commission met on Tuesday, September 14, 2010, with the following Commission members present: John Maxey, President; Thomas Trumble, Vice President; Frances Morgan, Arnold Dailey, Kelly Baty, and Gene Taylor. Staff members present included Jennifer Brockman, Director of Planning and Zoning; Steve Barney, Zoning Administrator; Jonathon Saunders, County Engineer; Stephen Groh, Assistant Prosecuting Attorney; and Julie Quodala, Planning and Zoning Office Manager.

Morgan Eppers and Daniel Hayes were absent with notification.

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

1. **Approval of the minutes from the August 24, 2010 meeting.**

Mr. Trumble moved to approve the minutes of the August 24, 2010 Planning Commission meeting. Mr. Taylor seconded the motion which carried unanimously.

2. **Citizens Communication:** None.

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

4. **Request by Alpha Associates, Inc. for a variance from Section 6.3 of the Subdivision Ordinance to allow for the project file to re-open and a variance to allow for an extension of time to complete the subdivision process to July 1, 2012.**

Ms. Brockman read from the staff report and explained that, in early June, a representative from the Sloan Square Apartments project picked up a memorandum from staff stating that the project was allowed an extension due to Senate Bill 595. She continued that the Planning Commission later determined that interpretation was incorrect and no extension was granted. However, a variance could be submitted to request an extension. Ms. Brockman stated that one of the reasons for requesting an extension is because the project has been unable to proceed due to a still pending court case. She explained the history of the project including that there were a number of conditions when the Community Impact Statement was approved.

Mr. Richard Klein, with Alpha and Associates, represented Dr. Gerald Miller, owner of Sloan Square Apartments. He reiterated that the project has not moved forward due to the lawsuit.

Mr. Maxey opened the public hearing. Ms. Barbara Humes approached the Planning Commission and stated concern that granting this project an extension would set a precedent to allow other projects to come forward and request extensions because they do not qualify for Senate Bill 595. Mr. Klein rebutted that the Sloan Square Apartment project meets the criteria for a variance and that they are not trying to set a precedent. Mr. Maxey closed the public hearing.

Mr. Dailey moved to reopen the file. Mr. Taylor seconded the motion which carried unanimously.

Discussion ensued regarding the use of Beauregard Road, which runs through Patrick Henry Estates, as access to Sloan Square Apartments and the effects of the lawsuit in the decision to grant or deny the variance.

Ms. Morgan moved to grant an extension of time to July 1, 2011 instead of July 1, 2012. Mr. Taylor seconded the motion. Mr. Trumble moved to table the current motion until such time as the lawsuit is resolved. There was no second and Mr. Trumble's motion died. Additional discussion ensued regarding whether or not this was a self-imposed hardship. The original motion failed 2 for and 4 against (Mr. Beatty, Mr. Trumble, Mr. Dailey, and Mr. Maxey).

Mr. Trumble moved to grant an extension of time to July 1, 2012. Mr. Dailey seconded the motion. The motion ended in indecision with 3 for (Mr. Dailey, Mr. Taylor, and Mr. Trumble) and 3 against (Mr. Morgan, Mr. Beatty, and Mr. Maxey).

Ms. Morgan moved to postpone reconsideration of the application to March 1, 2011. There was no second and the motion died.

Mr. Dailey moved to postpone this item to the September 28, 2010 meeting. Mr. Taylor seconded the motion which carried unanimously.

**5. Update on Old Standard Quarry Freedom of Information Act requests.**

Mr. Groh stated that he had received two emails from the Legislative Rule Making Committee, one containing documents and one stating that the audio file that they have been trying to send to him is too large to send electronically. It was requested that Mr. Groh send out any documents by e-mail. Mr. Maxey asked for unanimous consent to share all information presented to the Planning Commission with the County Commission. There was no objection.

Ms. Morgan left the meeting at 7:58 PM.

Ms. Brockman presented a memorandum detailing the events of the conference called held with Mr. Yogesh Patel, WV DEP Permits Officer, in which Ms. Brockman, Ms. Quodala, and Mr. Trumble participated. Ms. Brockman reported that she and Ms. Quodala had also spoken to Mr. Jay Lazell, Legal Counsel for DEP and the Department of Agriculture, regarding the Brownfield Economic Development Rule becoming Law.

**6. Draft request to the County Commission to consider a change in zoning for Federal Lands.**

Ms. Brockman presented a draft County Commission agenda request requesting Zoning Map Amendment for Planning Commission approval. Mr. Maxey also presented a draft Resolution to Petition the Jefferson County Commission to amend the zoning map.

Mr. Maxey moved to approve the resolution as drafted. Mr. Trumble seconded the motion which carried unanimously. Staff was directed to amend the agenda request form and attach the approved resolution to submit to the County Commission for the September 23, 2010 meeting. Staff was also directed to notify Ms. Jennifer Mahan, County Clerk of the request.

Mr. Maxey directed Ms. Brockman to set up a meeting with Harvey Heyser, Shepherdstown Zoning Administrator, to discuss the Shepherdstown Urban Growth Boundary.

7. **Discussion on the Draft Amendments to Article 4B, Wireless Telecommunications Facilities and review of Stakeholder Meeting.**

Mr. Barney described the Stakeholder Meeting that was held August 31, 2010. Mr. Barney relayed that comments from that meeting were provided in the agenda packets. He discussed several comments that were presented at the Stakeholder Meeting. Mr. Maxey suggested that Mr. Barney have a meeting with Mr. Groh to discuss comments addressing legal issues. Mr. Maxey stated that the time schedule should be extended by two weeks and to have Mr. Barney report back at the September 28, 2010 meeting.

Mr. Maxey asked for unanimous consent to remove the County-owned property height benefit from the Draft Amendments to Article 4B, Wireless Telecommunications Facilities. There was no objection.

Mr. Paul Rosa, citizen of Charles Town, presented a mark-up of the amendments relating to the comments received at the Stakeholder's Meeting.

Mr. Maxey asked that information relating to these amendments be posted to the Planning and Zoning website as soon as available.

Ms. Brockman explained staff's intent to review all comments and recommend changes to the draft amendments. Mr. Barney stated those recommended changes would be presented at the next Planning Commission meeting scheduled for September 28, 2010.

Mr. Tim Dennis, of Viewable Tower Partners, commented that the industry supports allowing the public to have a voice in the processing of a cell tower. He asked that the industry be allowed to submit a draft mark-up of the Draft Amendments.

8. **Blue Ridge Mountain Community Plan.**

Ms. Brockman stated that the consultants have provided a draft vision document constructed from comments made at the Citizen's Committee meetings on the Blue Ridge Mountain. This document is available to be viewed at the Blue Ridge Community Plan website. She explained that the next step would be to finalize the mission statement.

Ms. Brockman notified the Planning Commission that the Water Advisory Committee would be holding a meeting for anyone interested in creating a Watershed Association. Mr. Maxey suggested that Mr. Roger Ethier be notified.

**9. Reports from Legal Counsel and legal advice to the Planning Commission.**

Mr. Groh stated that he would discuss cell tower issues with Mr. Barney and that he was still reviewing documents regarding Old Standard Quarry. He informed the Planning Commission that the James Gibson, et al v. The Jefferson County Planning Commission Case No. 09-C-364 case was still pending.

Mr. Maxey moved to go into executive session. Mr. Trumble seconded the motion which carried unanimously. The executive session began at 8:56 PM.

Mr. Maxey moved to come out of executive session. Mr. Trumble seconded the motion which carried unanimously. The executive session ended at 9:41 PM.

**10. Director's Report.**

- Activity Report. These reports were provided in the agenda packets.
- Conferences. Ms. Brockman stated that she would be attending the "Strategic Conservation Using a Green Infrastructure Approach Conference" from September 13<sup>th</sup> through September 17<sup>th</sup> and that Mr. Barney would be attending the "Growing Communities on Karst 2010 and the Great Valley Water Resources Science Forum" on September 16<sup>th</sup> and 17<sup>th</sup>.
- Urban Tree Canopy Grant. Ms. Brockman stated that they want to give us more money than we asked for and that we are working on ways that we can match the increase. She gave an overview of the goals of the Urban Tree Canopy Grant.

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

**12. Planning Commission Exchange.**

Mr. Trumble moved to make a policy that, anytime a Planning Commissioner is a part of a meeting where there is not a quorum, a report be written and presented to the entire Planning Commission. Mr. Maxey seconded the motion which carried unanimously.

**13. President's Report.**

Mr. Maxey stated that County Commissioner Lyn Widmyer would be attending a HEPMPO meeting. Ms. Brockman informed the Planning Commission that a SmartCode seminar would be coming up soon and that she planned to have a staff member attend. Mr. Maxey discussed the importance of completing the requested research regarding fees.

**14. Actionable Correspondence.** None.

**15. Non-Actionable Correspondence.**

Ms. Brockman presented a letter written by Mr. Paul Rosa which voiced concern that the copying fees charged by the County Commission are too high. Mr. Maxey asked that staff present the letter Mr. Tim Boyde, County Administrator.

MINUTES  
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Mr. Maxey moved to adjourn at 10:00 PM. Mr. Trumble seconded the motion, which carried unanimously. A detailed transcript of the meeting, which was recorded by Julie Quodala, Office Manager, may be found on our website. These minutes were prepared by Amy Puetz, Planning Clerk.

To save the cost of reprinting all of the documents from the Sloan Square Variance, please insert the relevant documents provided to you last week here. There will be one copy of the variance present at the meeting.

## Amy Puetz

---

**From:** Morgan Etters [m\_ettters@frontiernet.net]  
**Sent:** Wednesday, September 22, 2010 1:14 PM  
**To:** Jennifer Brockman  
**Cc:** maxey@radlib.com; Seth Rivard; Steve Barney; Stephen Groh; Amy Puetz; Julia Quodala; Daniel Hayes  
**Subject:** Re: Sloan Square Apartments

Hi Jennie,

I watched the webcast and feel adequately informed enough to discuss and vote on this at the next Planning Commission Meeting.

Thank you,  
Morgan

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

**From:** "Jennifer Brockman" <jbrockman@jeffersoncountywv.org>  
**To:** "Morgan L. Etters" <m\_ettters@frontiernet.net>, "Daniel Hayes" <jenhayes@frontiernet.net>  
**Cc:** maxey@radlib.com, "Seth Rivard" <Srivard@jeffersoncountywv.org>, "Steve Barney" <sbarney@jeffersoncountywv.org>, "Stephen Groh" <sgroh@jeffersoncountywv.org>, "Amy Puetz" <apuetz@jeffersoncountywv.org>, "Julia Quodala" <jquodala@jeffersoncountywv.org>

**Sent:** Friday, September 17, 2010 6:00:00 PM  
**Subject:** Sloan Square Apartments

Morgan and Daniel -

There was an agenda item on this week's PC meeting regarding a variance request to reopen and provide an extension of time for the Sloan Square Apartment CIS. A public hearing was held and closed and the PC had extended discussion about a variety of issues. A few motions were made, all of which ended in a tie vote. Ultimately, the PC voted to continue the item until the next agenda at which you both would be in attendance. Because you were not at the hearing, in order to have an opportunity to vote, you will need to listen to the webcast of the portion of the meeting, including the PC discussion and to disclose that at the beginning of the meeting.

The only alternative seems to be that we could have a motion to reopen the hearing and re-hear the item. This would require re-advertising the hearing. The preliminary agenda that went out today noted that this was a possibility. By next Friday's agenda, I think we will have to know either that will be required.

Could you both let me know if you will have an opportunity to review the webcast and therefore feel comfortable being a part of the discussion and vote at the next meeting?

Thanks and have a great weekend.

Jennie

Jennifer M. Brockman, AICP, Director

Jefferson County Department of Planning and Zoning

116 East Washington Street

Charles Town, WV 25414

Office: (304) 728-3228

Fax: (304) 728-8126

## Amy Puetz

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**From:** jbrockman@jeffersoncountywv.org  
**Sent:** Monday, September 20, 2010 2:56 PM  
**To:** Daniel\_Hayes@URSCorp.com  
**Cc:** Julie Quodala; Morgan L. Etters; John Maxey; Amy Puetz  
**Subject:** Re: Sloan Square Apartments  
**Attachments:** graycol.gif; eclblank.gif

Thanks!  
Jennie

Sent on the Sprint® Now Network from my BlackBerry®

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**From:** Daniel\_Hayes@URSCorp.com  
**Date:** Mon, 20 Sep 2010 13:15:58 -0400  
**To:** Jennifer Brockman<jbrockman@jeffersoncountywv.org>  
**Cc:** 'Julia Quodala'<jquodala@jeffersoncountywv.org>; 'Morgan L. Etters'<m\_etters@frontiernet.net>; <maxey@radlib.com>  
**Subject:** RE: Sloan Square Apartments

I have listened to the podcast.

