

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

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

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

MEMORANDUM

**TO:** JEFFERSON COUNTY PLANNING COMMISSION  
**FROM:** JENNIFER BROCKMAN, DIRECTOR OF PLANNING  
**DATE:** OCTOBER 8, 2010  
**SUBJECT:** OCTOBER 12, 2010 PLANNING COMMISSION MEETING

Please find attached the following documents for consideration at the October 12, 2010 Planning Commission meeting.

**Documents provided:**

- **October 12, 2010 agenda and map.**
- **Mr. Eric Smith's Resume.**

1. Approval of the minutes from the September 28, 2010 meeting.

**Documents provided:**

- **September 28, 2010 draft minutes and attachments.**

2. Citizen Communications.

3. A call for postponements.

4. Public hearing regarding amendments to Article 4B, Wireless Telecommunications Facilities and related amendments to and related amendments Sections 2.2, 4.3, 4.4, 4.11, and 9.2 of the Jefferson County Zoning Ordinance. Possible discussion and vote on Article 4B, Wireless Telecommunications Facilities to submit to County Commission.

**Documents provided:**

- **Article 4B, Wireless Telecommunications Facilities Draft Amendments.**
- **Letter from Mr. Paul Rosa with news article attachment.**

5. Request by Barbara Feldman and Barry Whitebook for a waiver from Section 20.203 (D)(2) to waive the requirement for stormwater management, from Appendix A 1.3(A)(15) to waive the need for a topographic study, and from Appendix B 9.4(E)(3) to waive the required width for the access road. This property is located at 448 Southerly Lane, Charles Town and is designated as Tax District:2, Map:9, Parcel: 4.17.

**Documents provided:**

- **Waiver request and supporting documentation provided by Ms. Barbara Feldman.**
- **Staff Report.**
- **Staff recommended motion.**

6. Discussion on proposed draft amendment to Section 4.4 (H) of the Zoning and Land Development Ordinance.

**Documents provided:**

➤ **Memorandum concerning draft amendment to Section 4.4 (H) of the Zoning and Land Development Ordinance.**

7. Blue Ridge Mountain Community Plan.

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

9. Director's Report.

**Documents provided:**

➤ **Director's Agenda**

➤ **Activity Report**

➤ **Land Development Fees documents.**

➤ **Staff Quarterly Report.**

➤ **Work Plan.**

➤ **Memorandum of policy on meetings involving Planning Commission members without a quorum present.**

➤ **Policy on the interpretation of the word days for purpose of public notice requirements.**

➤ **National Trust for Historic Preservation invitation.**

➤ **PPC Memos.**

10. County Commission Liaison Report.

11. Planning Commission Exchange.

12. President's Report.

13. Actionable Correspondence.

14. Non-Actionable Correspondence.

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

AGENDA  
JEFFERSON COUNTY PLANNING COMMISSION  
**OCTOBER 12, 2010**

**PUBLIC MEETING PROCEDURE:**

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

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

The President may limit the presentation time of speakers.

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

PC members may ask questions at any time.

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

Once all speakers have finished, the PC will discuss and then vote on a motion 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 28, 2010 Planning Commission meeting.
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4. Public hearing regarding amendments to Article 4B, Wireless Telecommunications Facilities and related amendments to and related amendments Sections 2.2, 4.3, 4.4, 4.11, and 9.2 of the Jefferson County Zoning Ordinance. Possible discussion and vote on Article 4B, Wireless Telecommunications Facilities to submit to County Commission.
5. Request by Barbara Feldman and Barry Whitebook for a waiver from Section 20.203 (D)(2) to waive the requirement for stormwater management, from Appendix A 1.3(A)(15) to waive the need for a topographic study, and from Appendix B 9.4(E)(3) to waive the required width for the access road. This property is located at 448 Southerly Lane, Charles Town and is designated as Tax District:2, Map:9, Parcel: 4.17.
6. Discussion on proposed draft amendment to Section 4.4 (H) of the Zoning and Land Development Ordinance.
7. Blue Ridge Mountain Community Plan.
8. Reports from Legal Counsel and legal advice to PC.
9. Director's Report.
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AGENDA  
JEFFERSON COUNTY PLANNING COMMISSION  
OCTOBER 12, 2010  
PAGE 2 OF 2

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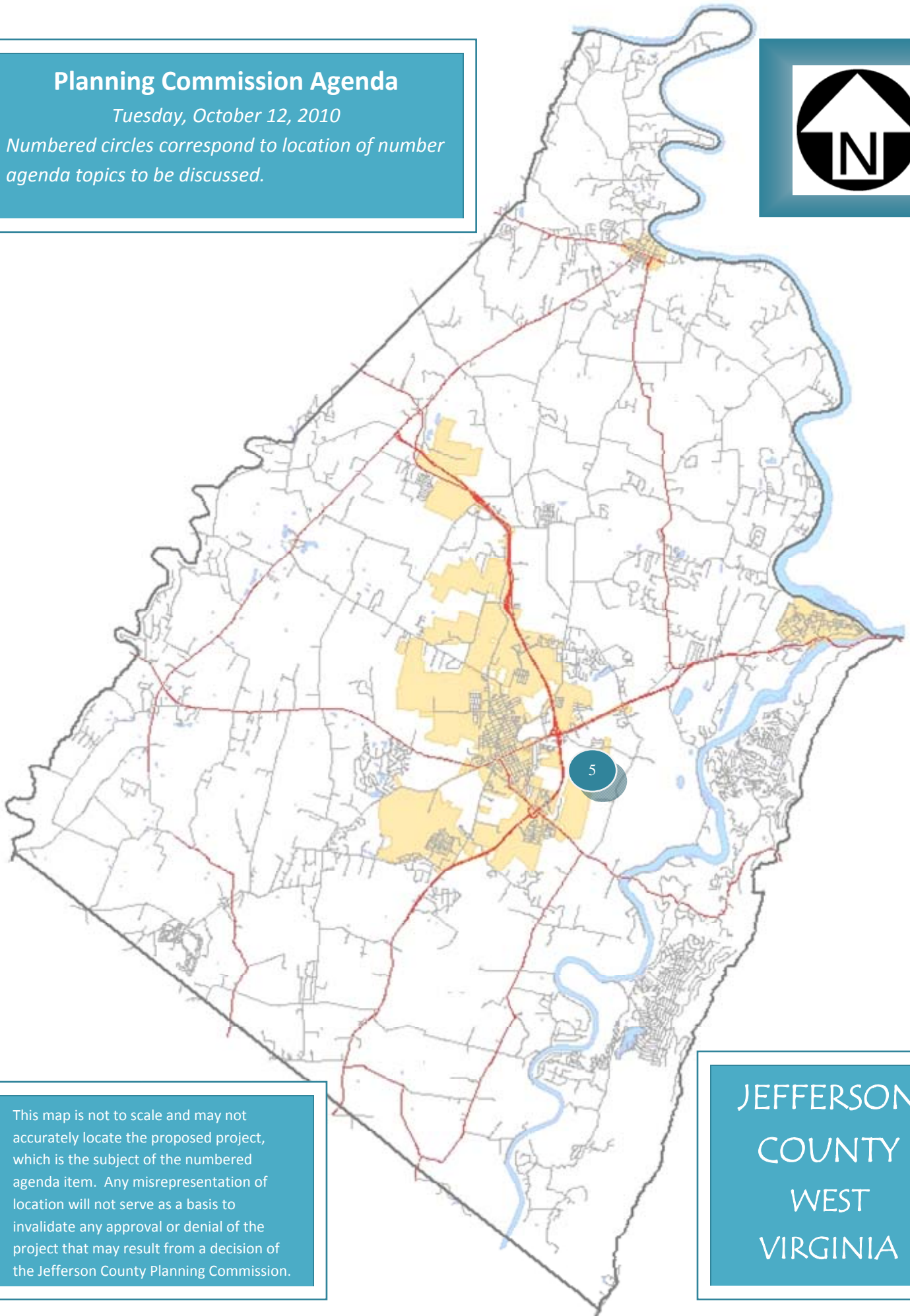
The Planning Commission welcomes written comments at any time. Our office is open Monday through Friday, 9:00 a.m. to 5:00 p.m., and is located at 116 East Washington Street, P.O. Box 338, Charles Town, WV 25414. Our phone number is (304) 728-3228; our fax number is (304) 728-8126; our email address 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, October 12, 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

March 24, 2010

Jefferson County Commission  
124 E. Washington Street  
Charles Town, WV 25414

Eric D. Smith  
29 Crest Lane  
Harpers Ferry, WV 25425

Dear Commissioners:

Please consider my submission for the position of commissioner for the Jefferson County Planning Commission. Based on my extensive civic experience and dedication to volunteer service, I believe I would make an excellent addition to the Planning Commission.

I served as a commissioner on the Montgomery County Commission on Common Ownership Communities (CCOC) in Montgomery County, Maryland from April 2003 until my second term expired in December of 2006. The commission's primary mandate was to advise the Montgomery County Executive and Montgomery County Council; promote public awareness of the rights and obligations of living in common ownership communities; eliminate disputes, and maintain property values and quality of life in community associations.

As a commissioner, I was responsible for overseeing all common ownership community matters within Montgomery County. Part of this responsibility included sitting on three person hearing panels to hear and provide impartial dispute resolution and adjudication between common ownership communities and their residents.

While serving on the commission, I was elected chairperson of the CCOC Legislative Committee. This is one of only two committees on the commission, and is responsible for identifying and managing pertinent legislative matters within the local, county, state, and federal governments. As chair of the committee I was liaison to county and state legislators. I was frequently called to Annapolis to meet with state senators and state delegates to assist with future, pending, and current legislation.

I was also a director on the Montgomery Village Foundation (MVF) Board of Directors for the town of Montgomery Village, Maryland. I served from January 2001 – March 2002 and again from March 2004 – March 2007. The MVF Board governs and determines policy for the 40,000 residents of Montgomery Village. The board is responsible for the oversight of over 100 Montgomery Village staff. The board is responsible for planning, budgets, transportation, information technology, facilities, maintenance, and all other aspects of the foundation.

In addition, as an MVF director, I served as liaison to committees that advise the board. These included the Transportation and Public Facilities Committee, Audit Committee, Recreation Committee, and Committee on the Environment.

As an MVF director, I saw the need for Montgomery Village to become more proactive as it pertained to safety issues in Montgomery Village. To accomplish that goal I founded the Public Safety Committee (PSC). The PSC is now an integral committee for MVF, and deals with all safety, security, and public health related issues in the town. The PSC has a direct relationship with the Montgomery County Police Department. I served as board liaison to this committee as well.

Additionally, I served as a committee member and chairperson of the MVF Committee on the Environment from July 1995 – March 2007. The committee advises the MVF board on all environmental and natural resources issues in Montgomery Village. I also chaired several subcommittees and other efforts on the committee.

Since moving to Jefferson County four years ago, I now feel that I understand the complexities of this county and will be able to assist with the many important and pressing issues currently impacting the county. I believe that I can lend my twelve years of experience as a community volunteer and civic leader to the betterment of the residents of the county. I am objective, and do my best to temper my decisions with research, knowledge, and community input. I believe the success of Jefferson County is of paramount importance. I look forward to the opportunity to serve on the Jefferson County Planning Commission, and I humbly ask for your consideration in appointing me to this very important position.

Respectfully,

A handwritten signature in black ink, appearing to be 'E. Smith', with a long horizontal line extending to the right.

Eric D. Smith  
29 Crest Lane  
Harpers Ferry, WV 25425

Amerismith@aol.com

**Microsoft**  
**CERTIFIED**  
IT Professional

Enterprise Project Management with Microsoft Office Project Server 2007

**Microsoft**  
**CERTIFIED**  
Technology  
Specialist

Microsoft Office Project Server 2007, Managing Projects  
Microsoft Office Project 2007, Managing Projects

## Synopsis

Mr. Smith is an award winning PMP (Project Management Professional), MCITP (Microsoft Certified IT Professional) for Enterprise Project Management, and an MCTS (Microsoft Certified Technology Specialist) with two distinct certifications in managing projects with Microsoft Project 2007 and Microsoft Project Server 2007. He has over 12 years of director, program and project management experience, as well as application development knowledge, including MS Project Server and database administration. He has had extensive PMO oversight and possesses intricate expertise in handling multiple projects, programs and portfolios. He has established Enterprise Project Management (EPM) guidelines, policies and procedures. He has trained and mentored project and program managers of all levels and grades for Fortune 100 Industry Leaders and various branches of the Federal government. His extensive interaction with business stakeholders, as well as technical personnel ensures that everyone is on the same page. Mr. Smith demonstrates seasoned expertise in regards to the managing, budgeting, scheduling, and tasking of all phases of every life cycle on each project within his program or portfolio.

Mr. Smith was presented with a Gold Medal from The President of the United States Council On Year 2000 Conversion recognizing his work in managing the FAA's Y2K (Year 2000) preparation database.

Mr. Smith was presented with AOL's highest employee honor, the annual Raise the Bar Award for outstanding project management of AOL's high speed input output (HSIO) software upgrade initiative.