Daniel B. Hayes, PE  
Principal Civil Engineer  
URS Corporation  
Gaithersburg MD  
Phone (301) 721-2225

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▼ "Jennifer Brockman" <jbrockman@jeffersoncountywv.org>

"Jennifer Brockman"  
<jbrockman@jeffersoncountywv.org>

09/20/2010 10:20 AM

To<Daniel\_Hayes@URSCorp.com>

cc"Julia Quodala"  
<jquodala@jeffersoncountywv.org>, "Morgan  
L. Etters" <m\_etters@frontiernet.net>

SubjectRE: Sloan Square Apartments

Hopefully this will get you there:

[http://129.71.117.176/camera/archived\\_meeting.php](http://129.71.117.176/camera/archived_meeting.php)

The meeting is labeled 2010-09-14 PC Meeting.wmv and the presentation is almost at the beginning of the

## Amy Puetz

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**From:** Planning Department [planningdepartment@jeffersoncountywv.org]  
**Sent:** Wednesday, September 08, 2010 10:04 AM  
**To:** apuetz@jeffersoncountywv.org  
**Subject:** Fw: Fwd: Potential Research Project for IPA

Planning Department  
P.O. Box 338  
116 East Washington Street  
Charles Town, WV 25414  
(304) 728-3228

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

**From:** "Planning Department" <planningdepartment@jeffersoncountywv.org>  
**Sent:** 9/8/2010 10:00:43 AM  
**To:** jbrockman@jeffersoncountywv.org, sbarney@jeffersoncountywv.org, "srivard" <srivard@jeffersoncountywv.org>  
**Subject:** Fw: Fwd: Potential Research Project for IPA

Planning Department  
P.O. Box 338  
116 East Washington Street  
Charles Town, WV 25414  
(304) 728-3228

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

**From:** <jennifersyron@frontiernet.net>  
**Sent:** 9/7/2010 9:14:05 PM  
**To:** "Peter Appignani" <pappignani@frontiernet.net>, "Peter Appignani" <pappignani@gmail.com>, planningdepartment@jeffersoncountywv.org  
**Subject:** Fwd: Potential Research Project for IPA

Dear Jenny and Pete,  
Just got this email from WV IPA.

----- Forwarded Message -----

**From:** "IPA IPA" <IPA@mail.wvu.edu>  
**To:** jennifersyron@frontiernet.net  
**Sent:** Tuesday, September 7, 2010 9:07:59 PM  
**Subject:** Re: Potential Research Project for IPA

Hi Ms. Syron,

Hopefully, my slow response hasn't indicated a lack of interest in what seems to be an interesting project. My delay at getting back with you has much more to do with my being out of town due to a death in the family. The particular area is not one that I have a lot of expertise in, but I might be able to round up some interest.

I think we can find some literature and research on the area that is relevant, and work with you to some degree. I am not quite sure what product you are seeking, so I will see what expertise I can find here. Let me know how you might like to proceed in terms of the Institute's involvement.

Bob Duval

>>> <[jennifersyron@frontiernet.net](mailto:jennifersyron@frontiernet.net)> 9/2/2010 1:31 PM >>>

> My name is Jennifer Syron. I am associated with a newly formed organization in our county, Jefferson County Organization of Homeowners Associations (JCOHOA), a non-profit organization that is seeking to provide support to homeowners associations and to represent the interests of homeowners and homeowners association before the county. Residents of the Chapel View subdivision in Jefferson County approached JCOHOA regarding several problems that their community was facing including: poorly constructed infrastructure in their subdivision, release of the bond money for that infrastructure, unfinished amenities, a developer on the verge of bankruptcy, no handover of HOA control in accordance with provisions in the Covenants, no financial disclosure, governance issues, all of which were further complicated by the HOA covenants.

>  
> JCOHOA is interested in securing grant money and finding a public policy research institute that could do an objective, independent third party study of this particular HOA case in order to elucidate the broader public policy issues so that these issues can be addressed by local governments. The study would then be offered to the Jefferson County Planning Commission.

>  
> The Jefferson County Planning Department has been instructed by the Planning Commission to define what the scope of such a project would entail and how much it might cost.

I also have contacted WV State Senator Herb Snyder about WV Code 36B on Common Interest Owners Associations, the law regulating HOAs. He has expressed an interest in the project as well and support for recommendations coming out of the project.

> I was hoping that such a project might be of interest to the West Virginia Institute of Public Affairs. As a trained social scientist, I can promise you the case is a multi-faceted, challenging one that raises so many interesting questions for land-use planning, democratic theory, economic viability of HOAs, to name a few.

>  
> If you are interested or think you might be and would like more information, you can contact me at:

>  
> Jennifer Syron  
> #(304)724-1201  
> [Jennifersyron@frontiernet.net](mailto:Jennifersyron@frontiernet.net)

>  
>  
> If this is not a project that you or your institute can take on, I would appreciate any suggestions you might have as to whom else to contact that might be willing and qualified to handle such a project.

>  
>  
> Sincerely,  
>

## Amy Puetz

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**From:** Planning Department [planningdepartment@jeffersoncountywv.org]  
**Sent:** Wednesday, September 08, 2010 10:05 AM  
**To:** apuetz@jeffersoncountywv.org  
**Subject:** Fw: for Jenny Brockman -- Fwd: Potential Research Project for GWIPP

Planning Department  
P.O. Box 338  
116 East Washington Street  
Charles Town, WV 25414  
(304) 728-3228

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

**From:** "Planning Department" <planningdepartment@jeffersoncountywv.org>  
**Sent:** 9/8/2010 9:59:29 AM  
**To:** jbrockman@jeffersoncountywv.org, "srivard" <srivard@jeffersoncountywv.org>, sbarney@jeffersoncountywv.org  
**Subject:** Fw: for Jenny Brockman -- Fwd: Potential Research Project for GWIPP

Planning Department  
P.O. Box 338  
116 East Washington Street  
Charles Town, WV 25414  
(304) 728-3228

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

**From:** <jennifersyron@frontiernet.net>  
**Sent:** 9/7/2010 2:13:45 PM  
**To:** planningdepartment@jeffersoncountywv.org  
**Subject:** for Jenny Brockman -- Fwd: Potential Research Project for GWIPP

Dear Jenny,

I'm sending you the contact information for the acting director of WV Institute of Public Affairs, with whom I left the message last week and emailed.

I just called today, but he's out of town until next week.

Pete from JCOHOA wanted a back-up. So I'm also sending you an email that I sent to the George Washington University School of Public Policy. While I think WVU should have an interest, GW has a huge, well-funded program and might be able to do it quicker and possibly better. I'm leaning toward whoever can answer some questions for the September 28th meeting.

Jennifer

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WV IPA

Robert D. Duval  
Associate Professor  
Ph.D., Florida State University, 1984

Office: 301A Woodburn Hall  
Tel: 293 3811, ext. 5299  
Email: [Bob.Duval@mail.wvu.edu](mailto:Bob.Duval@mail.wvu.edu)

Professor Duval teaches and conducts research on international politics, national security policy, quantitative research methods, and computer applications in political science. He is co author of Bootstrapping (Sage, 1993), and has published articles in the American Journal of Political Science, the British Journal of Political Science, and the Journal of Conflict Resolution. He also authors/edits "Poly Cy:Internet Resources for Political Science," an extensive guide to political science on the World Wide Web. He formerly served as the Resident Faculty Leader for Braxton Tower from 1998 2005. He also serves as the department's director for Computer and Information Services.

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----- Forwarded Message -----  
From: jennifersyron@frontiernet.net  
To: hwolman@gwu.edu  
Sent: Tuesday, September 7, 2010 2:01:17 PM  
Subject: Potential Research Project for GWIPP

Dear Professor Wolman,

I have a research project that looks at land use and development at the county level through the formation of HOAs that I was hoping GWIPP might be interested in conducting. As a trained social scientist, I can promise you the case is a multi-faceted, challenging one that raises many interesting questions for land-use planning, democratic theory, economic viability of HOAs, and the Uniform Common Interest Ownership Act, to name a few. While the project is based on a particular case study of a community in Jefferson County, WV, the issues the case raises would apply to many states experiencing development through the institution of HOAs, particularly those states that have adopted the Uniform Common Interest Ownership Act.

Jefferson County Organization of Homeowners Associations (JCOHOA), a non-profit organization that is seeking to provide support to homeowners associations and to represent the interests of homeowners and homeowners association before the county, is interested in securing grant money and finding a public policy research institute that could do an objective, independent third party study of a particular HOA case in order to elucidate the broader public policy issues so that these issues can be addressed by local governments.

The Jefferson County Planning Department has been instructed by the Planning Commission to define what the scope of such a project would entail and how much it might cost. WV State Senator Herb Snyder has expressed an interest

st in the project as well.

If you are interested or think you might be and would like more information  
, you can contact me at:

Jennifer Syron  
#(304)724-1201  
[Jennifersyron@frontiernet.net](mailto:Jennifersyron@frontiernet.net)

or

Planning and Zoning Departments  
Jennifer M. Brockman, AICP, Director of Planning & Zoning  
Information: 304-728-3228  
Email: [planningdepartment@jeffersoncountywv.org](mailto:planningdepartment@jeffersoncountywv.org)  
Email: [zoning@jeffersoncountywv.org](mailto:zoning@jeffersoncountywv.org)  
Mailing Address: P.O. Box 338, Charles Town, WV 25414  
Location: 116 East Washington Street, Charles Town, WV 25414  
Fax: 304-728-8126

Thank you for your consideration.

Sincerely,

Jennifer Syron

**JEFFERSON COUNTY, WEST VIRGINIA**

**Engineering Department**  
116 East Washington Street  
P.O. Box 716  
Charles Town, West Virginia 25414

Phone: 304-728-3257

Fax: 304-728-3953

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

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August 16, 2010

COPY

Summit Community Bank  
204 Catoctin Circle, SE  
Leesburg, VA 20175

Attn: Mr. Pat Frye, Chief Credit Officer

Re: Chapel View Subdivision – Completion of Site Improvements

Dear Mr. Frye:

Be advised that on August 12, 2010, the County Commission of Jefferson County formally "called-in" the site improvements bond for the Chapel View Subdivision (JCPC file no. 03-11) due to the developer being non-responsive in completing the site improvements required by the Preliminary Plat. In doing so, the County Commission directed that:

1. "The Engineering Department staff shall work with the surety provider and give the surety provider reasonable opportunity to complete site improvements in accordance with the Preliminary Plat; and
2. The Bonding Administrator shall pull the Letter-of-Credit (surety) before the January 15, 2011 expiration date if the surety provider fails to complete the site improvements within a reasonable amount of time or declines the opportunity to complete the improvements; and the Bonding Administrator shall place the funds in an escrow account at a local bank for use in completing the site improvements."

I know from our recent meeting, that you are evaluating your options with regard to completing the site improvements. Please contact Ms. Rebecca Burns, Bonding Administrator, by August 31<sup>st</sup> and let her know when you intend to make a decision. You may contact her at 304-728-3257.

In closing, our office is available to work with you if you intend to complete the site improvements. If you want to meet to discuss in detail what needs to be completed, please let me know.

Sincerely,

Roger L. Goodwin, P.E.  
Chief County Engineer

C: Tim Boyde, County Administrator  
Stephanie Grove, Assistant Prosecuting Attorney  
Rebecca Burns, Office Manager/Bonding Administrator  
Norma Kuroski, Land Development Inspector

**JEFFERSON COUNTY, WEST VIRGINIA**

Engineering Department

116 East Washington Street

P.O. Box 716

Charles Town, West Virginia 25414

Phone: 304-728-3257

Fax: 304-728-3953

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

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August 16, 2010

Orchard Knolls, LLC  
15B Catocin Circle, SE, Suite 203  
Leesburg, VA 20176

COPY

Attn: Mr. Brian Burke, Sr.

Re: Chapel View Subdivision – **Forfeiture of Bond**

Dear Mr. Burke:

Be advised that on August 12, 2010, the County Commission of Jefferson County formally "called-in" the site improvements bond for the Chapel View Subdivision (JCPC file no. 03-11) due to the developer being non-responsive in completing the site improvements required by the Preliminary Plat. I will notify the surety provider, Summit Community Bank, via a copy of this letter that the developer has forfeited the bond.

Sincerely,

Roger L. Goodwin, P.E.  
Chief County Engineer

C: Tim Boyde, County Administrator  
Stephanie Grove, Assistant Prosecuting Attorney  
Rebecca Burns, Office Manager/Bonding Administrator  
Norma Kuroski, Land Development Inspector

Summit Community Bank  
204 Catocin Circle, SE  
Leesburg, VA 20175  
Attn: Mr. Pat Frye, Chief Credit Officer

Orchard Knolls, LLC  
525-K East Market Street 335  
Leesburg, VA 20176

Orchard Knolls, LLC  
7371 Atlas Walk Way #625  
Gainesville, VA 20155-2992

## ARTICLE 4B. WIRELESS TELECOMMUNICATION FACILITIES

### 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 the provisions of the Telecommunications Act of 1996 and other Federal laws, 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. When any provision of this article is in conflict with any provision of the Jefferson County Zoning Ordinance or the Jefferson County Subdivision and Land Development Regulations, the stricter regulation shall apply.

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.

## 2.2 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>	<del>Zoning approval that the Zoning Administrator or his/her designee is authorized to grant after Administrative Review.</del>
<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.

**Comment [SB1]:** Administrative Approval: Term not used elsewhere in ordinance.

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- Antenna Array** 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~~ mile 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 support structure (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.~~

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Comment [SB2]: Term not used elsewhere in ordinance.

**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.

**Department** [The Jefferson County Planning and Zoning Department.](#)

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**Discernible** Capable of being distinguished with the eye or mind from its surroundings as a telecommunications tower.

~~**Distributed Antenna Systems (DAS)** — A wireless telecommunication facility where one or more commercial wireless providers in a given locale share common antenna arrays associated with microcells connected by fiber optic cables strung along existing utility poles. These microcells, in turn, are connected via fiber optic cables on the 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 for routing to each provider.~~

**Electric Distribution Poles** 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.

**Electric Transmission Towers** 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.

**Equipment Enclosure** 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.

**FAA** Federal Aviation Administration

**FCC** Federal Communications Commission

[September 23, 2010](#)

<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. This district excludes the area within the jurisdictional boundaries of the town of Harpers Ferry and the town of Bolivar.
<b>Historic Resource</b>	<u>A site, structure, area, or district possessing historic importance as defined by the U.S. Department of Interior, West Virginia State Historic Preservation Office, Jefferson County Historic Landmarks Commission, or other governmental agency.</u>
<b>Historic Site/Property</b>	<u>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.</u>
<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</b>	<u>Improvements to existing Wireless Telecommunications Facilities</u>

**Comment [SB3]:** Change definition and term for consistency with Subdivision Regulations.

**Modification** — 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.

**Comment [SB4]:** Major Modification Covered in 4B.9

**Minor Modification** — 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.

**Comment [SB5]:** Minor Modification: Term not used elsewhere in ordinance.

**Microcell** — 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.

**Monopole** — A support structure constructed of a self-supporting hollow metal tube securely anchored to a foundation.

**Neighborhood** — An area generally confined to a one-mile radius from the perimeter of a proposed development.

**PCS** — Personal Communication Services.

**Primary Public Safety Provider** — 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).

**Comment [SB6]:** Definition not used elsewhere in ordinance.

**Private Business** — Persons or entities which operate radio facilities (including

<b>User</b>	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>	<del>Trees which create a roof-like layer of spreading branches.</del>
<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</b>	A facility consisting of the equipment and structures involved in transmitting or receiving telecommunications or radio signals to or

**Facility** 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.

**Wireless Telecommunication Facility, Co-Located** ~~See collocation. 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.~~

**Comment [SB7]:** Addresses issue of two similar definitions.

**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, or inside a radome on a monopole that does not exceed the diameter of the monopole, or interlaced within or atop an electric distribution tower.

**Temporary Wireless Telecommunication Facility, Temporary.** A vehicle-mounted or portable wireless telecommunication facility including portable towers, antennas, equipment enclosures, generators and associated electronics, cabling, wiring and hardware. Such a facility may include, but is not limited to, "cell on wheels" mobile equipment.

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~~**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.

**Wireless Telecommunication Tower, Speculative** A Wireless Telecommunications Tower developed without a contractual agreement with one or more wireless service providers regarding the ownership or operation of the tower.

### **Section 4B.2 Classification of Wireless Telecommunication Facilities and Development Review Process**

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

1. Exempt Facilities [as specified in Section 4B.3](#)
- ~~2. Microcellular Wireless Telecommunication Facilities~~
- ~~3. Distributed Antenna Systems (DAS)~~
4. 2 Concealed Wireless Telecommunication Facilities
5. 3 Co-located Wireless Telecommunication Facilities
6. 4 Temporary Wireless Telecommunication Facilities
7. 5 Wireless Telecommunication Towers

Exempt Facilities are allowed by right. Prior to the issuance of a Zoning Certificate, all other types of new Wireless Telecommunications Facilities listed above require approval of a Minor Site Plan as described in the Jefferson County Subdivision and Land Development Regulations and also meeting the submittal and design requirements of this Article. Additionally, Wireless Telecommunication Towers shall require a public hearing ~~within 30 days of submittal of a site plan application,~~ to allow for an analysis of demonstration of need, neighborhood compatibility, impact on cultural and historic resources, and visual mitigation.

[Within thirty \(30\) days of receiving an application for a Wireless Telecommunications Facility the Department shall notify the applicant in writing \(1\) that the application is complete or \(2\) the particular information needed to complete the application. Once the additional information is received and the application is found to be complete, the Zoning Administrator shall notify the applicant of that finding.](#)

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### **Section 4B.3 Exempt Facilities Allowed by Right**

This section covers antennas other than those associated with commercial wireless telecommunication facilities, such as facilities associated with 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.4** ~~[delete heading and renumber]~~ Microcellular Wireless Telecommunication Facilities

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

~~Microcellular Wireless Telecommunication Facilities are permitted on buildings and other existing structures which do not require an increase in height to accommodate the facility.~~

~~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.~~

~~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.~~

~~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.~~

~~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 Zoning Certificate.~~

~~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 Zoning Certificate.~~

~~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. 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. Such enclosures must meet the setback requirements for the zoning district in which they are located. 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.~~

~~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.~~

#### **Section 4B.5** ~~[delete heading and renumber]~~ **Distributed Antenna Systems (DAS)**

~~DAS networks are permitted in all zoning districts, and are the optimal and preferred method of deploying wireless infrastructure throughout the Harpers Ferry Overlay District.~~

~~Equipment associated with a DAS network must meet the setback requirements for the zoning district in which it is located.~~

#### **Section 4B.6** **Concealed Wireless Telecommunication Facilities**

Concealed Wireless Telecommunication Facilities are permitted in all zoning districts.

The [Zoning Administrator/Department](#) may issue a Zoning Certificate 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, metal skid or platform, or other foundation 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 Zoning Certificate.

6. Applications for such utility pole height extensions in the Appalachian Trail Overlay District shall be referred by the ~~Zoning Administrator~~[Department](#) to the Appalachian Trail Conservancy and the National Park Service for review and comment prior to issuance of a Zoning Certificate.
7. 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.~~
8. Antennas associated with a Concealed Wireless Telecommunications Facility shall not be co-located on a tower or other support structure ~~developed as an Exempt Facility pursuant to this ordinance for the used use of by~~ an amateur radio operator.
9. 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 ~~at ground level~~ on a concrete pad, ~~metal skid or platform, or other foundation~~. If placed ~~on the~~ ground ~~level, on a concrete pad~~ such equipment enclosures shall be screened so as to make them unobtrusive.
10. 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.
11. 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 ~~of a generator~~ shall only take place on weekdays between 8:00 a.m. and ~~57:00~~ 7:00 p.m.
12. Equipment associated with a Concealed Wireless Telecommunication Facility not located in a public right-of-way must meet the setback requirements for the zoning district in which it is located.

#### **Section 4B.7 Co-located Wireless Telecommunication Facilities**

Co-located Wireless Telecommunications Facilities are permitted within all zoning districts. [Collocation includes the placement of additional antennas or antenna arrays on an existing or approved telecommunication tower or support structure \(or alternative structure or Concealed Telecommunication Support Structure\), 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.](#) The ~~Zoning Administrator~~[Department](#) may issue a Zoning Certificate for a Co-located Wireless Telecommunication Facility consistent with the following terms and conditions:

**Comment [SB8]:** Text copied from definition. Provides intent for this section.

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. delete and renumber~~
2. Antennas associated with a Co-located Wireless Telecommunications Facility shall not be co-located on a support structure developed as an Exempt Facility pursuant to this ordinance for the use of ~~used by~~ an amateur radio operator.
3. Co-located Wireless Telecommunication Facilities shall meet the following design standards:
  - a. ~~delete and renumber 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 these criteria.~~
  - b. ~~delete and renumber 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. ~~delete and renumber 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:~~
  - d. ~~delete and renumber Compact dual-polarized antennas in a cylindrical uniceil arrangement less than two feet in diameter mounted atop the support structure;~~
  - e. ~~Panel antennas flush mounted against the support structure;~~
  - f. ~~Antennas mounted at the end of straight or curved davit arms or brackets extending from the sides of the tower~~
  - g.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.~~
  - h.c. ~~delete and renumber 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.~~
  - i.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~~

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~~maintained in good appearance and repair.~~ No equipment enclosure may exceed twelve (12) feet in height.

~~j.g.~~ 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.

~~k.h.~~ 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~~Department may require as a condition of approval that the fencing be screened by a landscaped buffer of at least 10 feet in width planted along the entire exterior perimeter of the fence. Such a buffer must contain at least one row of native vegetation and form a continuous ~~hedge screen~~ at least ~~3 feet~~6 feet in height ~~at planting and maintained at 6 feet.~~ All buffer yards shall be maintained by the property owner. It will be the responsibility of the property owner to maintain the buffer yard and to replace any trees or shrubs that die. ~~The landscaping requirements of this section do not apply to an application for collocation on a site with an approved site plan.~~ The ~~Zoning Administrator~~Department may waive or modify the fencing requirement ~~if he or she~~upon a ~~determinations~~ that doing so will enhance the overall appearance of the facility without any compromise in safety or security.

~~l.i.~~ Signage at any ground-based portion of a Co-located Wireless Telecommunication Facility site shall conform to ~~FCC and FAA standards. No commercial signage is permitted.~~ ~~the following provisions:~~

~~m.~~ ~~[delete and renumber]~~ A sign no larger than two square feet 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;

~~n.~~ Equipment hazard warning and informational signs are permitted;

~~o.~~ The posting of any other signs or advertising is prohibited at any Wireless Telecommunication Facility or upon any Wireless Telecommunications Tower.

~~p.i.~~ 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.

~~q.k.~~ 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.

#### **Section 4B.8 Temporary Wireless Telecommunication Facilities**

Temporary Wireless Telecommunication Facilities are permitted in all zoning districts. The ~~Zoning Administrator~~Department may issue a Zoning Certificate 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~~one week 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 longer periods ~~of up to one week~~ upon the authority of ~~an appropriate public official. Public officials who may grant such approvals include~~ the Director of the Planning and Zoning Department, 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~~Department 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.9 Wireless Telecommunication Towers**

The provisions of this section apply to an application for a new Wireless Telecommunications Tower, as well as for a major modification to an existing Wireless Telecommunication Facility or Support Structure that results in a substantial change to the facility or structure, including but not limited to a height extension of more than twenty (20) feet or ten percent (10%) of the current height of a facility or structure, whichever is greater, and/or replacement of the structure.

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This section is not applicable to collocation of a new antenna array on an existing structure.

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##### **A. Site Plan Required**

Wireless Telecommunication Towers are permitted in all zoning districts subject to the provisions of this section. A minor site plan 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.~~

### **B. Public Hearing Required**

In addition to the requirements for a minor site plan, a proposed Wireless Telecommunications Tower shall be reviewed at a public hearing conducted at a scheduled Planning Commission meeting. ~~An application for such a facility shall be submitted at least 30 days prior to the scheduled Planning Commission public hearing.~~ The scope of this public hearing shall be limited to an analysis of demonstration of need, neighborhood compatibility, impact on cultural and historic resources, and visual mitigation. The Planning Commission shall review the proposed ~~tower~~ Tower for compliance with the standards in this article ~~and, if applicable, provide conditions to be addressed in the Department's approval of the site plan.~~ ~~An application for such a facility shall be submitted to, and deemed to be complete by, the Department at least 30 days prior to the scheduled Planning Commission public hearing.~~ Following a determination of completeness, the Department shall notify the Jefferson County Historic Landmarks Commission of an application.

### **C. Retention of Consultants** ~~[delete and renumber]~~

~~The Zoning Administrator may elect to retain outside consultants or professional services to review a site plan 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.~~

**Comment [SB9]:** The Department has a consulting budget and already has the authority to retain consultants for review of any type of development application.

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### **D. Applicant's Burden of Proof**

The applicant for a site plan 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 it has met all submittal and design criteria in this Ordinance, 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.~~

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### **E. 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 within six (6) months of issuance of a certificate of occupancy for the tower. Such demonstration shall include submittal of a contract between the applicant and the FCC licensee(s) or an affidavit by the FCC licensee(s), and a copy of each 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.

#### F. Demonstration of Need

As part of its application submission for a site plan 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, ~~and- 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 format to facilitate information sharing, inclusion on the county's web site and to otherwise maximize public awareness.

#### G. Balloon Test

1. An applicant shall conduct a balloon or crane test to simulate the maximum height of the proposed tower. ~~Following the test, the applicant shall submit color photo simulations showing the proposed structure as it would appear viewed from the closest residential property or properties and from adjacent roadways. Photographs should be taken from appropriate locations on abutting properties, along each publicly used road from which the balloon is visible, and from up to five significant structures or locations identified by the Department. A map shall be supplied identifying the location of each photo. Before and after photo exhibits will be presented.~~ of such tests taken from at least five different locations shall be submitted with the application for a site plan 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, in addition to the Historic Landmarks Commission adjacent/confronting affected property owners, and all owners within adjoining subdivisions if any portion of a subdivision adjoins the proposed development site](#), at least ten (10) days prior to such tests. [The applicant shall utilize address and owner information on file at the Jefferson County Assessor's Office.](#) Such notices shall designate a primary date

**Comment [SB10]:** Stakeholders have raised questions regarding review criteria for demonstration of need.

and an alternate date in case of inclement weather. Notices shall state that there is an application for a Wireless Telecommunications Tower on the property and provide the Planning Commission case number. The Zoning Administrator/Department shall review and approve the sufficiency of the notice and the list of addresses prior to mailing. An affidavit of mailing accompanied by a list of recipients and addresses 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-one hundred (50100) feet laterally, from that stated in its original notices, additional notice shall be required to be given consistent with the above requirements.