Mr. Smith possesses:

- Excellent analytical, organizational leadership, teaming, and interpersonal skills
- Experience in strategic planning and execution
- Expert written and verbal communication skills
- Expert presentation skills
- Astute proficiency in PMI's Project Management Body of Knowledge (PMBOK)
- Expertise with automated project management tools (including MS Project and Project Server/SharePoint, Primavera, TeamPlay, Team Foundation Server)
- Thorough understanding of the system/software development life cycle methodology
- Expert ability to problem solve and exact resolution
- Expert ability to multi-task
- Expert ability to coordinate and/or lead meetings

## Professional Experience

6K Systems

Dec 2008 – Present

### Senior Technical Project Manager

- Manage multiple high priority IT projects for government contract in the Financial Management Services (FMS) division of the Department of Treasury
- Provide consultative services pertaining to project management best practices, templates and quick references, security, policies and procedures, and normalizing project plans to gain consistent and repeatable application across the enterprise

- Provide administration and support for MS Project Server, Project Professional 2003 & 2007, and Project Web Access throughout the FMS MS Enterprise Project Management (EPM) system
- Provide one-on-one training to Project Managers, Task Managers, and other MS EPM stakeholders and constituents, including administration, project managers, executives, and team resources.
- Manage upwards of 45 simultaneous projects
- Member of the Security Review Board approving security policies and Sarbanes-Oxley conformity
- Consistently meet Service Level Agreements and end-user surveys show high customer satisfaction
- Establish and enforce Enterprise Project Management (EPM) guidelines, policies and procedures
- Direct and coordinate work of individual project teams
- Lead weekly status presentations meetings with COTR to accurately reflect work effort across portfolio throughout the SDLC phases
- High level exposure to ClearCase and ClearQuest as rational tools for FMS software configuration and change management implementation
- Define project management best practices around scope management, effort estimations, and risk management/avoidance and issue management
- Utilize MS SharePoint as document repository for project artifacts

## American Public University System (APUS)

Jan 2008 – Nov 2008

### Senior Manager of Software Engineering and Delivery

- Manage large scale IT projects for academic, finance, marketing, human resources, and other business areas within university system
- Release manager for all major, quarterly and monthly releases delivered within budget, schedule, and scope
- Manage upwards of 30 simultaneous projects and development efforts
- Manage developments of substantial partner payment programs for royalty distributions to military branch representative agencies, Army, Marines, Navy, and Air Force
- Manage all software engineering, production support, reporting and data warehouse staff
- Identify key staff members for individual assignments and allocate them according to expertise and availability
- Maintain communication with senior executives and various managers regarding all aspects of the projects
- Implemented enhanced project management and program management products, policies and procedures to couple with the conversion of legacy document
- Establish and enforce Enterprise Project Management (EPM) guidelines, policies and procedures
- Review and analyze staffing requirements, transfer requests, promotions, new hires, and terminations
- Perform employee counseling, evaluate work performance, track yearly objectives, conduct reviews, as well as provide their career development and training needs
- Direct and coordinate work of individual project teams
- Maintain resource utilization rate
- Coordinate with product managers, business analysts and QA managers to design and develop automated business systems
- Define project management best practices around scope management, effort estimations, and risk management/avoidance and issue management
- Implement SDLC and project management methodologies (RUP, AGILE-SCRUM, EVM)
- Primary contact with business unit management and personnel to identify and document business needs and objectives, current operational procedures, problems, input and output requirements, data scope, usage, formatting, and security requirements
- Write and maintain project WBS, project charter, communication plan, resource plan, statements of work, and project milestones, as well as conducting reviews for each
- Utilize MS SharePoint as document repository for project artifacts
- Utilize MS Visual Studio Team Foundation Server to manage product and sprint backlog items for delivery
- Responsible for implementation of unit testing, design and code reviews, and internal and business facing user demos
- Identify potential service level problems before they occur and implement or communicate solutions
- Prepare and maintain project time and cost estimates for completing projects and delivery schedules
- Provide technical assistance in identifying, evaluating, and developing systems and procedures
- Monitor and document post-implementation problems and revision requests
- Responsible for meeting with internal and external auditors to demonstrate SOX compliance and conformity within predefined APUS policy and procedures

Senior Program Manager

- Program management oversight for portfolios of multiple projects, employees, resources and overall budgets in excess of 10 million dollars
- Use Earned Value Management (EVM) methodology to accurately track progress, focus on requirements, stay within scope, and track cost performance on daily, monthly and quarterly intervals
- Utilize all aspects of Primavera (TeamPlay) project manager
- Successfully utilize capitalization for projects that qualify and create capitalization forecasts
- Manage all required documentation within the business document repository (AOL Library)
- Enhance change management (or change control) process to document requirements modifications
- Management within schedule and budget of multiple programs and projects including: Enterprise Data Warehouse (EDW), Metrics and Reporting, Telephony Enhancement Initiative (TEI), Billing Revenue Repository (BRR), Instant Messenger/Buddy List (IM/BL), Red Brick to Netezza Migration, Yellow Pages Reporting, HP Partnership Reporting, and Application Portfolio Management (APM)
- Program compliance management within Sarbanes-Oxley (SOX) and AOL-SDLC policies
- Project planning, estimations, business case management, budgeting, budget tracking & management, cost management and Return on Investment (ROI) Management
- Utilize traditional SDLC waterfall development, as well as agile and iterative release models
- Manage issue resolution, risk logs and mitigation plans
- Develop break fix methodologies and procedures
- Create and manage project plans, schedules/milestones, and Visio diagrams of project workflows
- Supervise training efforts for multiple products to include MS Project Server 2003 application projects, MS SharePoint, MS SQL Server, J2EE and all other application creation or enhancement efforts
- Utilize web seminars to facilitate remote training, such as NetMeeting, GoToMeeting, and WebEx to train those offsite in the use of the newly enhanced or created products
- Maintain customer expectations through communication management, stakeholder meetings and business value management
- Maintain trusted partner relationships with multiple departments of the business relating to project deliverables, status reports, and future work commitments
- Maintain quality control through regular meetings and status updates from quality assurance testing
- Regular status reporting to senior executives to include project status, cost, risks and issues
- Resource utilization projection, tracking, management and load balancing
- Successfully manage the implementation of third party COTS packages

**Systems Engineer Services Corporation**

May 2005 – Dec 2005

Program Manager

- PMO oversight of multiple projects at Fortune 100 Technology Industry Leader
- Utilization of Earned Value Management (EVM) methodology to accurately track progress, focus on requirements, stay within scope, and track cost performance at regular intervals
- Guiding projects through all points in the Software Development Life Cycle (SDLC)
- Utilize traditional SDLC waterfall development, as well as agile and iterative release models
- Manage issue resolution, risk logs and mitigation plans
- Create and manage project plans and schedule/milestones
- Manage projects with TeamPlay Project Manager
- Utilize the Change Management process to control scope of projects
- Resource utilization projection, tracking, management and load balancing
- Regular status reporting to senior executives to include project status, cost, risks and issues
- Successfully utilize capitalization for projects that qualify and create capitalization forecasts
- Ensure all formal reviews are completed
- Analyze variance, trends, and assess project performance
- Document all ETL (Extract-Transform-Load) procedures of XML data for related MS SQL Server applications development
- Successfully manage the Implementation of third party COTS packages
- Program compliance management within Sarbanes-Oxley (SOX) and AOL-SDLC policies

Senior Project Manager

- Cradle to grave oversight of quality control database support project at CitiFinancial Mortgage
- Guiding projects through all points in the System Development Life Cycle (SDLC)
- Responsible for all SDLC documentation
- Manage team of database programmers at multiple facilities
- Assign resources to support production fixes and enhancements to existing systems/applications
- Publish knowledge management transfer plan and establish knowledge transfer methodology
- Publish system documentation and functional specifications for the database applications
- Establish and supervise helpdesk for the quality control database applications
- Weekly reporting to business on staff hour breakdown and helpdesk volume
- Create and manage problem management process with trouble ticketing
- Problem mitigation to include identification, documentation, escalation, notification, and resolution
- Create and manage change control process
- Repair, reverse engineer, de-bug, enhance and maintain database applications
- Adjust threshold and premium criteria in applications as warranted
- Supervise and perform numerous installations and set-ups and perform monthly pre-fills of sample data
- Maximize the efficiency of database applications and integrity of the source code
- Coordinate hardware and technical infrastructure support with Systems Hardware Department
- Establish Entitlement Review Policy, and sustain proper entitlements for all systems
- Managing projects within Sarbanes-Oxley (SOX) compliant protocols

**Science Applications International Corporation (SAIC)**

Apr 2002 – Jan 2004

Principle Director

- Manage the operations of multiple Assessment Centers throughout the United States
- Directly responsible for the successful completion of hiring over one thousand federal airport security screeners within scope of Critical Infrastructure Protection (CIP)
- Responsible for the management, budget, and tasking of all phases of the assessment center life cycle
- Coordinate project plans and schedules, project cost estimates, and task coordination of multiple departments i.e. human resources, computer testing, information technology support, network support, physical performance testing, medical, fingerprinting, security, and logistics
- Top level supervisor for hundreds of full time employees
- Create and maintained extensive estimating models to track project costs
- Negotiate contracts with hotels, convention centers and various vendors
- Primary liaison and main point of contact with Transportation Security Administration (TSA), Federal Aviation Administration (FAA), and Department of Transportation (DOT) representatives to track technical issues and focus resources on their resolution.
- Perform data management in MS Access for master data of nuclear power plant testing results to maintain Critical Infrastructure Protection (CIP)
- Responsible for report creation, forms and queries, entity modeling, data conversion, and troubleshooting
- Extensive interaction with contracts personnel, and senior technical personnel

**Abacus Technology Corporation**

Dec 2000 – Apr 2002

Project Manager

- Successfully manage the Executive Secure Messaging Deployment Project per contract with IRS
- Primary architect of contingency planning and risk mitigation criteria
- Follow industry best standards and Office of Management and Budget (OMB) requirements
- Record and capture all necessary meeting minutes for distribution to meeting participants
- Create and complete surveys used to compile data to facilitate the deployment phase of the project
- Point of Contact with IRS Contracting Officer's Technical Representative
- Provide vulnerability analysis of major applications and general support systems for the FDIC
- Meet with FDIC points of contact to conduct interviews and audits of the various systems and applications
- Perform various tests and procedures to expose security vulnerabilities and recommended corrective actions to mitigate risks.

Science Applications International Corporation (SAIC)

Sept 1999 – Dec 2000

Project Manager

Network Solutions

Sept 1997 – Sept 1999

Project Manager

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## Certifications

- o PMP – Project Management Professional
- o MCITP – Microsoft Certified IT Professional - Enterprise Project Management with MS Project Server 2007
- o MCTS – Microsoft Certified Technology Specialist - Microsoft Office Project 2007, Managing Projects
- o MCTS – Microsoft Certified Technology Specialist - Microsoft Office Project Server 2007, Managing Projects

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## Civic Experience

Commissioner - Montgomery County Commission on Common Ownership Communities Apr 2003 – Dec 2006

- o Advise the Montgomery County Executive and Montgomery County Council
- o Chairperson of the CCOC Legislative Committee

Director - Montgomery Village Foundation Board of Directors (MVF) Jan 2001 – Mar 2007

- o Responsible for the oversight of over one hundred Montgomery Village staff members
- o Responsible for budgets, transportation, information technology, and all other aspects of the Foundation
- o Personally founded the Montgomery Village Public Safety Committee

Chairperson and Committee Member - MVF Committee on the Environment July 1995 – Mar 2007

- o Liaison to the Montgomery Village Foundation Board of Directors
- o Advisor MVF Board of Directors

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## Awards and Honors

- o AOL's *Raise the Bar* Award for Outstanding Work
- o The Gold Medal from The President of the United State's Council On Year 2000 Conversion
- o Certificate of Appreciation for Excellence in Service to the U.S. Department of Transportation
- o Montgomery Village Foundation Community Service Award (Two time recipient)

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## Education

- o *American Public University* 2008 – Present  
Currently enrolled in MBA program with concentration in IT Management
- o *The American University* 1992 – 1994  
Bachelor of Arts in Psychology  
Associate of Arts in General Studies

MINUTES  
JEFFERSON COUNTY PLANNING COMMISSION  
SEPTEMBER 28, 2010

The Jefferson County Planning Commission met on Tuesday, September 28, 2010, with the following Commission members present: John Maxey, President; Thomas Trumble, Vice President; Frances Morgan, Morgan Ethers, Daniel Hayes, Arnold Dailey, Kelly Baty, and Gene Taylor. Staff members present included Jennifer Brockman, Director of Planning and Zoning; Seth Rivard, Planner; Steve Barney, Zoning Administrator; Jonathon Saunders, County Engineer; Stephen Groh, Assistant Prosecuting Attorney; and Julie Quodala, Planning and Zoning Office Manager.

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

**1. Approval of the minutes from the September 14, 2010 meeting.**

Mr. Trumble suggested an amendment on page 2, paragraph 3, line 3 from “~~Mr. Morgan~~” to “*Ms. Morgan*” and on page 2, paragraph 3, and line 2 to “~~The motion ended in indecision...~~” to “*The motion failed to carry...*” Mr. Taylor moved to approve with the suggested amendments. Mr. Trumble seconded the motion which carried 6 for and 2 abstentions (Ms. Ethers and Mr. Hayes).

**2. Citizens Communication:** None.

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

**4. Presentation by Mr. Don Burgess, Board Member 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.**

Mr. Don Burgess, Board Member of the Harpers Ferry Historic Town Foundation, explained the purpose and actions of the Foundation. He reported that they would be holding a workshop on November 12, 2010 from 7 PM to 9 PM to discuss historic preservation and land-use issues. He stated an invitation flyer would be sent to the planning department.

**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 to allow for an extension of time to July 1, 2012 to complete the subdivision process.**

Ms. Brockman stated for the record that Mr. Hayes and Ms. Morgan had confirmed watching the webcast and were comfortable voting on this issue.

There was some discussion regarding entrance issues, conditions that were placed on the project with the Community Impact Statement (CIS) approval in 2007, and whether any progress had occurred with the project since the date of the CIS approval.

Mr. Maxey moved to reopen the public hearing. Mr. Trumble seconded the motion which carried unanimously.

Mr. Richard Klein, with Alpha and Associates, distributed a letter addressed to the Planning Commission and to Mr. Groh. He introduced Mr. Nathan Cochran, Legal Counsel for the project developer, who read the letter (attached). Mr. Cochran explained the circumstances under which the project has been delayed and gave reasons why he believed the extension should be granted. Mr. Klein again stated that the access roads are a part of the lawsuit being heard in the Federal Court and would be resolved with that lawsuit. Mr. Maxey closed the public hearing.

Mr. Groh suggested that the Planning Commission go into executive session to discuss possible legal issues related to the Sloan Square Apartments project. Mr. Dailey moved to go into executive session. Mr. Taylor seconded the motion which carried unanimously. Executive session began at 7:32 PM.