#### H. Preferred Structures and Locations Policy

1. Collocation Encouraged. Prior to the approval of the construction of a new Telecommunication Tower, it is the policy of Jefferson County to encourage use of the following facilities, structures, and locations collocation of wireless facilities in the following locations:-
  - a. Preferred Facilities. Preferred facilities are as follows, in descending order of priority:
    - i. 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 sharing by users of the same frequency band.
    - ii. a Co-location of antennas on existing electric transmission towers.
    - iii. b. Co-location and the use of existing or approved towers, buildings or alternative structures such as buildings, water towers, silos, church steeples, and utility poles more than thirty-fifty (3050) feet in height within a one-quarter mile radius of a proposed Telecommunication Tower, where appropriate.
  - b. 2. Preferred Support Structures. In light of Jefferson County's agricultural, and increasingly residential character, it is the policy of Jefferson County that for Wireless Telecommunication Facilities located outside the Industrial-Commercial zoning district (or on lands owned by Jefferson County or the Jefferson County Fire & Rescue Association), support structures for antennas are desired in the following descending order of preference:
    - i. a. Silos
    - ii. b. Other Alternative Structures
    - c. Monopoles and
    - iii. d. Lattice Towers

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- e.3 Preferred Locations. ~~When a~~For new Wireless Telecommunication Towers ~~is determined to be necessary~~, it is the policy of Jefferson County to encourage use of the following facilities or locations, in descending order of priority:
- ~~i. County owned properties (including Jefferson County Fire & Rescue Association but not including County owned park properties or the properties owned by the Jefferson County Development Authority)~~
  - ~~ii.a.~~ The Industrial - Commercial District
  - ~~ii.b.~~ Non-residential areas screened by existing vegetation and located outside of the Industrial - Commercial District

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### I. Application Requirements

In furtherance of the Preferred Structures and Locations Policy in this Article, the following provisions shall apply to an application for a site plan for a Telecommunication Tower:

1. The application must demonstrate that the proposed Telecommunications Tower is designed structurally, electrically, mechanically and in all other respects to accommodate ~~at least two (2)~~ additional wireless users ~~unless the applicant demonstrates that structure height, topography, or other factors render this requirement unfeasible~~. An application must include:
  - ~~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.~~ 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. A site plan 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.
3. Where suitable electric transmission towers are not available for co-location of antennas, ~~all other existing structures must be considered and discussed in the application before a Telecommunication Tower shall be approved. A~~ site plan for a Telecommunication Tower located outside the Industrial-Commercial zoning district ~~or on land owned by Jefferson County and the Jefferson County Fire & Rescue Association (with the exception of County owned park properties or the properties owned by the Jefferson County Development Authority)~~ shall not be approved unless the ~~the applicant demonstrates that the~~ equipment planned for the proposed tower cannot be accommodated on existing or approved towers,

**Comment [SB11]:** Stakeholders have noted that shorter towers, or towers in areas of steep topography, have limited or no collocation potential.

buildings, silos or other alternative structures more than ~~thirty-five~~ (530) feet in height (after first considering electric transmission towers) within a one-quarter mile 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;~~
  - ~~e-b.~~ 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-c.~~ Other unforeseen reasons that make it infeasible to locate the planned telecommunications equipment upon existing or approved towers, buildings or alternative structures.
4. Antennas associated with an application for a Wireless Telecommunication Facility may not be co-located on a tower or other support structure ~~used developed as an Exempt Facility pursuant to this ordinance for the use of by~~ an amateur radio operator.

#### J. Cultural and Historic Resources Review

1. ~~An In addition to the notification requirements of Section 4B.9(B), an application for a Wireless Telecommunication Tower 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, shall comply with the following:~~

~~a. the applicant shall provide both visual impact analysis and justification as to why the tower could not be sited elsewhere.~~

~~b. All applications shall be referred to the Jefferson County Historic Landmarks Commission for review and comment.~~

~~2-a.~~ An application for a proposed tower for a proposed Wireless Telecommunications Tower within the Harpers Ferry Overlay District shall be provided, by the applicant, to the National Park Service for review and comment, and the applicant will provide the Department an affidavit certifying delivery.

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~~a. Be referred to the National Park Service for review and comment.~~  
~~b. Include 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.~~

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~~3-b.~~ An application for a proposed ~~Wireless Telecommunication T~~ tower located within one- mile of the Appalachian Trail shall be ~~referred provided, by the applicant,~~ to the Appalachian Trail Conservancy and the National Park Service for review and comment, ~~and the applicant will provide the Department an affidavit certifying delivery.~~

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## K. Design Criteria

Wireless Telecommunication Towers shall comply with the following design criteria:

### 1. 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.~~

~~a.~~ Wireless Telecommunication Towers in the Industrial-Commercial zoning district shall not exceed 199 feet. Towers in all other zoning districts shall not exceed 100 feet. ~~If a silo is used for a support structure for antennas, the height of the silo shall not exceed 120 feet.~~

~~b.~~, with the exception of:

~~1. Towers on lands owned by Jefferson County and the Jefferson County Fire & Rescue Association (with the exception of County-owned park properties or the properties owned by the Jefferson County Development Authority) in any zoning district shall not exceed 199 feet.~~

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~~2. If a silo is used for a support structure for antennas, the height of the silo shall not exceed 120 feet.~~

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~~e-b.~~ 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.

### 2. Fall Zone

a. With the exception of silos, Wireless Telecommunication Towers shall be set back from all property lines a distance equal to 110% of tower 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. The Board of Zoning Appeals may modify this setback if the applicant demonstrates that the fall zone of the support structure is less than the setback required by this section, following submission of either a signed and sealed structural analysis by a licensed structural engineer, or specifications from the support structure manufacturer.
- c. No residential dwellings may be located in the fall zone on either the primary parcel or in any easement area on adjacent parcels.

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### 3. 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 unicelell 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~~

### 4.3. Signage

~~— Signage at any ground-based portion of a Wireless Telecommunication Facility site shall conform to FCC and FAA standards. No commercial signage is permitted the following provisions:~~

- ~~— a. A sign no larger than two square feet 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.~~

### 5.4. 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 of a generator 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 a landscaped buffer of at least 10 feet in width planted along the entire exterior perimeter of the fence. Such a buffer must contain at least one row of native vegetation and form a continuous hedge-screen at least ~~3 feet~~ 6 feet in height at planting ~~and maintained at 6 feet.~~ All buffer yards shall be maintained by the property owner. It will be the responsibility of the property owner to maintain the buffer yard and to replace any trees or shrubs that die.

The Planning Commission may waive or modify the fencing requirement ~~if it determines upon a determination~~ 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 to address visual mitigation.

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

~~Prior to issuance of a Zoning Certificate, 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.

**Comment [SB12]:** Per Legal counsel, no authority under 8A-6, "Methods of Security."

### 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 may be referred to the Property Safety Enforcement Agency Board for a determination of the structural soundness of the Facility or Structure shall be considered abandoned.
- ~~1.2.~~ If a structure is determined to be unsound, it will be considered abandoned.
- ~~2.3.~~ The owner or operator of any Wireless Telecommunication Facility or Support Structure shall remove the Facility pursuant to the requirements of the Jefferson County Property Safety Ordinance 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.

DRAFT

**Related Zoning Ordinance Amendments for Review and Adoption Concurrent with Article 4B**

2.2 Definitions – various, as noted in draft Wireless Telecommunications Ordinance

[4.4, Prohibited Uses Section]

~~4.4 J Commercial wireless telecommunications antenna, commercial wireless telecommunications equipment shelter, commercial wireless telecommunications facility and commercial wireless telecommunications tower while Article 1, Section 1.6 is in effect. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE FEBRUARY 11, 1998]~~

**Comment [SB1]:** Sec. 1.6 not in effect

[4.3, Nonconforming Uses Section]

~~4.3 (h) Nonconforming commercial wireless telecommunications antenna, commercial wireless telecommunications equipment shelter(s), commercial wireless telecommunications facility(s) and commercial wireless telecommunications tower(s) cannot expand under this provision while Article 1, Section 1.6 is in effect. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE FEBRUARY 11, 1998]~~

**Comment [SB2]:** Sec. 1.6 not in effect.

[Landscaping, Screening, and Buffer Yard Requirements]

Section 4.11 —

- ~~(i) All wireless telecommunications antennas, towers, and facilities shall have a buffer yard pursuant to Article 4, Section 4.11(d)1-4. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 1, 1998]~~

**Comment [SB3]:** Duplicative. All landscaping requirements should be addressed in Article 4B.

[Exceptions]

Section 9.2 Building Height Limitations

Commercial wireless communications facilities shall comply with ~~Section Article 4B.7(a).~~

**Comment [SB4]:** Correct reference for height exception.

## Amy Puetz

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**From:** Lynn Koerner [lynnk@shentel.net]  
**Sent:** Friday, September 24, 2010 12:34 PM  
**To:** 'Steve Barney'  
**Subject:** Tower Ordinance

Steve:

Wanted to maybe keep things a little bit more on the simplistic side regarding number of carriers. As an example, Frederick County, VA only states the tower will be made available for co-location and does not specify a height. Shenandoah County, VA specifies a minimum of 3 carriers or could be stated additional attachments which would cover microwave dishes etc.

Rather than going through the chart with this height and that height tower and what it needs to be built for, word it something like:

Tower structures will be designed to accommodate a minimum of 3 carriers. Due to the type tower design and location, the tower site developer may ask for a waiver of the 3 carrier design. (ie: short flagpole structure etc)

Let me know if you have any questions. Sorry I did this quickly between road trips.

Lynn  
540-335-0030

## Amy Puetz

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**From:** Steve Barney [sbarney@jeffersoncountywv.org]  
**Sent:** Tuesday, September 21, 2010 4:50 PM  
**To:** 'Amy Puetz'  
**Subject:** FW: Amateur Radio and the new Wireless Facilities Ordinance

One more for PC packet... just a 1-page email.

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**From:** Zoning Dept [mailto:zoning@jeffersoncountywv.org]  
**Sent:** Monday, September 20, 2010 4:43 PM  
**To:** sbarney  
**Subject:** Fw: Amateur Radio and the new Wireless Facilities Ordinance

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

**From:** "Pete Smith" <pete.n4zr@gmail.com>  
**Sent:** 9/14/2010 12:43:20 PM  
**To:** zoning@jeffersoncountywv.org  
**Cc:** n4zr@contesting.com  
**Subject:** Amateur Radio and the new Wireless Facilities Ordinance

Dear Planning Commission members,

As a licensed amateur radio operator and hence a stakeholder in the new ordinance, I want to express my support for the August 25 draft's provisions dealing with amateur radio antennas. The exclusion of amateur radio antennas from the ordinance's definition of Wireless Telecommunications Antennas is an important improvement on the existing ordinance, particularly when coupled with the language of Section 4B.3.

It is consistent with the language on amateur radio antennas in the former draft zoning ordinance, which I hope will one day be carried forward into a new traditional zoning ordinance for the county.

Should there be any effort to delete or alter the language referred to above, I hope that the Commission will give stakeholders like me a chance for further comment. I will be back in the country on September 24, and in the meantime am reachable by e-mail.

Sincerely,

Peter G. Smith  
Amateur Radio License N4ZR  
96 Willow Well Ln, Kearneysville, WV 25430

08/25/10 Public Comment Version  
Wireless.org Suggested Revisions

~~Strikethroughs~~ = Deletions

Underline = Additions

## ARTICLE 4B. WIRELESS TELECOMMUNICATION FACILITIES

### 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. When any provision of this article is in conflict with any provision of the Jefferson County Zoning Ordinance or the Jefferson County Subdivision and Land Development Regulations, the stricter regulation shall apply.

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 and certain public lands;
- (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.

### **Definitions**

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

#### **Accessory Equipment**

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.

#### **Administrative Approval**

Zoning approval that the Zoning Administrator or his/her designee is authorized to grant after Administrative Review.

#### **Alternative Structure**

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.

#### **Antenna**

Any structure or device used to collect or radiate electromagnetic waves for the provision of cellular, paging, Personal Communications Services (PCS) and microwave communications. Such structures and devices include, but are

not limited to, directional antennas, such as panels, microwave dishes and satellite dishes, and omni directional antennas, such as whip antennas.

- Antenna Array** 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 as an antenna 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.~~

<b>Commercial Wireless Service Provider</b>	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>Discernible</b>	Capable of being distinguished with the eye or mind from its surroundings as a telecommunications tower.
<del><b>Distributed Antenna Systems (DAS)</b></del>	<del>A wireless telecommunication facility where one or more commercial wireless providers in a given locale share common antenna arrays associated with microcells connected by fiber optic cables strung along existing utility poles. These microcells, in turn, are connected via fiber optic cables on the 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 for routing to each provider.</del>
<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. This district excludes the area within the jurisdictional boundaries of the town of Harpers Ferry and the town of Bolivar.
<b>Historic Resource Site/Property</b>	<del>Any historic site, property, district, or structure—lot, parcel, structure, or designated area</del> which is eligible for listing on, or which is listed on the National Register of Historic Places; <u>that appears on the West Virginia State Historic Preservation Office surveys; or the Jefferson County Historic Landmarks Commission map and database.</u> <del>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.</del>
<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>	<del>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.</del>
<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>	<del>Trees which create a roof like layer of spreading branches.</del>
<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.

**Wireless Telecommunication Facility, Co-Located** 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, or inside a radome on a monopole that does not exceed the diameter of the monopole, or interlaced within or atop an electric distribution tower.

~~**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.

**Wireless Telecommunication Tower, Speculative** A Wireless Telecommunications Tower developed without a contractual agreement with one or more wireless service providers regarding the ownership or operation of the tower.

## **Section 4B.2 Classification of Wireless Telecommunication Facilities and Development Review Process**

### **Section 4B.2.X Completeness of Applications**

Within thirty (30) days of receiving an application for a Wireless Telecommunications Facility the Zoning Administrator shall notify the applicant in writing that its application is complete or, if additional information is needed to process the application, the applicant shall be notified in writing as to the particular information needed to complete the application. Once the additional information is received and the application is found to be complete, the Zoning Administrator shall notify the applicant of that finding.

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. Prior to the issuance of a Zoning Certificate, all other types of new Wireless Telecommunications Facilities listed above, with the exception of Temporary Wireless Telecommunication Facilities, require approval of a Minor Site Plan as described in the Jefferson County Subdivision and Land Development Regulations and also meeting the submittal and design requirements of this Article. Additionally, Wireless Telecommunication Towers shall require a public hearing within 30 days of submittal of a site plan application, to allow for an analysis of demonstration of need, neighborhood compatibility, impact on cultural and historic resources, and visual mitigation.

### **Section 4B.3 Exempt Facilities Allowed by Right**

This section covers antennas other than those associated with commercial wireless telecommunication facilities, such as facilities associated with 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.4 Microcellular Wireless Telecommunication Facilities~~**

~~Microcellular Wireless Telecommunications Facilities are permitted in all zoning districts. The Zoning Administrator may issue a Zoning Certificate 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 Zoning Certificate.~~
  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 Zoning Certificate.~~
  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. Such enclosures must meet the setback requirements for the zoning district in which they are located. 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. ~~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.~~

#### **Section 4B.5 — Distributed Antenna Systems (DAS)**

DAS networks are permitted in all zoning districts., and are the optimal and preferred method of deploying wireless infrastructure throughout the Harpers Ferry Overlay District.

~~Equipment associated with a DAS network must meet the setback requirements for the zoning district in which it is located.~~

#### **Section 4B.6 Concealed Wireless Telecommunication Facilities**

Concealed Wireless Telecommunication Facilities are permitted in all zoning districts. The Zoning Administrator may issue a Zoning Certificate 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, or metal skid or platform, 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 Zoning Certificate.
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 Zoning Certificate.
7. ~~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.~~

8. 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.
9. 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 or metal skid or platform. If placed on the ground on a concrete pad, or metal skid or platform, such equipment enclosures shall be screened so as to make them unobtrusive.
10. 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.
11. 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.
12. Equipment associated with a Concealed Wireless Telecommunication Facility not located in a public right-of-way must meet the setback requirements for the zoning district in which it is located.

#### **Section 4B.7 Co-located Wireless Telecommunication Facilities**

Co-located Wireless Telecommunications Facilities are permitted within all zoning districts. The Zoning Administrator may issue a Zoning Certificate 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 these 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 located on a monopole, where practical, 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~~ Antennas within a cylindrical radome matching the diameter of a monopole. ~~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 monopole 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 on a monopole 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.
- g. 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.
- ~~h. 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 a landscaped buffer of at least 10 feet in width planted along the entire exterior perimeter of the fence. Such a buffer must contain at least one row of native vegetation and form a continuous hedge at least 3 feet in height at planting and maintained at 6 feet. All buffer yards shall be maintained by the property owner. It will be the responsibility of the property owner to maintain the buffer yard and to replace any trees or shrubs that die. 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.~~

- i. Signage at any ground-based portion of a Co-located Wireless Telecommunication Facility site shall conform to the following provisions:
  - i. A sign no larger than two square feet 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, except those required by the Federal Communications Commission, or advertising is prohibited at any Wireless Telecommunication Facility or upon any Wireless Telecommunications Tower;
- j. 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.
- k. 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.

#### **Section 4B.8 Temporary Wireless Telecommunication Facilities**

Temporary Wireless Telecommunication Facilities are permitted in all zoning districts. The Zoning Administrator may issue a Zoning Certificate 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. Where scheduled or unscheduled maintenance will extend beyond seventy-two (72) hours, the wireless provider must obtain a Zoning Certificate. The Zoning Administrator may issue such a certificate for up to thirty (30) days upon a showing of good cause by the applicant. Such certificate may be extended for an additional thirty (30) day period if the applicant can demonstrate to the Zoning Administrator's satisfaction that extenuating circumstances necessitate an extension.

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, or where ordered by the Federal Communications for a specific public 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.9 Wireless Telecommunication Towers**

##### **A. Site Plan Required**

Wireless Telecommunication Towers are permitted in all zoning districts subject to the provisions of this section. A minor site plan 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.

##### **B. Public Hearing Required**

In addition to the requirements for a minor site plan, a proposed Wireless Telecommunications Tower shall be reviewed at a public hearing conducted at a scheduled Planning Commission meeting. An application for such a facility shall be submitted to, and deemed to be complete by the Zoning Administrator, at least 30 days prior to the scheduled Planning Commission public hearing. The Zoning Administrator shall notify the Jefferson County Historic Landmarks Commission of an application as soon as the application is deemed complete. ~~The scope of this public hearing shall be limited to an analysis of demonstration of need, neighborhood compatibility, impact on cultural and historic resources, and visual mitigation. The Planning Commission shall review the proposed tower for compliance with the standards in this article.~~

The scope of this public hearing shall include consideration of the submittal and design criteria set out in this ordinance, the compatibility of the facility proposal with the Comprehensive Plan, as well as any relevant information presented by any person that addresses the purpose and intent of this ordinance or the Comprehensive Plan. Before the Zoning Administrator may issue a Zoning Certificate for a Wireless Telecommunication

Tower, the Planning Commission must find, by a majority vote, that the application complies with all submittal and design criteria set out in this ordinance, as that it is consistent with the Comprehensive Plan.

### **C. Retention of Consultants**

The Zoning Administrator may elect to retain outside consultants or professional services to review an ~~site plan~~ 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. Fees for such professional consulting services shall not exceed \$5,000.

### **D. Applicant's Burden of Proof**

The applicant for a site plan 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, that it has met all submittal and design criteria in this Ordinance, and that its proposal is consistent with the Comprehensive Plan. ~~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.~~

### **E. 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 within six (6) months of issuance of a certificate of occupancy for the tower. Such demonstration shall include submittal of a contract between the applicant and the FCC licensee(s) or an affidavit by the FCC licensee(s), and a copy of each 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.

### **F. Demonstration of Need**

As part of its application submission for a site plan 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 format to facilitate information sharing, inclusion on the county's web site and to otherwise maximize public awareness.

### **G. Balloon Test**

1. An applicant shall conduct a balloon or crane test to simulate the maximum 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 site plan in both hard copy and electronic form.
2. ~~Notice of the dates and times of such tests shall be mailed to all adjacent/confronting affected property owners, and all owners within adjoining subdivisions if any portion of a subdivision adjoins the proposed development site, at least ten (10) days prior to such tests.~~ Notice of the dates and times of such tests shall be mailed to all property owners within a one-quarter (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 and addresses 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. The applicant shall notify the Jefferson County Historic Landmarks Commission of any balloon test in sufficient time for a Landmarks Commission representative to attend and observe the balloon test. The applicant shall document the visibility of any wireless communication tower from any historic resource that is identified to the applicant prior to the balloon test by the Jefferson County Historic Landmarks Commission.
5. 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.

### **H. Preferred Structures and Locations Policy**

1. Prior to the approval of the construction of a new Telecommunication Tower, it is the policy of Jefferson County to encourage use of the following facilities, structures, and locations.

- a. Preferred Facilities. Preferred facilities are as follows, in descending order of priority:
- i. ~~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 sharing by users of the same frequency band.~~
  - ii. Co-location of antennas on existing electric transmission towers.
  - iii. Co-location and the use of existing or approved towers, buildings or alternative structures such as buildings, water towers, silos, church steeples, and utility poles more than fifty (50) ~~thirty (30)~~ feet in height within a one-quarter mile radius of a proposed Telecommunication Tower, where appropriate.
- b. Preferred Support Structures. In light of Jefferson County's agricultural, and increasingly residential character, it is the policy of Jefferson County that for Wireless Telecommunication Facilities located outside the Industrial-Commercial zoning district (or on lands owned by Jefferson County or the Jefferson County Fire & Rescue Association), support structures for antennas are desired in the following descending order of preference:
- i. Silos
  - ii. Other Alternative Structures
  - iii. Monopoles and Lattice Towers

Before an application for a monopole or lattice tower can be approved the applicant's submittal must provide justification as to why alternatives of a higher preference are not capable of serving its needs.

- e. Preferred Locations. When a new Wireless Telecommunication Tower is determined to be necessary, it is the policy of Jefferson County to encourage use of the following facilities or locations, without any particular order of preference; ~~in descending order of priority~~:
- i. The Industrial - Commercial District
  - ii. County-owned properties (including Jefferson County Fire & Rescue Association owned properties (but not including County-owned park properties or ~~the~~ properties owned by the Jefferson County Development Authority)
  - iii. Non-residential areas screened by existing vegetation and located outside of the Industrial - Commercial District

## **I. Application Requirements**

In furtherance of the Preferred Structures and Locations Policy in this Article, the following provisions shall apply to an application for a site plan for a Telecommunication Tower:

1. The application must demonstrate that the proposed Telecommunications Tower is designed structurally, electrically, mechanically and in all other respects to accommodate at least two (2) additional wireless users. An application must include:
  - a. A letter of intent agreeing to make all of its Wireless Telecommunication Towers ~~wireless telecommunication facilities~~ in Jefferson County (including existing towers ~~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. A site plan 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.
3. Where suitable electric transmission towers are not available for co-location of antennas, all other existing structures must be considered and discussed in the application before a Telecommunication Tower shall be approved. A site plan for a Telecommunication Tower located outside the Industrial-Commercial zoning district or on land owned by Jefferson County and the Jefferson County Fire & Rescue Association (with the exception of County-owned park properties or the properties owned by the Jefferson County Development Authority) shall not be approved unless the equipment planned for the proposed tower cannot be accommodated on existing or approved towers, buildings, silos or other alternative structures more than ~~thirty (30)~~ fifty (50) feet in height (after first considering electric transmission towers) within a one-quarter mile 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.
4. Antennas associated with an application for a Wireless Telecommunication Facility may not be co-located on a tower or other support structure used by an amateur radio operator.

## **J. Cultural and Historic Resources Review**

1. An application for a Wireless Telecommunication Tower 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, shall comply with the following:
  - a. the applicant shall provide both visual impact analysis and justification as to why the tower could not be sited elsewhere.
  - b. All applications shall be referred to the Jefferson County Historic Landmarks Commission for review and comment. The application shall address all historic resources listed on, or eligible for listing on, the National Register of Historic Places; and any historic site, property, district or structure appearing on the West Virginia State Historic Preservation Office surveys, or the Jefferson County Historic Landmarks Commission map and database of historic resources that are within one mile of the proposed site.
2. An application for a proposed Wireless Telecommunications Tower within the Harpers Ferry Overlay District shall be referred to the National Park Service and the Historic Landmarks Commission for review and comment.:
  - ~~a. Be referred to the National Park Service for review and comment.~~
  - ~~b. Include 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.~~
3. An application for a proposed Wireless Telecommunication Tower located within one-mile of the Appalachian Trail shall be referred to the Appalachian Trail Conservancy and the National Park Service for review and comment.

## **K. Design Criteria**

Wireless Telecommunication Towers shall comply with the following design criteria:

### **1. 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 shall not exceed 100 feet, with the exception of:
  1. Towers on lands owned by Jefferson County and the Jefferson County Fire & Rescue Association (with the exception of County-owned park properties or the properties owned by the Jefferson County Development Authority) in any zoning district shall not exceed 199 feet.
  2. If a silo is used for a support structure for antennas, the height of the silo shall not exceed 120 feet.
- c. 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.

### **2. Fall Zone**

- a. With the exception of silos, Wireless Telecommunication Towers shall be set back from all property lines a distance equal to 110% of tower 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.

### **3. Visual Cross Section**

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

- a. ~~Compact dual polarized antennas~~ Antennas in a cylindrical unicell arrangement inside a radome that does not exceed the diameter of the monopole. ~~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

Curved or straight davit arms or brackets used for antenna mounting on a monopole 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.

#### **4. Signage**

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

- a. A sign no larger than two square feet 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 except those required by the Federal Communications Commission (FCC), is prohibited at any Wireless Telecommunication Facility or upon any Wireless Telecommunication Tower.

#### **5. 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 a landscaped buffer of at least 10 feet in width planted along the entire exterior perimeter of the fence. Such a buffer must contain at least one row of native vegetation and form a continuous hedge at least 3 feet in height at planting and maintained at 6 feet. All buffer yards shall be maintained by the property owner. It will be the responsibility of the property owner to maintain the buffer yard and to replace any trees or shrubs that die.

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 agree in writing that, before a Zoning Certificate is issued, that it will 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.