Regular session resumed at 8:07 PM. Mr. Trumble moved to grant the variance as requested to July 1, 2012 for the following reasons: the Planning Commission was satisfied that the variance had met the 4 point test and that the project is currently involved in a lawsuit. The resolution of which is directly tied to whether the project could advance or not. Mr. Hayes seconded the motion which carried 7 for and 1 against (Mr. Baty).

**6. Response to staff analysis on case study for Chapel View.**

Ms. Brockman reported on the contact she had with Jennifer Syron, resident of Chapel View, regarding the progress of finding someone at WVU to do the case study. Discussion ensued on the Planning Commission's role in a resolution to these issues.

**7. Update on Old Standard Quarry requests.**

Mr. Groh stated that he had received the audio recordings that were sent in response to the Freedom of Information Act request but had not had a chance to listen to those recordings yet.

**8. Discussion on the Draft Amendments to Article 4B, Wireless Telecommunications Facilities.**

Mr. Barney explained the changes made to the Draft Amendments to Article 4B, Wireless Telecommunications Facilities based on the oral and written stakeholder comments. He presented related zoning amendments that would need to occur due to the amendment in Article 4B. Mr. Barney also pointed out comments from Mr. Lynn Koerner and Mr. Pete Smith, and a mark-up of the draft amendments provided by Mr. Paul Rosa that were all provided in the agenda packet. Mr. Barney explained that, once a draft was approved, the Planning Commission would hold a public hearing and then petition the County Commission who would hold an additional public hearing.

Discussion ensued regarding the fall zone amendment, Section 4B.9 (K) (2) (b), stating "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.” There was unanimous consent to strike this section from the draft amendments.

Mr. Maxey opened the meeting to public comment. Ms. Carlen M. Emanuel, Land Protection Manager, presented and read from a letter (attached) addressed to the Planning Commission from the Appalachian Trail Conservancy detailing the Conservancy’s comments on the draft ordinance. Mr. Paul Rosa, citizen of Charles Town, reviewed the suggested changes he had made to the draft amendments. Mr. Lynn Koerner, Wireless Consultant, reiterated that the PCIA would like an opportunity to make comment and to expand the time for Temporary Wireless Telecommunication Facilities (Section 4B.8 (1)) to greater than a week.

Mr. Maxey suggested reinstating the definition of Primary Public Safety Provider previously removed by staff. There was no opposition.

Mr. Maxey moved to reinstate Mr. Rosa’s original edits to Section 4B.7 (3) (c), 4B.7 (3) (d), and 4B.7 (3) (e) removed by staff in the draft amendments. Mr. Hayes seconded the motion which carried unanimously.

Mr. Maxey moved to reinstate Mr. Rosa’s language regarding the scope of the public hearing (Section 4B.9 (B)) to reference the Comprehensive Plan. Mr. Trumble seconded the motion which carried 7 for and 1 opposed (Mr. Dailey).

Ms. Morgan left the meeting at 9:03 PM.

Mr. Maxey moved to reinstate the original language in Section 4B.9 (C), Retention of Consultants. Mr. Trumble seconded the motion which carried unanimously.

Mr. Maxey moved to add Mr. Rosa’s suggested language: “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) day period if the applicant can demonstrate to the Zoning Administrator’s satisfaction that extenuation circumstances necessitate an extension” to be included in section 4B.8 (1). Mr. Hayes seconded the motion which carried unanimously.

Mr. Maxey moved to advertise a public hearing for the October 12, 2010 Planning Commission meeting and a discussion and vote on Article 4B, Wireless Telecommunications Facilities Draft Amendments for submission to County Commission. Mr. Hayes seconded the motion which carried unanimously.

**9. Blue Ridge Mountain Community Plan.**

Mr. Rivard reported on the latest Citizen’s Committee meeting. He stated that there would be a review of comments received at these meetings and then a joint meeting between the Planning Commission and County Commission would be scheduled.

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

These topics were covered in the executive session.

**11. Director's Report.**

- Activity Report. These reports were provided in the agenda packets.
- Draft Policy on meetings involving Planning Commission members without a quorum present. Ms. Brockman presented the draft policy. Mr. Maxey asked that this be tabled until the October 12, 2010 meeting to allow for research on procedure.
- Update on Petition by Planning Commission to rezone certain Federal Lands on US 340. Ms. Brockman stated that the petition was presented to County Commission and that they would be setting a date for a public hearing.
- Follow-up on Urban Growth Boundary Issues. Ms. Brockman reviewed the issues with getting the municipalities to approve the Urban Growth Boundaries (UGB). Ms. Brockman stated she would visit with the Harper's Ferry Town Council to discuss the UGB on October 11, 2010
- October 1, 2010 Smart Code On-Site Workshop. Ms. Brockman reminded the Planning Commission of this workshop and stated three of the Planning Staff were scheduled to go.
- Status of Land Development Fees. Ms. Brockman reported that this topic would be discussed at the County Commission meeting on October 7, 2010.
- Follow-up on discussion of Planning Commission Authority outside of WV Code 8A. Ms. Brockman stated that the Improvement Location Permit Ordinance had been the document dictating what project would require a site plan. She reported that the Planning Commission may be able to hold a Brownfield District to stormwater management standards.
- Status of Zoning Ordinance Amendments. Ms. Brockman reported that the amendments to Article 4B, Wireless Telecommunications Facilities, had taken up more staff time than planned and had caused the Zoning Ordinance Amendments to be delayed. She stated that the staff had started working on the formatting of the Zoning Ordinance and that a cleanup of the ordinance would be the next step. She reminded the Planning Commission that amendments to the Subdivision Regulations were still necessary. Mr. Trumble asked that Ms. Brockman provide the Planning Commission with a work plan detailing the priorities and deadlines of the staff. Mr. Maxey stated that Article 4.4 (h) referenced the incorrect section of the Subdivision Regulations and directed staff to draft an amendment to that article.
- Urban Tree Canopy Grant. Ms. Brockman stated that staff had drafted a memorandum of understanding to distribute to the cities of Charles Town and Ranson.

**12. County Commission Liaison Report.** None.

**13. Planning Commission Exchange.** None.

**14. President's Report.** None.

MINUTES  
JEFFERSON COUNTY PLANNING COMMISSION  
SEPTEMBER 28, 2010  
PAGE 5 of 5

15. **Actionable Correspondence.** None.

16. **Non-Actionable Correspondence.** Ms. Brockman presented an email to Mr. Yogesh Patel and a letter addressed to County Commissioner Lynn Widmyer from Mr. Terry Marcus, President of the Jefferson County Development Authority regarding the proposed signalized intersection at U.S. Route 340 and County Road 7.

Mr. Maxey moved to adjourn at 10:02 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.



LAW OFFICE  
Of  
RICHARD G. GAY, L.C.

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31 CONGRESS STREET  
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RICHARD G. GAY  
ADMITTED IN WEST VIRGINIA, PENNSYLVANIA, OHIO,  
AND THE DISTRICT OF COLUMBIA

NATHAN P. COCHRAN  
ADMITTED IN WEST VIRGINIA AND PENNSYLVANIA

R. GREG GARRETSON  
ADMITTED IN WEST VIRGINIA, MARYLAND  
AND PENNSYLVANIA

September 24, 2010

VIA FACSIMILE

Steve Groh, Esquire  
Asst. Prosecutor/ Jefferson County  
P.O. Box 729  
Charles Town, WV 25414

Jefferson County Planning Commission  
P.O. Box 388  
Charles Town, WV 25414

**RE: SLOAN SQUARE APARTMENTS**

Dear Members of the Commission and Mr. Groh:

I am writing regarding the request for variance and extension of time submitted by Alpha Associates, Inc., for Sloan Square Apartments. As you know, the matter was heard before the Planning Commission on September 14, 2010 and will be taken up again on Tuesday, September 28, 2010.

I would like to raise these points for the Commission's consideration regarding the extension of time issue.

First, the Planning Commission should grant Sloan Square's request because of the representations of Ms. Brockman regarding the time extension. Planning Director Brockman stated at the September 14, 2010 Planning Commission meeting that she had written a memo in June of 2010 opining that the project would fall under the extension provision of W.Va. Code 8A-5-12(f) (extending the project deadlines until 2012) and that the information in the memo had been made known to Sloan Square (Brockman stated that "somebody related to this project picked that memo up"). This is significant because the Sloan Square project was due to expire in June and therefore covered by Brockman's interpretation. Later, the Planning Commission determined that it did not believe the code would apply in situations where the preliminary plat had not been approved.

Consequently, Ms. Brockman wrote the letter to Dr. Miller that is attached to this correspondence stating that there was confusion in the implementation of the policy and that the Planning Commission would "support the submittal of two variances for your project."

September 23, 2010

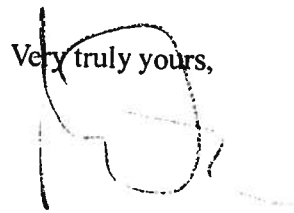
As a result of the above, Sloan Square requests that the Planning Commission support the two variance requests and extend the time for this stage of the project until July 1, 2012.

Second, the proceedings before the Planning Commission have been delayed, not by Sloan Square, but by the ongoing Federal lawsuit that was filed by the Patrick Henry Estates Homeowners Association. It is therefore improper to penalize Sloan Square for events beyond its control involving upholding the project's legal rights. The West Virginia Supreme Court has ordered equitable tolling/extensions of time to be granted to an applicant under the Subdivision Ordinance when the applicant's project was delayed due to legal proceedings. For example, the Supreme Court in *Jefferson Utilities, Inc. v. Jefferson County Bd. Of Zoning Appeals*, 218 W.Va. 436, 624 S.E.2d 873 (2005) stated "the trial court is hereby directed to enter an order approving the reissuance of the subject permits and adjust, where necessary, any time deadlines established in the Ordinance that may have passed during the pendency of this appeal so that the parties are not penalized for pursuing their statutory rights of appeal." The time extension in this case should be granted for the same reason the Supreme Court stated in *Jefferson Utilities*.

Finally, the Sloan Square project qualifies for an extension of time under West Virginia Code 8A-5-12(f).

Thank you for your attention to this matter. I trust the Planning Commission will consider this information and will grant Sloan Square the extensions and variances requested.

Very truly yours,



Nathan P. Cochran, Esquire

NPC/skg

cc: Dr. Gerald Miller  
Jennifer Brockman, Director of Planning & Zoning

**JEFFERSON COUNTY, WEST VIRGINIA**  
**Department of Planning**

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

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

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

July 26, 2010

Gerald Miller  
1 Babbette Court  
Baltimore, MD 21208

Dear Mr. Miller:

As you may know, on March 11, 2010, a change to WV Code Chapter 8A, Article 4 occurred through the passage of Senate Bill No. 595. The changes to Chapter 8A read as follows:

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

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

**"§8A-5-12. Vested property right.**

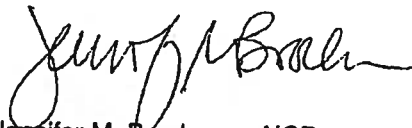
(f) Any subdivision or land development plan or plat, whether recorded or not yet recorded, valid under West Virginia law and outstanding as of January 1, 2010, shall remain valid until July 1, 2012, or such later date provided for by the terms of the planning commission or county commission's local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

After a careful review of the Jefferson County ordinances and files, the Jefferson County Planning Commission, at its July 13, 2010 meeting, determined that this provision does not apply to your project known as Sloan Square Apartments. Please note that your project timeline required a Final Plat Public Hearing to have been held by June 27, 2010. Therefore, your project has expired. Due to the confusion regarding the implementation of this change in the WV Code, the Planning Commission would support the submittal of two variances for your project.

You may apply for a variance to reopen the file and also apply for a variance to request an extension of time, with a maximum extension of July 1, 2012. These variances must be submitted no later than August, 2010.)

If you have any questions, please feel free to contact the Departments of Planning and Zoning at (304) 728-3228 or e-mail us at [planningdepartment@jeffersoncountywv.org](mailto:planningdepartment@jeffersoncountywv.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer M. Brockman". The signature is fluid and cursive, with the first name being the most prominent.

Jennifer M. Brockman, AICP  
Director, Planning and Zoning

Cc: Alpha Associates, Inc.

September 28, 2010

Jefferson County Planning commission  
P.O Box 250  
124 E. Washington Street  
Charles Town, WV 25414

RE: Article 4B. Wireless Telecommunication Facilities Ordinance

Dear Sirs:

I applaud the Jefferson County Planning Commission for considering the Appalachian National Scenic Trail in planning regulations for the county. The Appalachian Trail Conservancy appreciates the opportunity to assist the Commission in its planning for the future of Jefferson County.

The following is our Policy on Roads and Utility Developments (April 2009).

“The Appalachian Trail Conservancy seeks to preserve and protect the scenic, cultural, and natural resources of the Appalachian Trail and the Appalachian Trail experience, as defined by the National Trails Systems Act and ATC policy. To this end, ATC seeks to avoid, minimize, or eliminate the visual, aural, and experiential impacts of roads and utility developments upon those resources and will support any and all measures that do so. Developments that are considered incompatible with the purposes and scenic values of the Appalachian Trail include public and administrative roads; power lines; pipelines; communications lines, towers, and buildings; wind-energy facilities; aircraft beacons; and roads and utilities serving these facilities. It is the policy of ATC to oppose construction of any facilities of those types on Appalachian Trail corridor lands or those facilities on adjacent lands that could have an adverse impact on the viewshed of the Trail, unless they meet all of the following criteria:

1. The proposed development represents the only prudent and feasible alternative to meet an over-riding public need, as demonstrated in a thorough and detailed analysis of alternatives.
2. Any new impacts associated with the proposed development shall coincide with existing major impacts to the Trail experience.
3. Any proposed development of linear facilities shall be limited to a single crossing of the Appalachian Trail corridor.
4. Any adverse impacts of a proposed development shall be sufficiently mitigated so as to result in no net loss of recreational values or the quality of the recreation experience provided by the Appalachian Trail. To the extent practicable, mitigation shall occur on site.
5. The proposed development shall avoid, at a minimum: (a) wilderness or wilderness study areas; (b) National Park Service natural areas; (c) Forest Service semi-primitive non-motorized or designated backcountry areas; (d) natural-heritage sites; (e) cultural-resource sites; (f) Trail-related facilities, such as shelters and campsites; and (g) alpine zones, balds, and wetlands.