**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**  
**September 28, 2010**  
**Planning Commission meeting**

- 1) Activity Report (attached)
- 2) Draft Policy on meetings involving PC members without a quorum present
- 3) Update on Petition by PC to Rezone Certain Federal Lands on US 340 (attachments)
- 4) Follow up on Urban Growth Boundary issues:
  - a) Harpers Ferry Town Council – October 11, 2010
  - b) Bolivar – status of boundary from Town Ordinance
  - c) Shepherdstown – follow up with Zoning Administrator
- 5) October 1, 2010 Smart Code On-Site Workshop, Ranson Civic Center (attached)
- 6) Status of Land Development Fees
- 7) Follow Up on Discussion of PC Authority Outside of WV Code 8A
- 8) Status of Zoning Ordinance Amendments

## Christine Chalmers

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To: PLANNING COMMISSION  
Subject: FW: WEEKLY CALENDAR

### MONDAY, SEPTEMBER 20, 2010

2:00 pm STEVE, SETH and JONATHAN – MEETING / RE: EBENEZOR  
CHURCH  
3:00 pm - 5:00 pm JENNIE – “WAC” MEETING IN LIBRARY CONFERENCE ROOM

### TUESDAY, SEPTEMBER 21, 2010

9:30 am - STAFF MEETING  
1:15 pm – 2:45 pm JENNIE, STEVE AND JENNILEE – WEEKLY ZONING MEETING  
3:00 pm – 4:00 pm JENNIE, SETH AND AMY – WEEKLY PLANNING MEETING  
  
7:00 pm - JENNIE, SETH AND JULIE – BLUE RIDGE MOUNTAIN COMM. MEETING

### WEDNESDAY, SEPTEMBER 22, 2010

8:00 am – 9:30 am JENNIE – DEPARTMENT HEAD MEETING  
10:00 am JENNIE, SETH, STEVE AND JONATHAN – M/S PPC MEETING WITH HERB JONKERS  
RE: HIGHLAND FARM  
11:30 am SETH, STEVE AND JONATHAN – SITE PLAN PPC / RE: JEFFERSON ASPHALT  
1:30 pm SETH, STEVE AND JONATHAN – SITE PLAN PPC / RE: VERIZON  
3:00 pm SETH, STEVE AND JONATHAN – M/S PPC / RE: WELLER

### THURSDAY, SEPTEMBER 23, 2010

9:00 am - COUNTY COMMISSION MEETING

### FRIDAY, SEPTEMBER 24, 2010

10:00 am JENNIE, SETH, STEVE, JONATHAN, JENNILEE – MEETING WITH JANE STONE  
RE: STONECREST

## **Christine Chalmers**

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

### **MONDAY, SEPTEMBER 27, 2010**

10:00 am JENNIE & STEVE – MEETING WITH RUSTY MORGAN  
11:30 am JENNIE & JULIE – “COOP” MEETING  
1:30 pm JENNIE, JENNILEE, SETH & JULIE – MEETING REGARDING FEES.  
3:00 pm – 3:30 pm JENNIE – MEETING WITH ARNIE

### **TUESDAY, SEPTEMBER 28, 2010**

9:30 am - STAFF MEETING  
1:15 pm – 2:45 pm JENNIE, STEVE AND JENNILEE – WEEKLY ZONING MEETING  
3:00 pm – 4:00 pm JENNIE, SETH AND AMY – WEEKLY PLANNING MEETING  
  
7:00 pm - PLANNING DEPARTMENT MEETING

### **WEDNESDAY, SEPTEMBER 29, 2010**

9:30 am - 12:30 pm JENNIE (SETH/ALTERNATE) – REGION 9 STORMWATER STEERING COMMITTEE  
LOCATION: MOUNTAIN STATE UNIVERSITY ROOM #212 / MARTINSBURG  
1:30 pm JENNIE & JULIE – “COOP” MEETING @ BARB MILLER’S OFFICE  
3:30 pm – 5:00 pm JENNIE – MEETING WITH LYN WIDMYER & JOHN MAXEY / RE: 340 CORRIDOR  
5:00 pm JENNIE – “COG” MEETING

### **THURSDAY, SEPTEMBER 30, 2010**

9:00 am - COUNTY COMMISSION MEETING  
7:00 pm JENNIE – WATERSHED ASSOC. MEETING IN LIBRARY CONFERENCE ROOM

### **FRIDAY, OCTOBER 01, 2010**

8:00 am - 4:00 pm JENNIE, SETH & STEVE – SMARTCODE SESION / RANSON CIVIC CENTER

Commission Office Use Only

Date on Agenda:

Appt Time or New Business:

## AGENDA REQUEST FORM

Name: Jennifer Brockman

Department or Entity: Planning and Zoning

Estimation of amount of time needed for appointment: 10 minutes

Date Requested – 1<sup>st</sup> Choice: September 30, 2010?

Date Requested – 2<sup>nd</sup> Choice: \_\_\_\_\_

If a specific date is needed, please provide reason for specific date:

Subject: **Request to Initiate Rezoning of certain Federal Lands**

Please provide the County Commission with a description of your request or presentation, including any background information:

**WV Code 8A-7-9 provides two mechanisms to initiate amendments to zoning ordinances. One mechanism permits the planning commission to petition the County Commission to amend a previously adopted zoning ordinance. The other is for the County Commission to initiate the amendment to the zoning ordinance, which requires the County Commission to obtain a recommendation from the Planning Commission on conformance with the Comprehensive Plan.**

**The Planning Commission is interested in having the County Commission initiate a zoning map amendment for any federal land in Jefferson County that is not zoned rural. The Planning Commission has researched this and determined that this situation only exists in the 340 corridor. Land recently acquired by the National Park Service and by the Customs and Border Patrol consists of a number of different zoning districts. The Planning Commission has initiated discussion with both of these entities and they have indicated that would not object to having their zoning classification changed.**

**For this reason, the Planning Commission is requesting that the County Commission initiate this zoning map amendment process enabling the Planning Commission to evaluate request in light of the Comprehensive Plan, hold a public hearing, and provide a recommendation to the County Commission.**

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve):

**I move that the Planning Commission research, hold a hearing, make a recommendation related the rezoning of certain federal lands along 340 from their current zoning to rural zoning.**

Attachments:

**JEFFERSON COUNTY, WEST VIRGINIA**  
**Department of Planning & Zoning**  
116 East Washington Street  
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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**Date:** September 28, 2010

**To:** Planning & Zoning Staff

**From:** John Maxey, Planning Commission President

**RE:** Planning Commission Policy – Meetings with Planning Commission Presence

Any meeting or conference call, the setting of which was approved by the Planning Commission at a regularly scheduled Planning Commission meeting, that requires Planning Commission representation without the presence of a quorum shall require Staff to document meeting minutes. The meeting minutes shall be presented to all Planning Commission members within their packet for the next regularly scheduled Planning Commission meeting.

**Effective Date:** September 28, 2010

**X**

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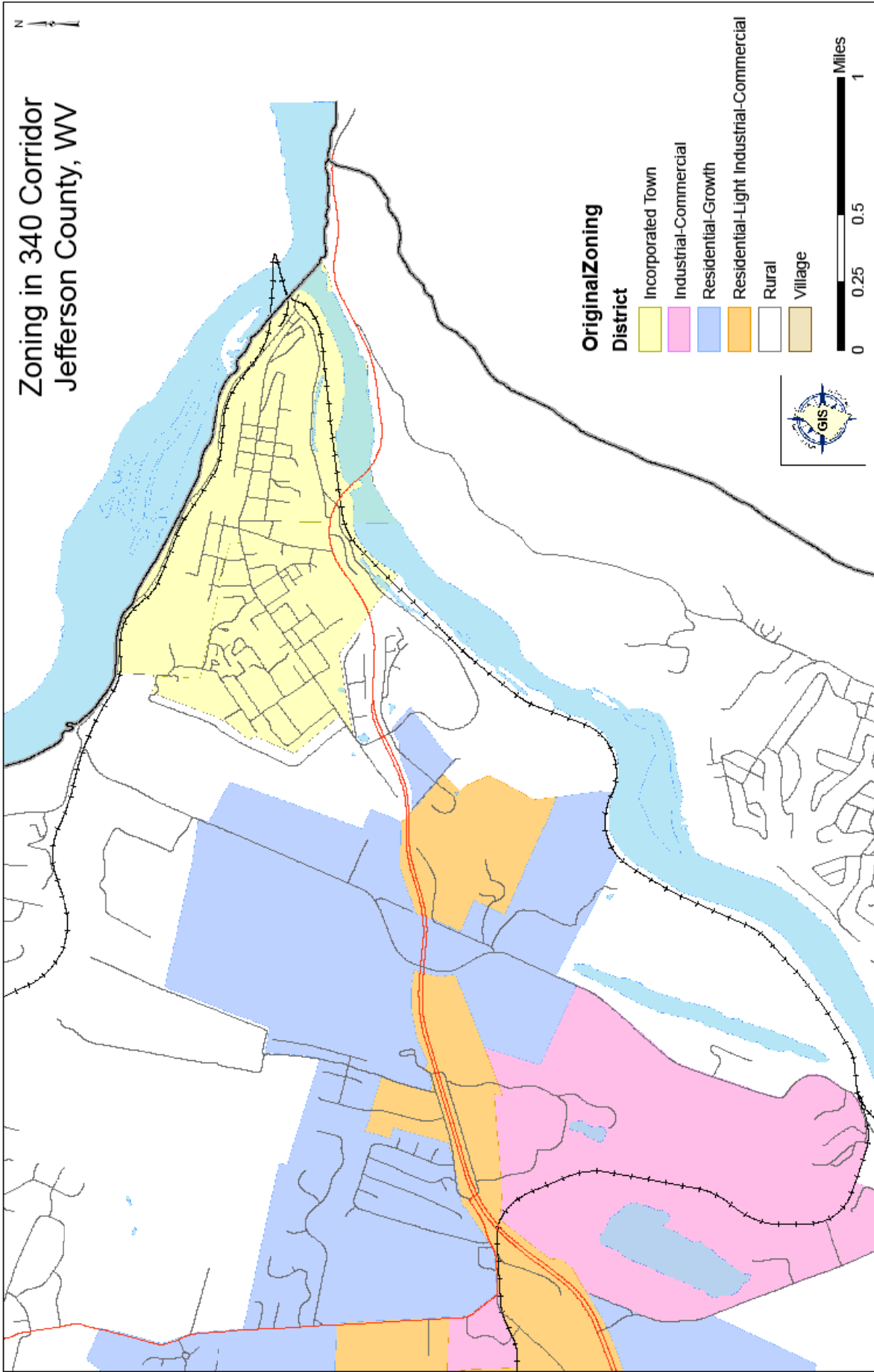
John Maxey  
Planning Commission President

**Jefferson County Planning  
Commission Petition to County  
Commission**

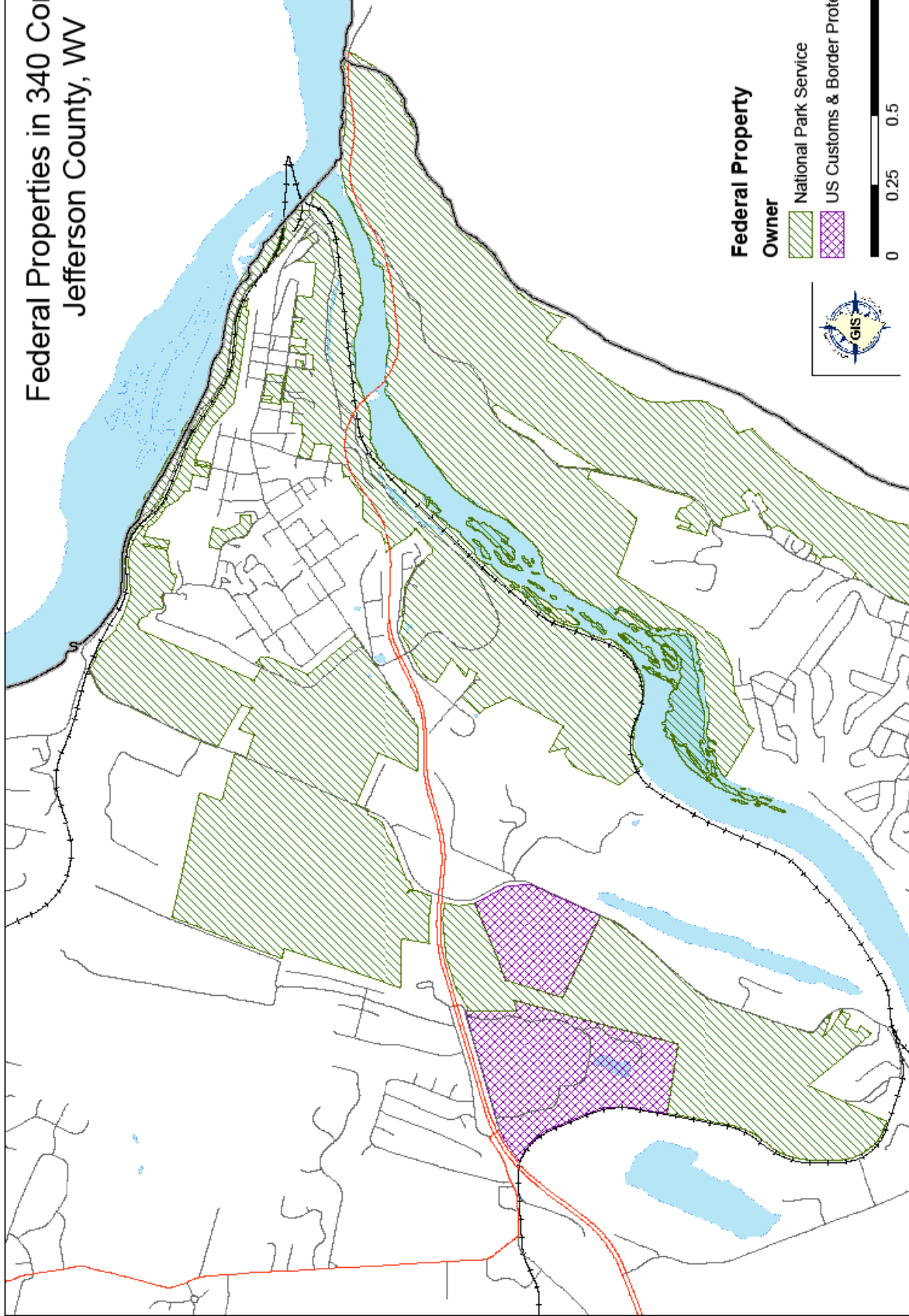
**Request to Rezone Certain  
Federal Lands along US 340**

**September 23, 2010**

# Zoning in 340 Corridor Jefferson County, WV




# Federal Properties in 340 Corridor Jefferson County, WV



## Federal Property

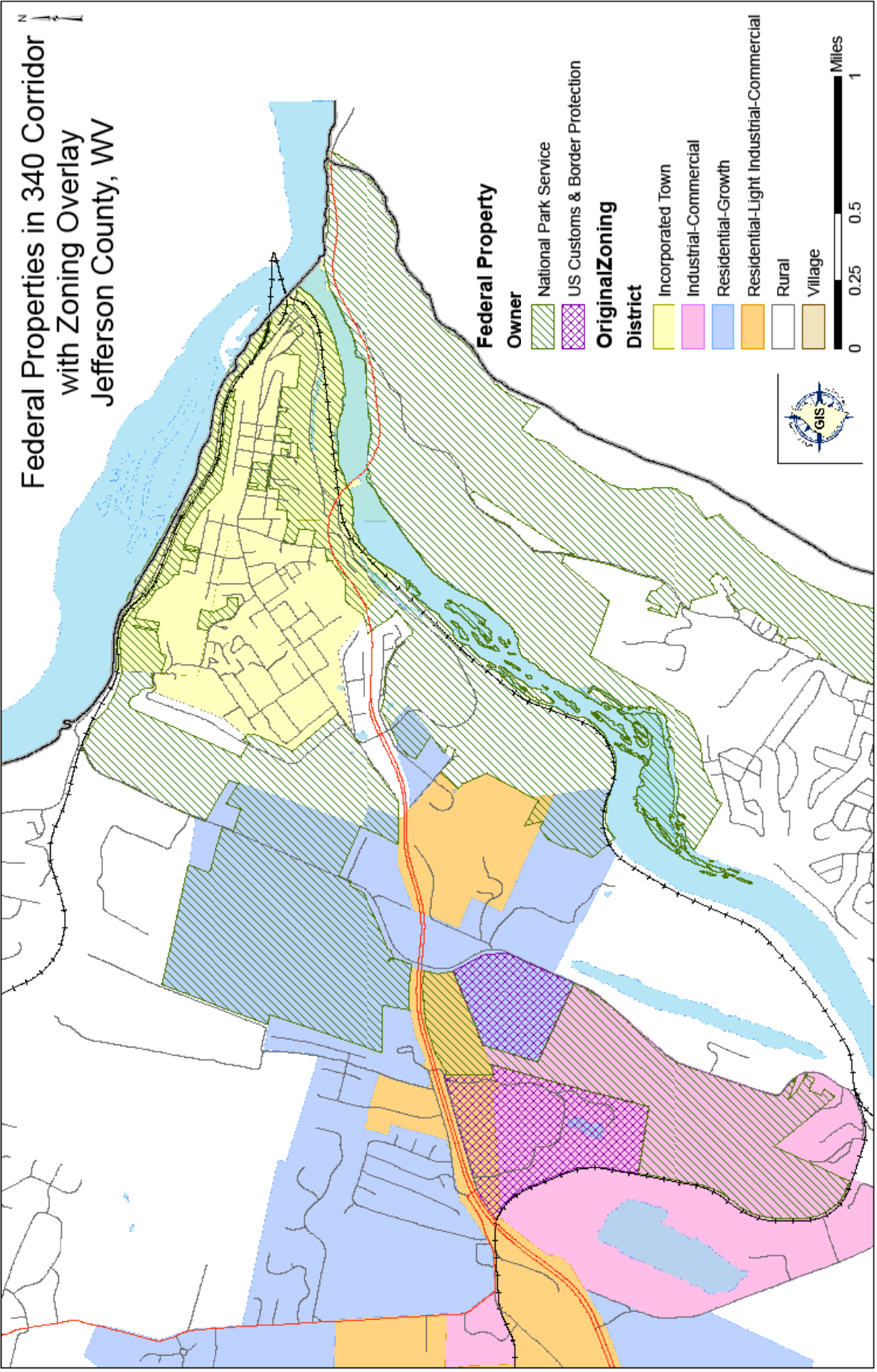
### Owner

 National Park Service

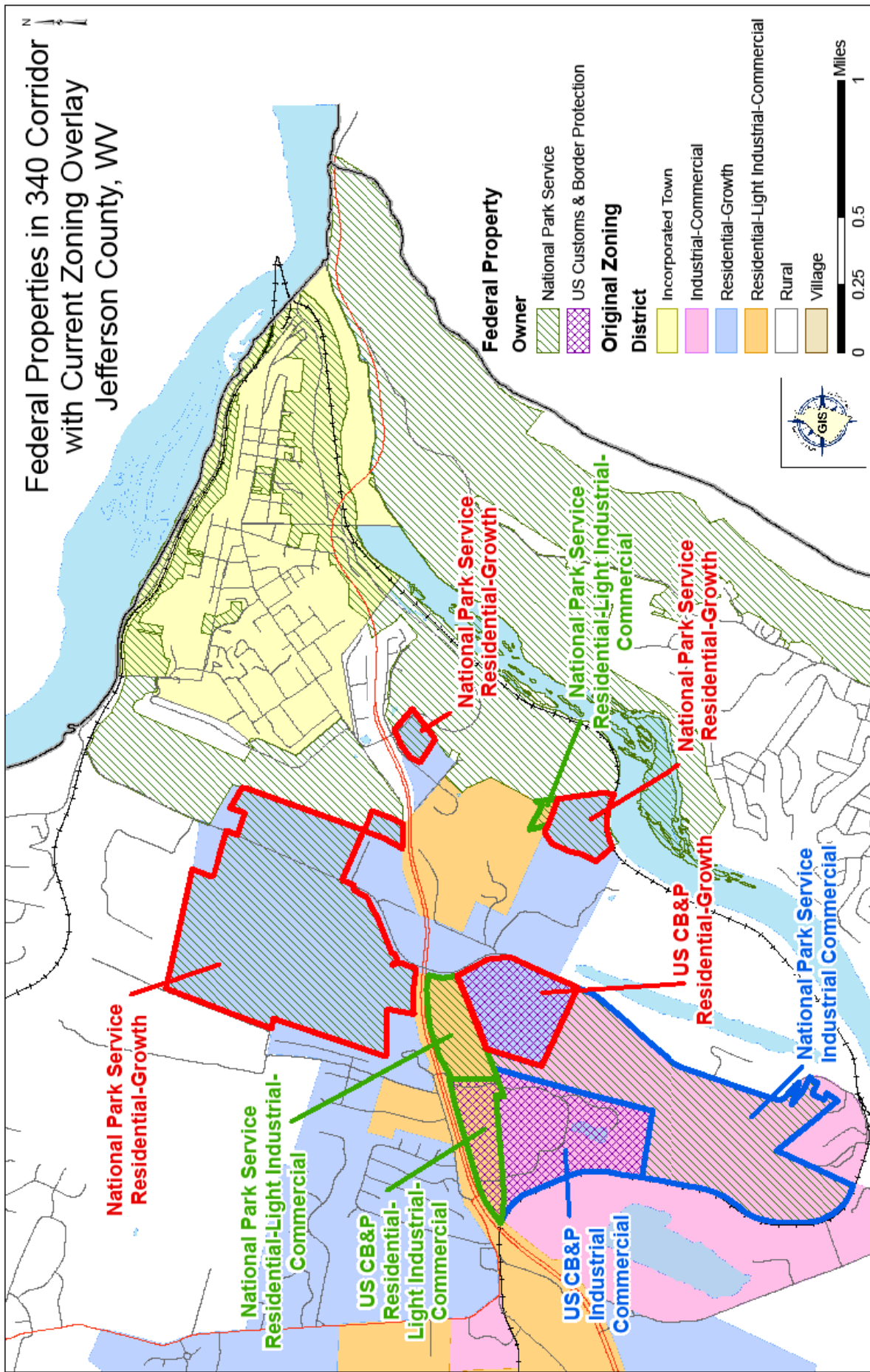
 US Customs & Border Protection



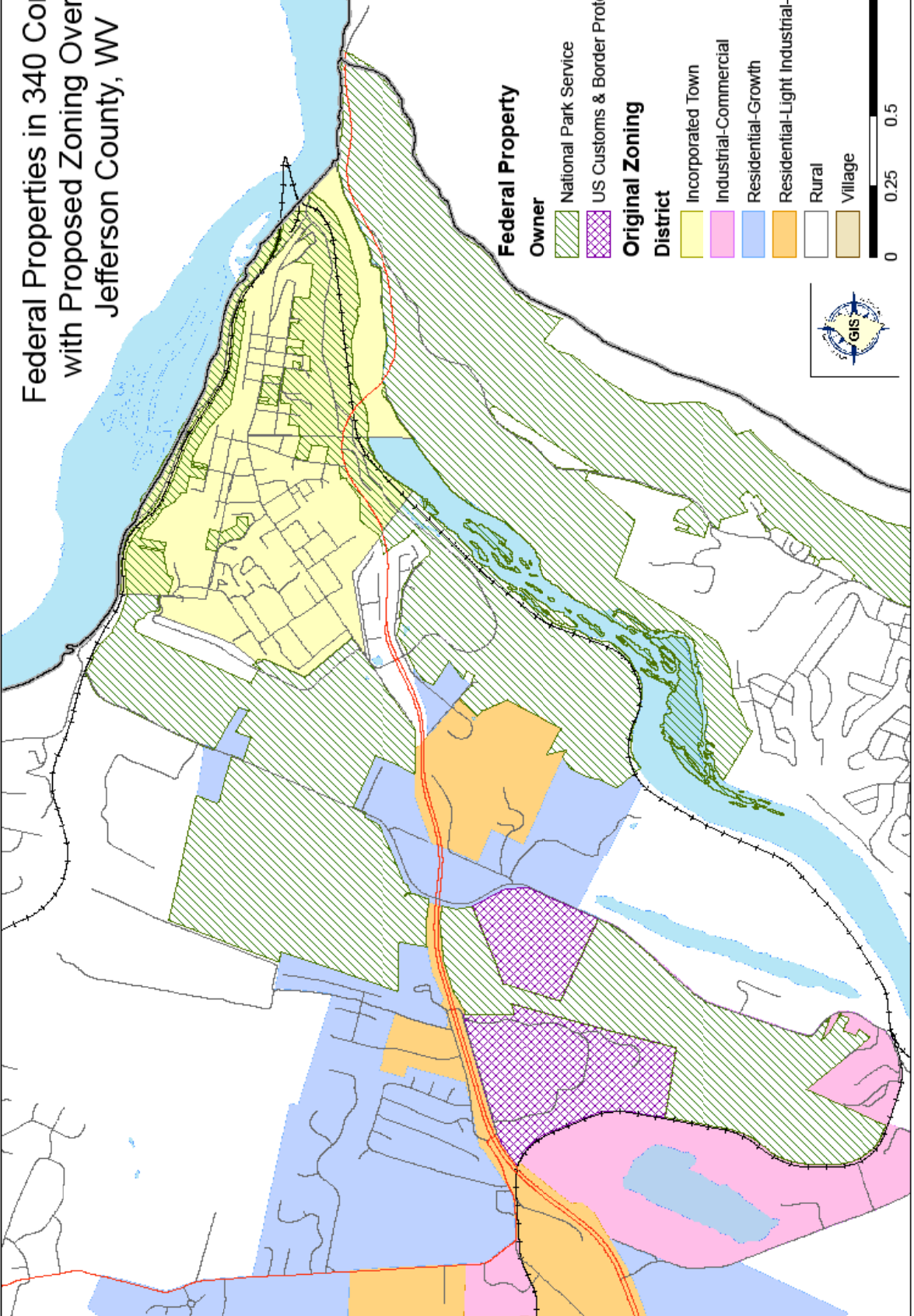
# Federal Properties in 340 Corridor with Zoning Overlay Jefferson County, WV