*Join the Journey™*

*Site Developments*—The Appalachian Trail Conservancy opposes facility development on mountaintops, ridgelines, and other visible areas in the foreground and middle-ground distance zones as seen from the Appalachian Trail, unless the visual, aural and experiential impacts to the Appalachian Trail can be satisfactorily mitigated on-site. (Foreground and middle ground will be determined using the U.S. Forest Service Scenery Management System, as described in *Landscape Aesthetics*, Agriculture Handbook Number 701).

For proposed facilities within one mile of the Trail, ATC will request local, state, or federal regulatory bodies to include in any authorization a condition prohibiting development of new facilities, or any changes to existing facilities, without prior notification of and consultation with the organizations and agencies responsible for management of the Appalachian Trail.

In 1999, the Appalachian Trail Conservancy and other organizations involved with national scenic trails, signed a resolution agreement in 1999 with the wireless telecommunication industry's umbrella organizations, the Cellular Telecommunications Industry Association and the Personal Communications Industry Association, which lays out voluntary guidelines to facilitate notice and cooperation when wireless communication sites are proposed near national scenic trails. This resolution focuses on early notification, cooperative review and consideration of alternatives for any proposed facilities within one mile of a national scenic trail. The following paragraphs have been excerpted from the agreement as they pertain to this telecommunications ordinance.

**A. Proposed Sites Within One Mile of a National Scenic Trail**

The voluntary guidelines are applicable to proposed sites for wireless telecommunications facilities that are within one mile of a National Scenic Trail. Reference in this document to the location of a "National Scenic Trail" refers to the centerline of a Trail's existing or planned footpath.

**B. Existing Wireless Telecommunications Facilities Within One Mile of a National Scenic Trail**

Existing wireless telecommunications facilities that have been constructed prior to the effective date of the Resolution and that are within one mile of a National Scenic Trail are not subject to these guidelines. However, planned modifications to existing structures that would entail an overall increase in height above ground level of the structure and any attached appurtenance of 25 feet or more or that would require new or additional FAA-directed aviation lighting measures would be subject to the guidelines.

ATC supports the one mile distance of the Appalachian Trail Overlay zone of Sec 4B.9.J. ATC also supports Sec 4.B.6, concealed facilities and Sec 4.B.7, co-location of facilities.

Thank you for the opportunity to comment on the proposed ordinance.

Sincerely,



Carlen M. Emanuel  
Land Protection Manager

## **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 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 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 co-location 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>Alternative Structure</b>	For antenna-mounting purposes, a structure which is not primarily constructed for the purpose of holding antennas but on which one or more antennas may be mounted. The term Alternative Structure includes, but is not limited to, buildings, silos, water tanks, pole signs, lighting standards, steeples and electric distribution, electric transmission or other utility poles.
<b>Antenna</b>	Any structure or device used to collect or radiate electromagnetic waves for the provision of cellular, paging, Personal Communications Services (PCS) and microwave communications. Such structures and devices include, but are not limited to, directional antennas, such as panels, microwave dishes and satellite dishes, and omni-directional antennas, such as whip antennas.
<b>Antenna Array</b>	Two or more antennas that operate as components of a complete antenna suite for a single Wireless Telecommunication Facility.
<b>Antenna, Concealed</b>	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.
<b>Appalachian Trail Overlay District</b>	For purposes of the Wireless Telecommunication Facilities Ordinance, the area within one mile of the centerline of the Appalachian Trail.

<b>Broadcast Tower</b>	A structure situated on a lot that is intended for transmitting television or AM/FM radio signals.
<b>Cell on Wheels “COW”</b>	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.
<b>Co-location</b>	For purposes of regulating commercial wireless telecommunication facilities, co-location means the placement of additional antennas or antenna arrays on an existing or approved telecommunication tower or support structure (or alternative 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. Co-location includes antennas, combiners, transmitters, receivers and related electronic equipment, cabling, wiring, equipment enclosures and other components or improvements associated with a wireless telecommunication facility.
<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>Department</b>	The Jefferson County Planning and Zoning Department.
<b>Discernible</b>	Capable of being distinguished with the eye or mind from its surroundings as a telecommunications tower.
<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.</b>	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.
<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>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>Visible</b>	Capable of being seen by the unaided eye in the daylight.

<b>Wireless Telecommunication Antenna</b>	The physical device through which electromagnetic, wireless telecommunications signals authorized by the Federal Communications Commission are transmitted or received. Antennas used by amateur radio operators are excluded from this definition.
<b>Wireless Telecommunication Equipment Shelter</b>	The structure in which the electronic receiving, transmitting and relay equipment for a wireless telecommunications facility is housed.
<b>Wireless Telecommunication Facility</b>	A facility consisting of the equipment and structures involved in transmitting or receiving telecommunications or radio signals to or from a mobile radio communications source and transmitting those signals to a central switching computer which connects the mobile unit with the land-based telephone lines.
<b>Wireless Telecommunication Facility, Co-Located</b>	See Co-location.
<b>Wireless Telecommunication Facility, Concealed</b>	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.
<b>Wireless Telecommunication Facility, Temporary</b>	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.
<b>Wireless Telecommunication Tower</b>	A structure intended to support equipment and antennas used to transmit and/or receive telecommunications signals including monopoles, guyed and lattice construction steel structures.
<b>Wireless Telecommunication Tower, Speculative</b>	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. Concealed Wireless Telecommunication Facilities
3. Co-located Wireless Telecommunication Facilities
4. Temporary Wireless Telecommunication Facilities
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 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 Department shall notify the applicant of that finding.

## **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 Concealed Wireless Telecommunication Facilities**

Concealed Wireless Telecommunication Facilities are permitted in all zoning districts. The 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. 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.
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 Department 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 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, if flush-mounted on the side of a building or alternative structure, shall be camouflaged to match or complement the color and architectural texture of the surface.
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 use of 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 at ground level, 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 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.5 Co-located Wireless Telecommunication Facilities**

Co-located Wireless Telecommunications Facilities are permitted within all zoning districts. Co-location 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 Department may issue a Zoning Certificate for a Co-located Wireless Telecommunication Facility consistent with the following terms and conditions:

1. 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 an amateur radio operator.
2. Co-located Wireless Telecommunication Facilities shall meet the following design standards:
  - a. Antennas associated with a Co-located Wireless Telecommunication Facility located on a monopole shall, where practical, 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. Antennas within a cylindrical radome matching the diameter of a monopole;
    - ii. Antennas mounted at the end of straight or curved davit arms or brackets extending from the sides of the tower.
  - b. No co-located Wireless Telecommunication Facility located on a monopole 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.
  - c. 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.
  - d. 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.

- e. 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 7:00 p.m.
- f. 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 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 screen at least 6 feet in height. 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 co-location on a site with an approved site plan. The Department may waive or modify the fencing requirement upon a determination that doing so will enhance the overall appearance of the facility without any compromise in safety or security.
- g. 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.
- h. 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.6 Temporary Wireless Telecommunication Facilities**

Temporary Wireless Telecommunication Facilities are permitted in all zoning districts. The 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 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 Department 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 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, temporary facilities may be placed for longer periods upon the authority of the Director of the Planning and Zoning Department, Zoning Administrator, County Administrator, and the Director of the Office of Homeland Security and Emergency Management.
  3. Permits may be issued by the 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.7 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.

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

##### **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 resulting 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. The scope of this public hearing shall include to an analysis of demonstration of need, neighborhood compatibility, impact on cultural and historic resources, visual mitigation, the submittal and design criteria of this article, and 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. The Planning Commission shall review the proposed 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.

Before the Department 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 of this article, and that the application is consistent with the Comprehensive Plan.

**C. Retention of Consultants**

The Department 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.

**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.

**E. Proof of Eligibility**

Speculative Wireless Telecommunication Towers are prohibited. 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 Department 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 each 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.
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 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 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 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 one hundred (100) 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. Co-location Encouraged. Prior to the approval of the construction of a new Telecommunication Tower, it is the policy of Jefferson County to encourage co-location of wireless facilities in the following locations:
  - a. Co-location of antennas on existing electric transmission towers.
  - 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 fifty (50) feet in height within a one-

quarter mile radius of a proposed Telecommunication Tower, where appropriate.

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, support structures for antennas are desired in the following descending order of preference:
  - a. Silos
  - b. Other Alternative Structures
  - c. Monopoles
  - d. Lattice Towers
  
3. Preferred Locations. For new Wireless Telecommunication Towers, it is the policy of Jefferson County to encourage use of the following facilities or locations, in descending order of priority:
  - a. The Industrial - Commercial District
  - b. 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 additional wireless users unless the applicant demonstrates that structure height, topography, or other factors render this requirement unfeasible. An application must include:
  - 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. 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, a site plan for a Telecommunication Tower located outside the Industrial-Commercial zoning district shall not be approved unless the applicant demonstrates that the equipment planned for the proposed tower cannot be accommodated on existing or approved towers, buildings, silos or other

alternative structures more than fifty (50) feet in height 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 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. 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 professional engineer; or
  - 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 developed as an Exempt Facility pursuant to this ordinance for the use of an amateur radio operator.

**J. Cultural and Historic Resources Review**

1. In addition to the notification requirements of this Section, an application for a Wireless Telecommunication Tower shall comply with the following:
  - a. An application for a proposed 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.
  - b. An application for a proposed tower located within one mile of the Appalachian Trail shall be 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.

**K. Design Criteria**

Wireless Telecommunication Towers shall comply with the following design criteria:

**1. Height Restrictions**

- 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. 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. 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.

## **4. Lighting & Marking**

Wireless Telecommunication Towers shall not be lighted or marked unless required by the FCC or by the 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 7:00 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 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 screen at least 6 feet in height at planting. 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 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 alternative to address visual mitigation.

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

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

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

1. Any Wireless Telecommunication Facility or Support Structure that is not operated for a period of twelve (12) consecutive months may be referred to the Property Safety Enforcement Agency Board for a determination of the structural soundness of the Facility or Structure.
2. If a structure is determined to be unsound, it will be considered abandoned.
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.



October 2, 2010

President John Maxey  
Jefferson County Planning Commission  
Post Office Box 338  
Charles Town, WV 25414

**RECEIVED**

**OCT 04 2010**

**JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING**

Dear Mr. Maxey:

I am writing to commend members of the Planning Commission for their resolve in promptly and steadily advancing the new wireless facilities ordinance in a manner that has been fair to all stakeholders. At the same time, I'd like to call the Planning Commission's attention to a major hole in the fabric of Jefferson County's landscape that will exist after the ordinance has been adopted, and that will threaten the overall regulatory scheme.

I speak specifically of the numerous lands that are exempt from zoning that are held by Jefferson County itself, as well as the Jefferson County Board of Education, the Jefferson County Public Service District, and the Jefferson County Economic Development Authority. In addition numerous parcels are in State of West Virginia or Federal ownership. For the most part, these properties are exempt from local zoning regulation and that loophole often is exploited by wireless companies and third parties to circumvent local zoning controls.

As an example, I am attaching an article from today's Washington Post about Milestone Communications, a third party speculative tower builder that specifically targets school properties in order to circumvent zoning. In this regard I note that there currently is a cell tower at the baseball field at Washington High School. I don't recall this tower ever having gone through the zoning and permitting process. When all the school properties in Jefferson County are considered, it is easy to see how unregulated placement of towers on these properties can defeat the purpose and intent of the proposed zoning ordinance. The same is true when Economic Development Authority and Public Service District properties are considered.

PO Box 1350  
Harpers Ferry  
WV 25425  
phone 304.725.2990  
mobile 304.839.1262  
[prosa@wireless.org](mailto:prosa@wireless.org)  
[www.wireless.org](http://www.wireless.org)

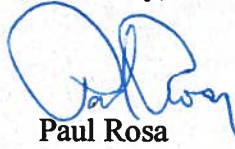
The same is also true of the numerous State of West Virginia and Federal properties sprinkled across Jefferson County. One example of the use of these properties to circumvent local zoning controls is the Sprint/Shentel tower at the US Customs and Border Protection Advanced Training Facility at Harpers Ferry. Even though the preservation community had limited opportunity to address the potential adverse impacts of this facility upon adjacent properties, particularly Harpers Ferry National Historical Park, these opportunities were not as extensive as would have occurred under the process set out in the proposed zoning ordinance.

Thus I think it is incumbent for either the Planning Commission or the County Commission to obtain a Memorandum of Understanding with the Economic Development Authority, the Board of Education and the Public Service District to require any requests to place wireless telecommunication facilities on their properties to be processed under the proposed zoning ordinance, just as if they were private properties. To the best extent possible, similar agreements should be sought with the State of West Virginia and with Federal agencies having properties in Jefferson County.

By doing so the Planning Commission and County Commission can achieve a holistic outcome that blankets the entire county with a common set of criteria to achieve the overarching aesthetic objectives of the proposed ordinance. All of this relates back to the question I posed at the beginning of the ordinance development process: when all is said and done, what do you want our community to look like?

I hope the Planning Commission shares my concerns and proposed course of action to put in place side agreements with public agencies that complement and complete our shared vision. Please do not hesitate to contact me at (304) 839-1262 should you or your colleagues have any questions.

Sincerely,



Paul Rosa

cc: Jennifer Brockman, Director of Planning & Zoning  
Steve Barney, Zoning Administrator  
President Lyn Widmyer, Jefferson County Commission  
Director James Cobb, US Customs & Border Protection  
Superintendent Rebecca Harriett, Harpers Ferry National Historical Park

October 2, 2010 Washington Post

## **Fairfax middle school parents stand up to proposed cellphone tower**

By Kevin Sieff  
Washington Post Staff Writer

The cellphone towers sprouting on Northern Virginia's schools in recent years are mainly the work of one man, Len Forkas, who has crisscrossed the region with promises of revenue and aesthetic sensitivity. The tower he proposed one night this week for Longfellow Middle School would look, he said, like a 150-foot pine tree emerging from the roof of the red-brick Fairfax County schoolhouse.

But Forkas may have met his match at Longfellow, where parents arrived armed with binders full of journal articles and sheaves of statistics about the radiation cellphone towers emit. "Here's the important question," Richard Sargent, a member of the Fairfax County Council of PTAs, said from the back of the school cafeteria. "What do we have to do so that this thing is never built here?"

Cellphone towers at schools have stoked controversy nationwide in the past decade. Scientists generally agree that the health risks are low, but some cities have banned them because of fears of illness among the students attending classes below.

But resistance of the sort that has developed at Longfellow has been rare among Northern Virginia school districts, which in most cases have accepted the towers, along with promises of revenue and improved cell coverage in communities experiencing a proliferation of data-hungry iPads and smartphones.

Forkas, 51, athletic and even-tempered, has made the same pitch in front of dozens of Northern Virginia PTAs, detailing the revenue that a cellphone tower would provide to the school and trying to assure the crowd that the tower would pose no public health hazard.

Since 2004, Forkas has had great success in Fairfax, despite sporadic PTA resistance. His company, Milestone Communications, based in Reston, now makes most of its revenue by building and maintaining cellphone towers on the campuses of Northern Virginia public schools.

Schools receive \$25,000 when the towers are installed, and Milestone gives the school system about 40 percent of the revenue from cellphone companies, usually about \$30,000 a year per pole. The Fairfax County school system has received about \$4 million from its 23 towers since the first one was installed in 1995. The income is a small piece of the budget for a school district that spends more than \$2 billion a year.

"The revenue is an important consideration, but we're also responding to the county's preference to build these structures on public rather than private land," said Lee Ann Pender, director of the school system's Department of Facilities and Transportation Services.

Schools tend to be in locations that cellphone companies find desirable (Longfellow is in the middle of a cellular "dead zone" in the Falls Church area) and often have existing structures that can help disguise the towers.

Opposition has been galvanized in recent months by Milestone's proposal to build towers at several schools, including Longfellow. Projects also are in the works at Sandburg, Thoreau and Irving middle schools, as well as Madison High School.

Parents have started groups such as Gainesville-based Moms for Safe Wireless and Falls Church-based Protect Schools. At Longfellow, the proposition has agitated a group of passionate, educated parents who have collected a mountain of information - much of it inconclusive - on non-ionizing radiation.

"If there's any doubt about this at all, why do we have to build it in our schools? I don't want my children to be exposed," said Dan Sperling, who was applauded by the meeting's nearly 50 attendees.

Milestone's towers meet standards of the Federal Communications Commission, the World Health Organization and other federal and international bodies.

Even though most public health agencies agree that the radio-frequency radiation exposure from the towers is significantly lower than exposure from cellphones, the infrastructure's long-term effect has caused concern.

"They tell you it's absolutely safe, and safe within the FCC standard ... but it's impossible to gauge the safety because Milestone doesn't provide sufficient data to determine the total RF radiation that will be generated by the specific antenna array at Longfellow," said Neil Ende, a parent of a Longfellow student.

On Monday, a team of Milestone employees tried to explain the basics of wireless infrastructure to parents, some of whom resisted their efforts. Few middle school PTAs boast a more impressive pool of professional expertise.

"I don't need you to explain this to me; I'm an electrical engineer," one parent said.

"I'm a medical oncologist at Georgetown," another man said, by way of introduction.

"I'm a telecommunications attorney," said another.

"I just spoke with one of the world's foremost radiation experts in Salzburg, Austria," said Karl Polzer, co-founder of Protect Schools, who raised concerns about the effect of long-term radiation exposure.

Forkas soldiered on, fielding question after question. "I appreciate that many people who don't understand the technology look at this apprehensively," he said after the meeting.

As Forkas sees it, the alternative to building the tower on Longfellow's campus is settling on a less-desirable location. The property would still be close to the school, but the pole might be more of an eyesore. And the revenue would go to a private landowner instead of a public institution.

When Forkas's son Matt received a leukemia diagnosis as a fourth-grader at Forestville Elementary in Fairfax, Forkas had a flash of concern about the ubiquitous towers. "I spent a lot of time researching the health issues associated with wireless infrastructure near schools," he said. He said he remains convinced of the towers' safety.

But the Longfellow parents plan to fight on.

"If it's about money, let us know. We'd rather raise the money ourselves," Sperling said. "We don't need a cellphone tower to bring in revenue."

RECEIVED

SEP 16 2010

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

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

**WAIVER REQUEST FORM**

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

Property Owner (s): Barbara Feldman and Barry Whitebook

Address: 448 Southerly Lane

Charles Town, West Virginia 25414

Phone Number: (304) 725-3756

Location of Property: Same as above

Lot Size: 2.6937

Deed Book Reference: Deed Book #: 801 Page #: 697

Tax Map Reference: District: Charles Town 02 Map: 9 Parcel: 4.17

Zoning District: Rural

Section of Ordinance: Section 24.300

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

See Attached -

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

Please note waivers to the Subdivision Regulations must comply with Division 24.300 of the Subdivision Regulations. To justify your waiver request, please address the following items:

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

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

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

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

---

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*Barbara Feldman*

Signature of Property Owner

Signature of Property Owner

**For Official Use Only**

Amount of Fees Paid: \$100.00 / Check #2506

Date of Meeting/Public Hearing: Tuesday, October 12, 2010 at 7:00 p.m.

Official/Administrative Body: Planning Commission

Property to be posted by: Applicant /\*Placards x 2 - picked up on 9/17/2010

Adjoiner letters to be mailed by: \*Staff (14 days prior to Meeting date)\*

Official Signature and Seal: (Addresses to be provided by Applicant)\*

## Jefferson County Planning Commission Waiver Request Form

In working towards compliance with the zoning ordinances for a cottage industry, I am requesting two reductions in site plan standards or waivers to the site plan: Storm water management and access road width requirements. I am also requesting a modification to the survey so that it only cover boundaries and not a topographic survey.

I ask that you consider my requests with three points in mind. First is that without these reductions in site plan standards, the cost to me, a small business owner, is prohibitive. Like most people, I have limited resources. The lowest bid for a site plan was \$7,500. Without storm water management, access road width requirements, and a topographic survey, the cost will be between \$2000 and \$3,000. Please keep in mind that I will likely have significant additional expenses to meet compliance with the zoning ordinances once the site plan is completed.

Second is the cost/benefit ratio of conducting a site plan in these three areas. We have lived in this house 16 years. The building has been in existence for five years. The slope on our whole property is very modest (see pictures). The greatest slope under the building is 15". According to the site plan quote I have, the topographic survey would reflect 2' vertical contour intervals. Near the building in question, there is nothing like a 2' slope. To do a topographical survey is expensive and would have no benefit, given that the slope near the building is less than two feet.

Regarding stormwater management, when we got the original permit to build a roofed deck five years ago, no concern was expressed about stormwater management. Although having a roof does modify the runoff pattern of land directly under the building, the building is small (1232 square feet) and the land itself can absorb moisture as the floor is set above the land. In addition, the ground around the building is covered by grass and plants, and there are many water absorbing plants nearby. The closest paved areas are 44' and 50' away. On the other two sides, the closest structure is 116' feet away and the road on the opposite side is 140' feet away—there is plenty of land and plants surrounding the building to absorb the runoff. The parking area is gravel and landscaped with trees on one side and a tree and perennial plants on the other. Even with the 6 feet of snow we had this past winter, we have never had a wet spot anyplace in our yard, including around the building or the parking area. To do a stormwater management plan for this building or the gravel parking area is expensive and will have no benefit to the environment and be detrimental to me financially.

Regarding site access by road, the existing two driveways on our property, one to our house and one to the gravel parking area, will only be used by my business less than two hours each week cumulative time. Last year, when my neighbors behind us complained about occasional congestion on the shared right of way on our property, I spaced my classes 20 minutes apart. Also, I made sure all students being dropped off were dropped off at our driveway, on the other side of our property. This meant that my classes caused only one way traffic on the shared right of way: cars were either coming in or leaving from classes. After I made these changes, I asked my neighbor if they eliminated the congestion. She said it did.

I only have two neighbors adjacent to our property (See letter from our neighbors on our left), as there is a soy bean and corn field across the road and a large woods on one side. No large trees obscure the driveways. Doing a road access plan is expensive, and I have made every effort already to eliminate congestion while maintaining the rural nature of the property.

+And third is the benefit to the community of my services at a reasonable cost, something I can ill afford to continue if I need to spend \$7,500 on a site plan alone. In recent years, scientific health studies have proven what practitioners of tai chi and qigong have known for years: that practice of these two martial and healing arts have incredible health benefits: reduction in high blood pressure, improved leg strength and balance (especially in seniors), improved digestive, cardiovascular, and immune system functions, prevention or treatment of arthritis and fibromyalgia, improved cognitive functions, prevention of osteoporosis, reduced chronic pain, and physical improvements in multiple sclerosis patients. Students with specific injuries are usually able to heal more quickly and develop tools to maintain better health.

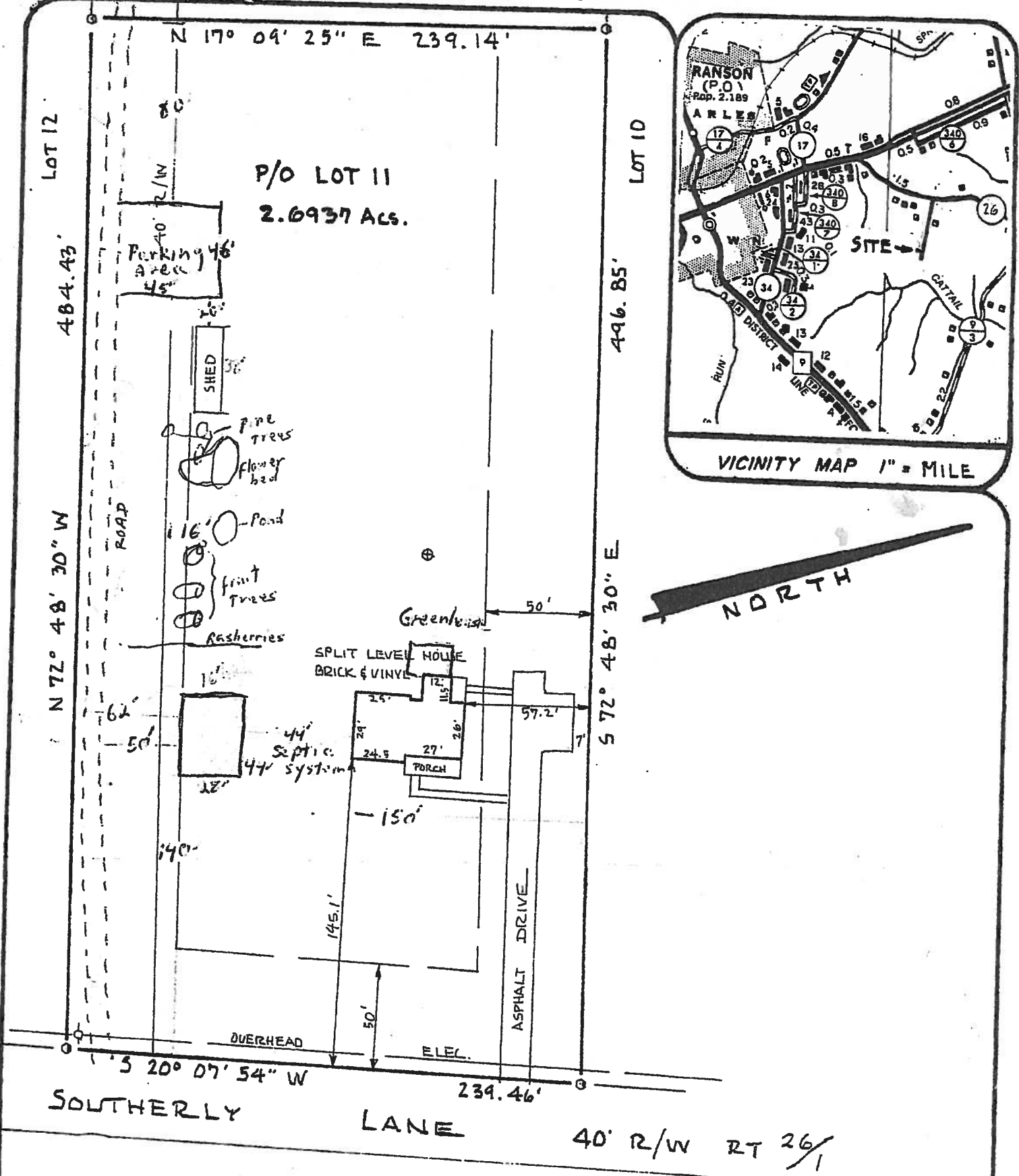
The karate classes I teach share the following benefits with tai chi and qigong: improvements in flexibility, coordination, agility, strength and power, awareness, reaction time, quality of sleep. The karate classes also teach self-discipline, focus, self-confidence, and peaceful ways of dealing with conflict. Karate is an excellent practice for kids (and adults) with ADHD, autism, developmental delays, and other conditions. I have had students with all of these conditions (see letters from students and parents attached).

There is something else that Blue Heron Martial and Healing Arts is about and that is integral to the space in question. First, a little bit of history. I began 15 years ago teaching at the Jefferson County Community Center on Route 9 because I wanted my classes to be readily available financially to the community. I have always had a scholarship fund. But more than that. It was important that my students feel a sense of community as they improved their health and well being. Each year we took on some project at the Community Center: Cleaning and putting polyurethane on the upstairs floor, putting new ceiling tiles up in the basement, and painting the basement were three large projects we did. This sense of community Blue Heron tries to create benefits adults and increases social interaction. It is perhaps even more important for children. While I am teaching them martial arts, helping them improve their physical health and mind/body connections, I am also helping them see themselves as part of a community. They learn to partner with each other, to take care of the space around them (weekly sweeping the floor or yearly cleaning the windows), to be more mindful of how their actions affect others.