# Federal Properties in 340 Corridor with Current Zoning Overlay Jefferson County, WV



# Federal Properties in 340 Corridor with Proposed Zoning Overlay Jefferson County, WV

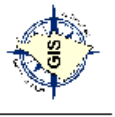


## Federal Property

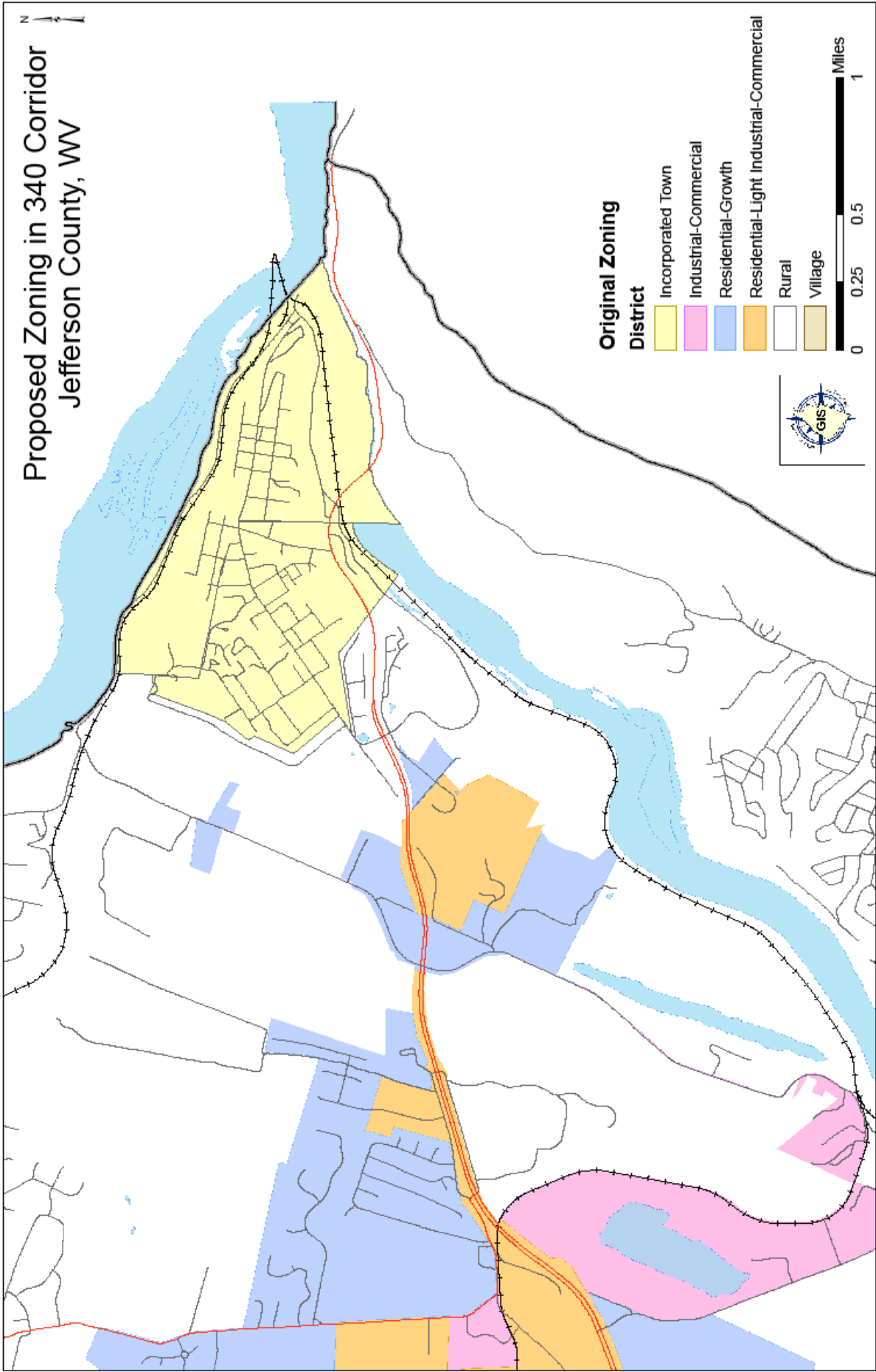
- Owner**
- National Park Service
  - US Customs & Border Protection

## Original Zoning

- District**
- Incorporated Town
  - Industrial-Commercial
  - Residential-Growth
  - Residential-Light Industrial-Commercial
  - Rural
  - Village



# Proposed Zoning in 340 Corridor Jefferson County, WV



# Jefferson County Zoning and Land Development Ordinance (effective 12/3/09)

## Section 5.7 Rural District

- (a) Principal Permitted Uses
  2. Churches and private or public elementary, middle or secondary schools and specialized or accredited educational and training facilities for adults in a campus setting, including classroom buildings, dormitories, cafeterias, gymnasiums (whose use is limited to the students, participants and instructors at said school or training facility), and administrative buildings.

## Resolution to Petition the Jefferson County Commission to Amend the Zoning Map

WHEREAS the existing Jefferson County Zoning map indicates parcels along Route 340 now owned by the National Park Service and U.S. Customs and Border Patrol as either their original zoning classification or as "National, State and County Facilities"; and

WHEREAS the Jefferson County Planning Commission wishes to revise the zoning map so that it reflects the true underlying zoning classification rather than parcel ownership; and

WHEREAS the current use of these parcels fits the rural zoning classification; and

WHEREAS rezoning these parcels to reflect a rural classification would be consistent with the Jefferson County Comprehensive Plan;

THEREFORE BE IT RESOLVED that the Jefferson County Planning Commission petition the Jefferson County Commission under the provisions of WV Code §8A-7-9 paragraph B to rezone the parcels owned by either the National Park Service of the U.S. Customs and Border Patrol along Route 340 from the current zoning classification to rural.

On September 14, 2010 at the regularly scheduled Planning Commission meeting, the Planning Commission decided with a 5-0 vote to petition the County Commission to rezone Federal Lands along the Route 340 Corridor.

X



John Maxey

President, Jefferson County Planning Commiss...



# City of Ranson



## Office of the City Manager

312 South Mildred Street  
Ranson, West Virginia 25438-1621  
Phone (304) 725-1010 FAX (304) 728-8579  
E-mail: [citymanager@cityofransonwv.net](mailto:citymanager@cityofransonwv.net)  
[www.cityofransonwv.net](http://www.cityofransonwv.net)

### Council Members

Debbie McClure  
Scott Coulter  
Donnie Haines  
Duke Pierson  
David Cheshire

A David Hamill – Mayor      Ray A. Braithwaite – Recorder

September 14, 2010

Jennifer Brockman  
Jefferson County Planning Office  
P.O. Box 338  
Charles Town, WV 25414

RE: SmartCode On-Site Workshop  
Ranson Civic Center, October 1, 2010

Dear Ms. Brockman:

I am writing to invite you to participate in a momentous one-day seminar that will introduce the community at large to the development potential of the SmartCode. The SmartCode is an integrated land development ordinance. It folds zoning, subdivision regulations, urban design, public works standards and basic architectural controls into one compact document. It is also a unified ordinance, spanning scales from the region to the community to the building.

In 2003, the City of Ranson established its first Urban Growth Boundary (UGB) and embarked on a campaign to encourage annexation within the UGB. To prepare for this new growth and development, the City adopted a Growth Management Plan that in part sought to ensure that as the City grew, it grew in a sustainable, balanced fashion. To this end, my staff and I attended a number of presentations on the implementation and use of SmartCode and found it to be a valuable tool for both government and the development community. Ultimately, the City wants to develop in a planned and practical manner, while also ensuring that we offer a predictable process for our developers and understandable rules for our citizens.

The City has invited PlaceMakers to present the SmartCode concept during a one-day seminar to be held on Friday, October 1<sup>st</sup> at the Ranson Civic Center with lunch and light refreshments provided. I encourage you to attend this free event and ask that you invite others as we would like a large audience. If you are able to participate, please RSVP by September 28<sup>th</sup> to Stacey Dodson at (304) 724-3863 or [sdodson@cityofransonwv.net](mailto:sdodson@cityofransonwv.net)

Regards,

P. David Mills, ICMA-CM  
City Manager

**COPY**

# smartcode OnSite



## Program Agenda

Friday, October 1, 2010  
Ranson Civic Center  
431 W. Second Avenue  
Ranson, West Virginia 25438

- |                         |   |
|-------------------------|---|
| 8:30 a.m. – 8:40 a.m.   | Welcome and Introduction<br><i>City Manager Paul D. Mills</i>   |
| 8:40 a.m. – 10:00 a.m.  | PlaceMaking as an Economic Development Tool<br><i>Nathan R. Norris</i>  |
| 10:00 a.m. – 10:15 a.m. | Break   |
| 10:15 a.m. – 11:45 a.m. | Safeguarding Community Character with the SmartCode:<br>Article by Article Overview<br><i>Nathan R. Norris &amp; Howard M. Blackson III</i> |
| 11:45 a.m. – 1:00 p.m.  | Lunch   |
| 1:00 p.m. – 2:00 p.m.   | Walking Tour: Understanding SmartCode Details by<br>Walking Downtown<br><i>Nathan R. Norris &amp; Howard M. Blackson III</i>                |
| 2:00 p.m. – 3:00 p.m.   | How to Customize a SmartCode for Your Community<br><i>Howard M. Blackson III</i>  |
| 3:00 p.m. – 3:30 p.m.   | Next Steps<br><i>Nathan R. Norris &amp; Howard M. Blackson III</i>  |



# smartcode onsite



## Program Agenda

**Nathan R. Norris** is the Director of Implementation Advisory for PlaceMakers, LLC, working with developers and municipalities to plan, develop and market traditional places. He has successfully helped educate and build support for the adoption of form-based codes in places as diverse as El Paso, Lawrence, Taos, Kona and Leander, Texas. He frequently speaks to municipalities, organizations and groups interested in placemaking as an economic development tool; zoning code reform for sustainability; greenbuilding; and promoting Smart Growth through intelligent school planning and design. He is a contributor to the SmartCode Manual, a Board Member of the New Urban Guild Foundation as well as the Transect Codes Council, and is the primary author of the Smart Growth Schools Report Card. Nathan is a licensed attorney and real estate broker. He received his undergraduate degree from the University of Virginia and his law degree from the University of Alabama.

**Howard M. Blackson, III** is the Director of Planning for PlaceMakers, LLC. Howard is known for crafting plans that reflect the unique nature and culture of the site's location. This is manifested in his work for Kona, Hawaii, and Taos, New Mexico.

Prior to joining PlaceMakers, Howard gained valuable public sector experience as a member of the San Diego County Planning Department. Howard received his Bachelor of Arts in Geography from the University of Texas and his Master of Arts in Urban Design from the University of Westminster in England.



# The SmartCode

**The SmartCode is an integrated land development ordinance.** It folds zoning, subdivision regulations, urban design, public works standards and basic architectural controls into one compact document. It is also a unified ordinance, spanning scales from the region to the community to the building.

**The SmartCode is freeware,** available for use without charges or licensing fees.

**The SmartCode enables the implementation of a community's vision** by coding the specific outcomes desired in particular places. It allows for distinctly different approaches in different areas within the community, unlike a one-size-fits-all conventional code. To this end, it is meant to be locally customized by professional planners, architects, and attorneys. This gives the SmartCode unusual political power, as it permits buy-in from stakeholders.

**The SmartCode supports these outcomes:** walkable and mixed-use neighborhoods, transportation options, conservation of open lands, local character, housing diversity, and vibrant downtowns.

**The SmartCode discourages these outcomes:** sprawl development, automobile dependency, loss of open lands, monotonous subdivisions, deserted downtowns, and unsafe streets and parks.

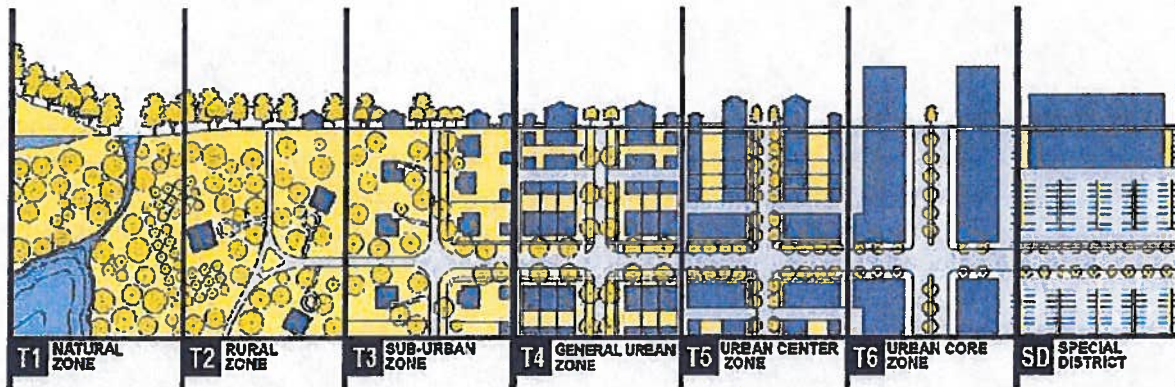
**The SmartCode is one of the family of “form-based codes”** addressing primarily the physical form of building and community. It is thus unlike conventional zoning codes based on use and density, which have caused systemic problems over the past sixty years by making mixed use and walkable neighborhoods inadvertently illegal.

**The SmartCode is also a “transect-based code.”** A transect is usually encountered as a continuous cross-section of natural habitats for plants and animals, ranging from shorelines to wetlands to uplands. The transect of the SmartCode is extended to the human habitat, ranging from the most rural to the most urban environments. This allows environmental and urban concerns to be administered in an integrated way. Here is a rural-to-urban transect, showing section and plan views.

HAWAI'I AHUPUA'A  
(A VALLEY SECTION)



The SmartCode's rural-to-urban Transect is divided into a range of "T-zones" each with its own complex character. The Transect ensures that a community offers a full diversity of building types, thoroughfare types, and civic space types, and that they have characteristics appropriate to their locations in the environment. The metrics for these T-zones should be locally calibrated.



The Transect is a powerful tool that can coordinate standards across other disciplines including ITE (transportation) and LEED (environmental performance) standards. The platform of the Transect allows the integration of the design protocols of traffic engineering, public works, town planning, architecture, landscape architecture, and ecology.

The SmartCode addresses development patterns at three scales of planning:

- Regional Scale
- Community Scale
- Block and Building Scale

Thus it may replace a number of other documents, despite being only 50 pages.

Additional Modules and PlugIns are available that are compatible with the SmartCode. If stronger architectural guidelines are desired, a community may adopt one of the Pattern Books correlated to the Transect.

To purchase a bound copy of *SmartCode Version 9.0 and Manual*, contact New Urban News Publications at 607-275-3087, [mail@newurbannews.com](mailto:mail@newurbannews.com), or [www.newurbannews.com](http://www.newurbannews.com).

For free electronic editable files and PDFs of the model v9.0 and v8.0 SmartCodes, SmartCode Modules and Plug-Ins, case studies, workshop opportunities, and consultant services, visit [www.SmartCodeCentral.com](http://www.SmartCodeCentral.com).