The Community Center was sold 6 years ago. We spent the next year sharing a building with a dance group. The group was nice, the building was dark, dingy, and had awful feng shui. When the dance group moved elsewhere, I began teaching classes out of my house. Smaller classes were in our downstairs room that has a full length mirror on one wall. Other classes we moved outside or to the deck, which is now enclosed. Moving my classes to our property gave me more control over what my students encounter. For example, the path from the parking area to the classes is a stroll through the garden. Students can notice the changes weekly, from spring bulbs to the redbud blooming, from iris to daylilies, from water lilies followed by lotus in the pond to the sunflowers and asters to the falling of the leaves. It is a calming walk (or run for some of the children), a freeing and healthy experience. The room in our house has multiple purposes yet is adequate for small classes. The building in question is simpler. It is a place for reflection, for meditation, for cultivating the mind and the body, for becoming more whole. I would like my students to be able to use it.

1. When we built the structure, we made sure we met all setback requirements and designed it so that it would have minimum impact on the land and be a positive space for ourselves and others who might use it. In addition, I am an organic gardener, quite aware of the desire for having a sustainable environment that is both healthy and beautiful. In the 16 years we have lived here, we have added many trees, shrubs, and plants to the existing landscape as well as a small pond. This landscape provides food and shelter for numerous birds as well as small mammals. As my students walk from the parking area, which is also landscaped, to the building where classes will be held, they will walk through a calming, park-like landscape.
2. Allowing this request will not negatively affect the land or my rear neighbor's access to their home, as I have found a way to make the traffic one way at any time on our shared right of way. I have letters in support of my business from my neighbors on the side and behind me. I have no neighbor across the street as it is a soybean/corn field. In addition, it will positively affect the health and well being of my students (see attached letters). Therefore, it will help promote a beneficial cottage industry.
3. A more limited site plan will help me create a cottage industry that is beneficial to the community, is in keeping with the rural nature of our area, and does not cause difficulties for our neighbors.

By helping me use my financial resources to meet building code requirements instead of spending my resources on these expensive parts of the site plan, I will be able to keep my costs down and continue to offer affordable classes.



THIS LOT IS ON F.E.M.A. MAP 540065 0038 B AND DESIGNATED ZONE C; AREAS DETERMINED TO BE OUTSIDE THE 100 YEAR FLOOD PLAIN. THIS LOT HAS INDIVIDUAL SEPTIC & WELL.

COV. & RES.- 418P492  
489-40

*Barbara Feldman*

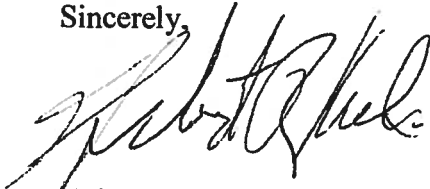
TO BE CONVEYED TO:  
RARRY A. WILHELMSON & BARBARA A. FELDMAN

Hubert and Elizabeth Keel  
412 Southerly Lane  
Charles Town, WV 25414

To whom it may concern,

We are Barbara Feldman and Barry Whitebook's neighbors on their left. We are supportive of her having her martial and healing arts classes, her business, on her property. We are aware of the benefit in health and well being to her students. We have had no problem regarding traffic on Southerly Lane.

Sincerely,

A handwritten signature in black ink, appearing to read "Hubert and Elizabeth Keel". The signature is written in a cursive style with a large, stylized initial "H" and "E".

Hubert and Elizabeth Keel

September 1, 2009

450 Paulas Circle  
Kearneysville, WV 25430

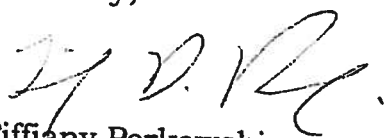
To Whom It May Concern:

I am writing to tell you about the very positive effects of the karate classes offered at the Blue Heron Martial and Healing Arts dojo. My family has been involved at the Blue Heron for almost three years now. We began classes with our children so that they could reap the physical and mental benefits of studying karate. We expected greater physical strength and confidence and a finer ability to focus, but we have gained so much more than that. Sensei Barbara both demands respect from and shows respect to all of her students, children and adults alike. Our children have never had a more tolerant and yet more demanding teacher. She understands that all people are not alike and does not try to fit everyone into the same-sized hole. Students are not segregated by age. There are young and old, experienced and new students in every class. This is the real world; it reflects the structure of the most basic human unit group—the family.

The dojo environment at the Blue Heron more closely resembles the mix of people and the diversity of relationships that one encounters throughout their lives. But where the outside world sometimes makes it hard for individuals to try new things, Sensei Barbara has created a place where everyone can come and learn and improve their body, their mind, and their health in an atmosphere of safety and support. Because every person who attends classes at the Blue Heron is influenced by this atmosphere of mutual respect, each student is like the proverbial pebble in a pond. Because they have been treated with respect and tolerance, each student treats others outside the dojo with a little more respect, a little more tolerance.

If the world outside the dojo becomes a little more like the world inside the dojo, then Sensei Barbara's efforts will have benefitted our society at large exponentially, ten to the power of every student she has had the opportunity to touch. Our family feels extraordinarily fortunate to have found the Blue Heron.

Sincerely,



Tiffany Perkowski

40 Pelham Lane  
Charles Town, WV 25414  
August 30, 2009

Dear Sir or Madam:

We are writing to express our support and appreciation of Blue Heron Dojo and its classes.

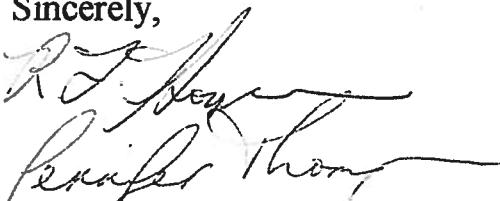
Three years ago our oldest son, Ethan, was diagnosed with PDD, Pervasive Developmental Delay, characterized by speech and fine motor delays. Karate was among the recommended treatments for him because it provides opportunities to interact with peers without the pressure of performing for a team. The mild social interaction in a karate class helps build coping skills to compensate for language processing delays. Ethan has been enrolled in Smart Moves, a beginning karate class for 4 to 6 year olds, since he was four and will progress into a regular karate class this fall.

While Smart Moves has not been the only factor that has helped Ethan cope with his delays, we count it among the more significant. The Smart Moves class has helped him exhibit confidence in social settings. It is a source of friends for him. His facility with language has blossomed. And it has helped enormously with his motor skills and coordination. All of these factors will help support him as he transitions to Kindergarten this year.

It is our sincere hope that our son will be able to continue at Blue Heron Dojo in the years to come. For certain, Blue Heron Dojo has been and will continue to be a source of support for the social and physical development of our son. In fact, our younger son, Owen, will be enrolling in Smart Moves this fall as well.

If you require additional information about the positive impact that Blue Heron Dojo has had on our family, please contact us by telephone at 304-724-2026.

Sincerely,



Russell F. Thompson, MEd.  
Jennifer Thompson, MS TESOL

Office of Zoning Compliance  
Jefferson County  
West Washington Street  
Charles Town, WV

August 31, 2009

Dear Sir/Madam:

We write to you in support of Blue Heron Martial and Healing Arts and the dojo on Southerly Lane in Charles Town. We have been practicing tai chi at Blue Heron since January, 2009.

The martial arts and tai chi chuan are important for health. They promote balance, strength and focus. Many of Ms. Feldman's students pursue this physical fitness activity as a therapy for aging or injured joints and muscles. For some in both the adult classes and the children's classes, the martial arts practice is an important social outlet.

We were introduced to the study of tai chi through an introductory class sponsored by the County Recreation Department. We thought that we would be able to pursue the next level of this skill only by travelling to another state. We felt fortunate to find a qualified instructor close to home and a facility that reflects the Asian roots of the practice. The dojo blends into and compliments its natural surroundings.

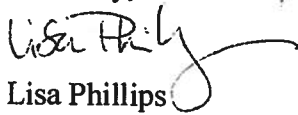
The convenience of the Blue Heron dojo for residents who work during the day and for school age children and others who require transportation is, we feel, an important consideration for the Office of Zoning Compliance.

While there is a small amount of increased traffic when students arrive and leave practice sessions, in our experience, the drivers are respectful of the country road and the few homes in the area. At no time have we seen speeding cars, heard horns or loud music from vehicles, or seen trash being left along the route.

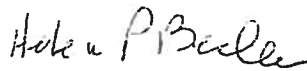
If Ms. Feldman were required to close the dojo, she might be able to continue teaching by renting other spaces. However, this would drive up the cost of practice sessions, perhaps beyond what many students could afford. In addition, and we feel that this merits consideration, the special ambiance of the dojo would be lost.

The dojo plays a central role in the lives of many in Jefferson County. We hope that the county and the Office of Zoning Compliance will keep this important facility open.

Sincerely,



Lisa Phillips  
PO Box 468  
Harpers Ferry, WV 25425



Helen P. Becker  
PO Box 694  
Harpers Ferry, WV 25425

August 29, 2009

To Whom It May Concern:

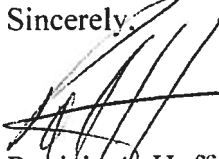
I am writing to support the petition of Barbara Feldman for two variances in order to come into compliance with zoning ordinances and continue to hold classes on her property.

I have been attending classes at Barbara's dojo for about 3 or 4 years. I am diabetic, asthmatic, arthritic and frequently suffer from bouts of depression. Each of these conditions has been markedly improved through the Qigong classes I take from Ms. Feldman. Because of her teaching in this wonderful place, I am able to move with less pain, to breathe better, to get better control of my blood sugar levels and to feel optimistic instead of depressed. She does not claim these health benefits for the exercises, but I certainly know how good I feel when I attend class and how bad I feel when I skip a class or a semester. She also provides her services on "scholarship" for people who are unable to pay.

I think providing this kind of assistance to people in the community enhances the overall quality of life for the whole community by helping to keep people active and engaged during all stages of their lives. In addition, it brings dollars to the community both through the fees paid to Ms. Feldman and through all the times people like me shop in your grocery stores and eat in your restaurants after class. I have no other reason to come to Charles Town and normally would spend no money there. Her small business doesn't compare economically to the track and casinos, but it also doesn't bring congestion and pollution.

These variances would allow a business to exist that is in an out of the way location, creates no noise or other nuisances, brings peace to all who go there and provides only positive impacts on the community. It seems to me that it just makes sense to allow these variances and I respectfully ask that you do so. Thank you.

Sincerely,



Patricia A. Hoffmann  
PO Box 72  
Gore, VA 22637

[patth@shentel.net](mailto:patth@shentel.net)  
(540)858-2586

*From the desk of*  
*John R. Yost*  
*812 Honeysuckle Dr., Martinsburg, WV, 25401*

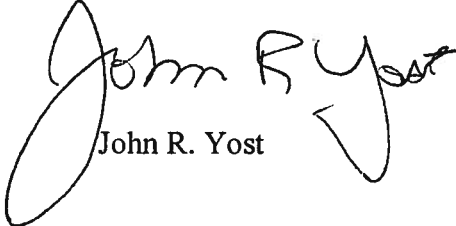
8-30-09

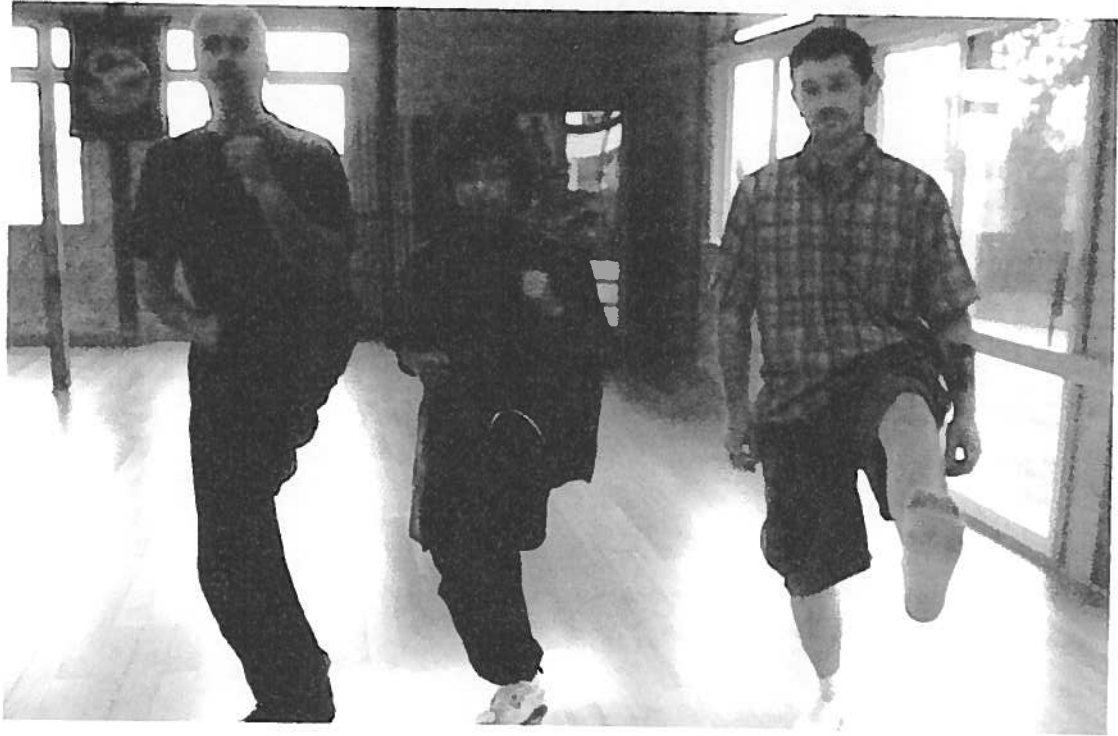
To Whom It May Concern:

For the past thirteen years I have been a student of the Blue Heron Martial Arts school, which is owned and operated by Barbara Feldman, and currently is located outside of Charles Town, West Virginia. I have benefitted so greatly from the quality of training offered by Ms. Feldman that I have been willing to commute from Martinsburg several times a week. When any business pulls people in from another county, this alone speaks of the benefits being offered by that business. Perhaps needless to say, when I come to Jefferson County, I also bring my patronage of other area businesses, thereby contributing to the tax base of the county. I am not the only person who does this.

Therefore, it should be obvious that the Blue Heron Martial Arts school contributes to the well-being of the Charles Town community.

Sincerely,

  
John R. Yost





Southern view, front and side of structure with woods behind.



Southern view, entrance side of structure (side nearest our house)



Southeastern view of structure and its entrance, taken from behind our house



Picture of structure taken from our rooftop



Entrance of structure and landscape taken from our rooftop



View of rear of structure from right of way



Inside of structure: Karate test—meditation



After karate test



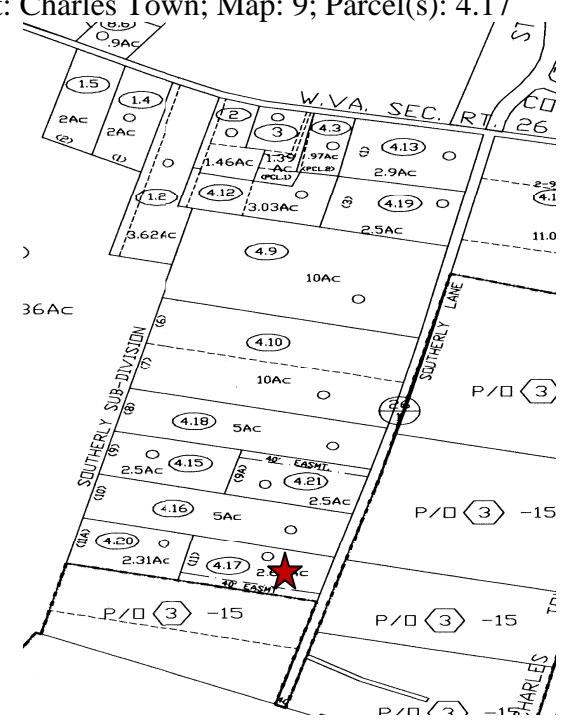
Northwest view from our rooftop and our nearest neighbors to the north



Easterly view, parking area and shed

**Barbara Feldman/Barry Whitebook Waiver Request**

Item #5: Request by Barbara Feldman/Barry Whitebook for a waiver from Section 20.203 (D)(2) to waive the requirement for stormwater management, from Appendix A 1.3(A)(15) to waive the need for a topographic study, and from Appendix B 9.4(E)(3) to waive the required width for the access road.

APPLICANT:	Barbara Feldman and Barry Whitebook
OWNER:	Barbara Feldman and Barry Whitebook
DEVELOPER:	Barbara Feldman and Barry Whitebook
SURVEYOR/ENGINEER:	N/A
PROPERTY LOCATION:	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.
LEGAL DESCRIPTION:	District: Charles Town; Map: 9; Parcel(s): 4.17 
ZONING DISTRICT:	2002 Zoning Map: Rural
SURROUNDING PROPERTIES:	2002 Zoning Map North: Rural South: City of Charles Town East: City of Charles Town West: Rural
LOT AREA:	2.6937 acres
PROPOSED DENSITY:	N/A

**Barbara Feldman/Barry Whitebook Waiver Request**

<b>PERMIT APPROVALS:</b>	
Health Department Permit	N/A
Department of Highways	N/A
<b>APPROVALS:</b>	
Conditional Use Permit	N/A
Community Impact Statement	N/A
Concept Plan	N/A
Preliminary Plat	N/A
Site Plan	N/A
Final Plat	N/A
Variance History	10/15/09 – The BZA denied a variance to waive the requirement for a site plan. 10/15/09 – The BZA granted a variance to increase the size of an existing one-story accessory structure from the allowable 1,000 sq. ft. to the built size of 1,232 sq. ft.
<b>OTHER APPROVALS:</b>	N/A

**Planning & Zoning Department Report**

The applicant is seeking to establish a home occupation under the Cottage Industry as found in Section 4.A.3 of the Zoning Ordinance. The use is for martial arts and healing arts classes. Although the use is low intensity, the number of visits to this location by students is higher than the Home Occupation Levels 1 and 2, it is in keeping with the Cottage Industry range. While no specific number of trips are given by the applicant, it is expected that there will be four or six vehicles per class with approximately 10 classes per week being conducted. Under the Cottage Industry, a maximum of 12 trips per day are allowed with a maximum of 60 trips per week.

Prior to the requests before the Planning Commission, the applicant had applied to the Board of Zoning Appeals for two variances. The first variance was a total relief of all site plan requirements. That request was denied by the Board. The second variance was a request to allow an existing accessory structure of 1,232 sq. ft. to be used for the Cottage Industry operations. The Cottage Industry states that, “Two subordinate structures shall be permitted not exceeding two stories and shall not have a footprint greater than 1,000 sq. ft.” This variance was approved.

The applicant has three waiver requests before the Planning Commission. The first is a waiver from stormwater management regulations; second is a waiver from a topographic survey and the third waiver is a from road access width to the parking area.

The Departments of Planning and Zoning defers to the Engineering Department regarding the stormwater management and topographic survey waivers, but will address the access road width.

Currently, there is an access drive along the applicant's property line which is used to access one lot in the rear. Being a minor subdivision under the old standards, the only standard for access is a 40 foot access easement. Additionally, our previous and current standards do not offer a standard width for gravel access easements. The current gravel access width is approximately 10 feet. Currently, the only standard for paved or gravel access widths is for 6 lots or more under residential use. This site has been determined to meet the Rural Site Plan standards of the Subdivision Regulations, which allows the applicant to use gravel for access aisles and parking.

The access drive request can be evaluated from two different perspectives. First, for non-commercial subdivisions with 6-12 lots, a requirement of a 20 foot wide gravel access is required. This would allow sufficient two way access, considering the number of limited lots. Second, in site development access to public roads, access shall be 22 feet to 24 feet. Planning Staff contends that the Cottage Industry use is an accessory structure to the principal residence. As such, the requirement in this case should be the non-residential 6-12 lots with a 20 foot wide gravel access. The use is similar in nature due to the number of trips in the Cottage Industry being similar to that of a 6-12 lot subdivision.

In contrast, while the minimum standard width for a gravel access would be 20 feet if held in comparison to a 6-12 lot subdivision, there is reason to maintain the access at the current width. As stated above, the site is under the Rural Site Plan standards. Doubling the width of the gravel for one lot, behind the property and for a maximum of 12 trips per day, would impact the rural nature of the area. Many of the houses in this area are on 5 acre lots and reflect the rural character. Adding the additional gravel would impact this rural feel.

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

Not increasing the width of the access aisle will not result in any maintenance cost for the County, since the access easement is not maintained by the county or the state. As part of a minor subdivision, there are no parkland or parks plan implications. The waiver would neither increase nor decrease the amount of impervious area. Additional gravel would create a certain amount of impermeability that could be avoided with the waiver.

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

Due to the limited use and nature of the access, the public health, safety or welfare or the rights of the adjacent property owner or residents would not be impacted. The neighbor to the north has submitted a letter stating that they understand the use of the site and traffic implications and are accepting of the situation. While additional traffic will be present at this location, the number of vehicle trips is similar to one single family home.

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

The intent of the Regulations is to have reasonable access to a site or lot. While the width of the gravel access does not meet the minimum width of 20 feet, the 10 foot drive aisle does provide the intent in this

case. The applicant has stated that she will offset her class times by at least 20 minutes to allow for traffic to leave and traffic for the next class to arrive. The intent is to reduce, as much as possible, any two way traffic. This essentially would result in traffic either coming or going but minimal traffic coming and going at the same time.

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

The waiver will not increase or decrease the quality of the access. The character of the area would retain a more natural, rural feel, as is intended by the Rural Site Plan standards, if the waiver were granted.

**Engineering Department Report**

The applicant is requesting a waiver from appendix B section 9.4.E.3 Internal Site Driveways Width, Section 9.10 Storm Water Management, and appendix A Sec. 1.3.A.15 two foot contours requirement.

To be able to approve this variance, the applicant needs to prove all of the following:

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

From the information provided, the Engineering Department feels that the applicant has only met 1 out of the 4 criteria above. Considering the natural landscape provided by the applicant, number 1 may satisfy the greater open space. As for the other 3 requirements, they are not satisfactory because of the following:

- The requested waivers do adversely affect adjacent property owners in the manor of increased runoff from due to no stormwater management facilities being provided.
- The requested waivers do not keep with the intent of the subdivision ordinance due to the fact 2 and 4 are not satisfied.
- The requested waivers do not provide a better quality project due to the fact that a decrease in driveway width will decrease the safety in regards of two way traffic and not providing contour will make it more difficult in determining where runoff is being directed.

**Engineering's Recommendation**

The Engineering Department does not support these variances from site plan standards. The problem with supporting these variances is usually someone will show up after the fact to complain about the internal driveway not being adequate, stormwater runoff is being increased on my property, traffic issues, etc. We feel it is good practice to enforce the regulation due to liability issues.

However, if the Planning Commission chooses to grant these variances, it would be prudent to set limitation to this waiver request to limit the maximum increase in stormwater, set a minimum internal driveway width and show where the runoff is leaving the property.

**Our Recommendation**

Planning and Zoning Staff recommends granting the waiver from the required access width. This decision was based on the limited number of users and that the current access is sufficient to meet the intended use. Doubling the width of the gravel access would only provide minimal convenience, not greater function to the users and would result in additional impervious area.

Staff feels it is important to reiterate, that beyond these waiver requests, the applicant is aware that the building needs to be brought into compliance with building code. The applicant will need additional permits before moving forward. Also, the applicant shall be required to stagger classes at least 20 minutes apart to allow for classes to leave before the next class is arriving. Finally and most importantly, the applicant is nearly at maximum growth for this site and should be made aware of this fact. Any growth could potentially be a violation. Based on the history of this site, it is not unreasonable to expect that it will be surveyed for any future violations.

**A Motion regarding  
Waivers for Barbara Feldman & Barry Whitebook  
October 12, 2010**

**Please Note** – Any motion made by the Planning Commission regarding the Feldman/Whitebook waiver requests must reference the 4 criteria for a waiver, which is listed below, findings of fact and any conditions.

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

**Now therefore be it moved**, that the Jefferson County Planning Commission recommends \_\_\_\_\_ the request for...

Recommended \_\_\_\_\_ this \_\_\_ day of \_\_\_\_\_ 2010  
By vote of the Jefferson County Planning Commission  
By a vote of \_ Yes \_ No

\_\_\_\_\_  
John Maxey, Commission President

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

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

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

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**MEMO**

**TO:** Planning Commission Members  
**FROM:** Jennifer M. Brockman, AICP, Director, Planning and Zoning  
**DATE:** October 12, 2010  
**RE:** Proposed Amendment to Zoning Ordinance Section 4.4 (h) Prohibited Uses

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On September 28, 2010, the Jefferson County Planning Commission directed staff to draft an amendment to Section 4.4(h) of the Jefferson County Zoning and Land Development Ordinance regarding the reference to the old Subdivision Ordinance. The proposed text amendment is as follows:

“(h) For parcels located east of the Shenandoah River or which are in a natural, undisturbed condition within 1000 feet of the Potomac and Shenandoah Rivers and Opequon Creek, no use shall be permitted without adherence to the requirements for retention of land in a natural, undisturbed area as spelled out in Section [14.2 of the Subdivision Ordinance 22.504 “Protection of Resources” of the Subdivision and Land Development Regulations.](#)”

[Amended by act of the County Commission, effective September 13, 1990]

Please note that, historically, because this section referenced the Subdivision Ordinance, and the referenced section clearly referred to subdivision activity, this section was only enforced as a part of a major subdivision development or a non-residential site plan. During the recent Subdivision Regulations amendment process, statements were made that this policy would continue unless and until a revision to this interpretation was publicly vetted. If the Planning Commission would like to revise this enforcement policy, a public policy process should take place before this is forwarded to the County Commission for action amending the Zoning Ordinance text. If this amendment is intended to be policy neutral, the next step would be to set a meeting date for a Public Hearing on the proposed amendment prior to making a recommendation to the County Commission.

As the County Commission will also have to hold a public hearing, the Planning Commission's hearing can occur at the next regular meeting, if desired.

**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**  
**October 12, 2010**  
**Planning Commission meeting**

- 1) Activity Report (attached)
- 2) Status of Land Development Fees – report on October 7, 2010 CC meeting
- 3) Quarterly Report on FY 2011 Work Plan (attached)
- 4) Work Plan for Long Range Planning Activities (attached)
- 5) Draft Policy on meetings involving PC members without a quorum present
- 6) Informational item: Recent Internal Policy on application of the word “days” for the purpose of public notice requirements (attached)
- 7) Report on Urban Growth Boundary meetings:
  - a) Harpers Ferry Town Council, October 11, 2010
  - b) Shepherdstown Town Council/Planning Commission
- 8) Upcoming Meetings:
  - a) National Trust for Historic Preservation, 11/12/10, 7 pm, Galilean Fisherman's Hall (attached)
  - b) Tentative Public Hearing on US 340 Federal Lands Rezoning, 11/18/10, 7 pm
  - c) Join Meeting of Planning Commission and County Commission regarding Blue Ridge Mountain Communities Watershed planning effort, 12/7/10, 7 pm, tentatively Blue Ridge Elementary School

**Christine Chalmers**

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

**MONDAY, OCTOBER 4, 2010**

10:00 am STEVE & JENNILEE – SITE VISIT / RE: MIKE KANHEL  
10:00 am SETH – TELEPHONE CONFERENCE CALL WITH SERA ZEGRE /  
RE: DOWNSTREAM STRATEGIES

**TUESDAY, OCTOBER 5, 2010** -

9:30 am – 10:30 am STAFF MEETING  
11:00 am – NOON JENNIE & SETH – WEEKLY PLANNING MEETING  
1:00 pm – 2:00 pm JENNIE & STEVE – WEEKLY ZONING MEETING

**WEDNESDAY, OCTOBER 6, 2010**

8:00 am - 9:30 am JENNIE – MONTHLY DEPARTMENT HEAD MEETING  
10:00 am JENNIE – MEETING WITH ANGELA BANKS (ASSESSOR)  
1:00 pm – 4:00 pm JENNIE & JULIE – MEETING / RE: JOB CLASSIFICATION

**THURSDAY, OCTOBER 7, 2010**

9:00 am - COUNTY COMMISSION MEETING  
10:15 am JENNIE'S CC APPOINTMENT TIME

**FRIDAY, OCTOBER 08, 2010**

11:00 am – NOON JENNIE & STEVE – “ONE-ON-ONE” MEETING  
2:00 pm JENNIE – MEETING WITH TODD  
RE: JCHLC 340 VIEWSHED MAPS

**Christine Chalmers**

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To: PLANNING COMMISSION  
Subject: FW: WEEKLY CALENDAR

**MONDAY, OCTOBER 11, 2010 COLUMBUS DAY HOLIDAY – OFFICES CLOSED**

7:00 pm JENNIE – HARPERS FERRY CITY COUNCIL MEETING  
7:00 pm JENNIE – FARMLAND PRESERVATION BOARD MEETING

**TUESDAY, OCTOBER 12, 2010 -**

9:30 am – 10:30 am STAFF MEETING  
11:00 am – 12:30 pm JENNIE & STEVE – WEEKLY ZONING MEETING  
2:00 pm – 3:00 pm JENNIE, SETH & AMY – WEEKLY PLANNING MEETING  
  
7:00 pm JENNIE, SETH & JULIE – PLANNING COMMISSION MEETING

**WEDNESDAY, OCTOBER 13, 2010**

11:00 am - NOON JENNIE & AMY – “ONE-ON-ONE” MEETING  
3:00 pm – 4:00 pm STEVE, SETH, JONATHAN – PPC MEETING / RE: TIM SNYDER M/S

**THURSDAY, OCTOBER 14, 2010**

9:00 am - COUNTY COMMISSION MEETING

**FRIDAY, OCTOBER 15, 2010**

NOON – 1:30 pm STAFF MEETING

**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)  
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**MEMO**

**TO:** County Commission Members  
**FROM:** Jennifer M. Brockman, AICP, Director, Planning and Zoning  
**DATE:** October 7, 2010  
**RE:** Follow up on Land Development Fee Roundtable Discussion

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The Jefferson County Planning Commission and Planning, Zoning, and Engineering Staff initiated an effort to develop a fee schedule for land development activities that reflects actual cost recovery for development review when the new Subdivision Regulations were adopted nearly two years ago. The current land development fees have not been revised since January 1, 2001. Numerous meetings and workshops have been held on this topic by both the Planning Commission and County Commission in this two year period. Most recently, in July, 2010, the Jefferson County Commission hosted a Roundtable Discussion to discuss the drafted Land Development Fees with stakeholders and the public at large. At this Roundtable Discussion, a number of comparative cost scenarios were reviewed and the accuracy of the costs were discussed. Staff was requested to combine all of the proposed fees into one schedule for ease of use by the staff, the public, and the development community. Additional cost comparisons for four specific scenarios were also requested.

As was previously noted, every community uses very different criteria for determining the review fees for land development applications. It is very difficult to compare apples to apples without a real land development document in hand for comparison. Staff has made an effort to coordinate with the other jurisdictions provide accurate estimated cost data regarding the four scenarios requested at the July 8, 2010 meeting.

Attached are the following documents:

1. The proposed fee schedule combining all planning, zoning, and engineering fees. This fee schedule reflects edits that the staff is proposing based on our recent experience processing a concept plan and based on an evaluation of the comparative costs.
2. The proposed building permit fee schedule.
3. The cost comparisons for the 4 specified scenarios (Parent to Child; 100 lot residential subdivision; 10 lot commercial subdivision; 100,000 square foot commercial/industrial site plan) for the cities of Ranson, Charles Town, and Martinsburg; and Berkley County. Note that this is an attempt to include all review fees associated with all steps of a development submittal, including concept plan, preliminary plat, construction documents, and final plat. These fees do not include building permit fees.
4. An analysis of the percent change resulting from the proposed fees as presented in July, 2010 and as revised for this meeting. Note that for clarification, the current site plan fee

is noted as zero. When an applicant applies for a site plan in Jefferson County, they pay a building permit fee. The fees noted in the cost comparisons are the site plan fees only. Building permit fees would be calculated separately.

At the County Commission's July meeting, a number of policy considerations were discussed, but no final decisions were made related to the policies. These policy considerations could affect the County Commission's decisions related to increasing or decreasing certain fees. The types of policy considerations that were discussed include, but were not limited to, the following

1. What do you accept as cost recovery and what are you willing to subsidize?
2. How do the fees compare to the municipalities within the county?
3. Minor subdivision for residential development, and in particular parent to child divisions, need to reflect a human scale.
4. Consideration of the limited funds of churches and non-profits.
5. Impact on Economic Development in the current economy.
6. Possibly providing credit or incentives for employment based developments.
7. Consideration of reducing fees for minor plats and site plans for up to two reviews and having additional fees if additional reviews are necessary.

The next step is to set a meeting date for a Public Hearing on the proposed fee schedule. Staff recommends that the County Commission take action to set this date and utilize the newly proposed fees as highlighted on the first attachment for the purpose of this Hearing.

**Engineering, Planning & Zoning Department's  
Proposed Land Development Fee Schedule**

Minor Residential Subdivision	Pre-Proposal Review (Eligibility)	Final Plat	Review for Recording
Base Fee Per Plat	\$200	\$750	\$50
Plus Per Lot Fee	\$0	\$300 per lot	\$25

Minor Non-Residential Subdivision (≤ 5 Lots; 4+Residue Lot maximum; and only in existing approved Commercial/Ind. Park)	Pre-Proposal Review (Eligibility)	Final Plat	Review for Recording
Base Fee Per Plat	\$200	\$800	\$50
Plus Per Lot Fee	\$0	\$350 per lot	\$25

Major Residential Subdivision (>5 Lots or not eligible for Minor Subdivision)	Pre-Proposal Review	Concept Plan	Preliminary Plat (each phase)	Final Plat (each phase)	Review for Recording
Base Fee Per Plat	\$0	1-50 Lots \$1050	\$800	<del>\$800</del>	\$100
Plus Per Lot Fee	\$0	51-100 \$1550 101+ \$2050	<del>\$350 per lot</del>	\$250 per lot	<del>\$25</del>

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Major Non-Residential Subdivision (>5 Lots or not eligible for Minor Subdivision)	Pre-Proposal Review	Concept Plan	Preliminary Plat (each phase)	Final Plat (each phase)	Review for Recording
Base Fee Per Plat	\$0	<del>1-10 Lots \$1300</del>	<del>\$1000</del>	<del>\$900</del>	\$100
Plus Per Lot Fee	\$0	10-30 \$1600 30+ \$2000	<del>\$550 per lot</del>	<del>\$450 per lot</del>	<del>\$25</del>

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\$500~~

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Minor/Limited Site Plan	Pre-Proposal Review	<u>Site Plan, Bonding &amp; Milestone Inspections</u> <i>(Re-inspection fees apply)</i>
Base Fee Per Plan	\$0	\$4250

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Minor/Full Site Plan (≤ 5,000 sq.-ft. on undeveloped site, or ≤10% of sq.-ft. of building on developed site, however not > 10,000 sq.-ft.; and not eligible for Limited Site Plan.)	Pre-Proposal Review	<u>Site Plan, Bonding &amp; Milestone Inspections</u> <i>(Re-inspection fees apply)</i>
Base Fee Per Plan	\$0	\$6300
Plus fee for area greater than 5,000 sq.-ft. of impervious area + disturbed area.	\$0	\$0.02/sq.-ft. of impervious + disturbed area over 5,000 sq.-ft.

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<b>Major/Full Site Plan</b> (> <u>5,000</u> sq.-ft. on undeveloped site; or >10% of sq.-ft. of building on developed site, or > <u>10,000</u> sq.-ft.)	Pre-Proposal Review	Concept Plan	<u>Site Plan, Bonding &amp; Milestone Inspections</u> (Re-inspection fees apply)
Base Fee Per Plan	\$0	\$1300	\$7300
Plus fee for area greater than <u>5,000</u> sq.-ft. of impervious area + disturbed area.	\$0	\$0	\$0.04/sq.-ft. of impervious + disturbed area over <u>5,000</u> sq.-ft.

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<b>Apartment/Multiplex/Condominium Site Plan &amp; Minor (≤ 8 units) or Major Process</b>	Pre-Proposal Conference	Concept Plan (only applicable under Major Process)	Site Plan, Bonding & Milestone Inspections (Re-inspection fees apply)
Base Fee Per Plan	\$0	\$300	\$3,000
Plus Per Unit Fee	\$0	\$0	\$200/unit

<b>Self-Storage Units Site Plan &amp; Minor or Major Process</b>	Pre-Proposal Conference	Concept Plan (only applicable under Major Process)	Site Plan, Bonding & Milestone Inspections (Re-inspection fees apply)
Base Fee Per Plan	\$0	\$300	\$3,000
Plus Per sq.-ft. of Building Footprint Fee	\$0	\$0	\$0.18/sq.-ft. of building footprint

<b>Cell Tower Site Plan Site Plan &amp; Minor Process</b>	Pre-Proposal Conference	Site Plan, Bonding & Milestone Inspections (Re-inspection fees apply)
Base Fee Per Plan	\$0	\$3,500

Redline Revision	Fee
Major Preliminary Plat & Site Plans Note: Major Redline Revision examples include revisions to SWM plan & drainage, roadway design, water & sewer design, changes to parking layout, and/or more than 3 different minor revisions on one submission.	\$300
Minor Preliminary Plat & Site Plans Note: Minor Redline Revision examples include revisions to easements, addition of notes to plan sheets, revisions to sediment & erosion control plan, addition of bus shelter, changes to landscaping plan, and no more than 3 different minor revisions on one submission.	\$200

Zoning Items	Fee
Zoning Ordinance Text Amendment Application	\$3,000 + \$15 per Certified Letter
Zoning Ordinance Map Amendment Application (Rezoning)	\$2,500 + \$15 per Certified Letter
Conditional Use Permit (CUP) Application without LESA	<del>\$1,500</del> + \$15 per Certified Letter
Conditional Use Permit (CUP) Application with LESA	\$2,500 + \$15 per Certified Letter 50% returned if the project fails LESA 0% returned if the project fails LESA & loses and appeal to BZA
Modification of existing CUP	<del>\$250</del> administrative modification <del>\$500</del> requiring Board of Zoning Appeals review
Zoning Variance Application	<del>\$250</del> + \$50 per additional section varied
Zoning Variance Application (construction/use has commenced prior to BZA approval)	\$350 + \$100 per additional section varied
Administrative Appeal Application	\$250/per item
Zoning Map Interpretation	Free (Verbal)  <del>Free (Written)</del>
Zoning Text Interpretation	Free (Verbal)  <del>Free (Written)</del>
Zoning Certificate	\$150 (Sign, Animated) \$75 (Sign, Non-animated) \$75 (All others)
<u>Change in nonconforming use</u>	<del>\$75</del> administrative change <del>\$250</del> change requiring Board of Zoning Appeals decision
<u>Special Exception</u>	<del>\$250</del>
<u>Seasonal Use</u>	<del>\$100</del>

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Subdivision Items	Fee
Lot Line Adjustment/Merger	<del>\$250</del>
Subdivision Ordinance Waiver Request	\$250 + \$50 per additional section waived
Minor Final Plat or Site Plan Amendment	\$225
Clerical/Scrivener Error	Free (Staff error) \$50 (Non-Staff error)
Miscellaneous Items	Fee
Inspection Fee – Land Development Site Inspection	\$50
Re-inspection – Land Development failed inspections	\$75
Construction Bond – Time Extension Request (by staff or CC)	\$400
Construction Bond – Surety Renewal	\$300
Floodplain Ordinance – Floodplain Delineations	\$20
Floodplain Ordinance – 100 Yr. Flood Elevation Determination	\$25
Floodplain Ordinance – Review of LOMA, LOMR or LOMR-F requests	\$100
Aerial Photograph	\$25
Comprehensive Plan	<del>\$25</del>
Zoning Map (small)	\$10
Zoning Map (medium)	\$15
Zoning Map (large)	\$20
CD (copy of meetings, electronic copy of files, etc.)	\$10
Zoning Ordinance	<del>\$25</del>
Subdivision Regulations	\$25
<u>Salvage Yard Ordinance</u>	<u>\$10</u>
Copies (letter, legal & 11"x17")	\$1/page*
Copies (plan sheets, maps, etc.)	\$7.50/sheet*
*Note: The charge for copies is subject to change and shall be the prevailing rate as set by the County Commission of Jefferson County	

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\* Note: All projects vested in process prior to the adoption of this fee schedule will utilize the fee schedule last amended in January 2001.

## MEMORANDUM

### Comparisons and Proposed Building Permit Fee Schedule March 18, 2010

The authority of a county commission to adopt a building code is provided in West Virginia State Code, Section 7-1-3n, Authority of Certain Counties as to Building and Housing Codes; State Building Code, which states:

*"...county commissions are hereby authorized and empowered, by order duly entered of record, to adopt building and housing codes establishing and regulating minimum building housing standards for the purpose of improving the health, safety and well-being of its citizens."*

Section 108, Fees, of each of the various building codes provides for permit fees. It states:

*"On buildings, structures, electrical, gas, mechanical, and plumbing systems or alterations requiring a permit, a fee for each permit shall be paid as required in accordance with the schedule as established by the applicable governing body."*

Since March 29, 2001, when Jefferson County adopted the Building Code Enforcement Ordinance, building permit fees have not been reviewed or increased. As mentioned in the Memorandum to the Planning Commission dated, February 19, 2010, and in attached *Table 1*, a site plan review fee was not included in the processing of a site plan. The entire site plan fee consisted only of building permit fees. To address this issue, staff has proposed a separate plan review fee, but has also proposed the following fee revisions for building permits. The building permit fees were reviewed and adjusted in the same manner as all other fees proposed in this packet.

**Chart 1**

Jefferson County, West Virginia  
 Engineering Department  
 Office of Building Permits & Inspections

**PROPOSED IRC BUILDING PERMIT FEE SCHEDULE  
 FINAL DRAFT  
 (As of Feb. 22, 2010)**

**IRC - Residential Building Permit Fee Schedule**

Date: 5/21/2009

		Current Fee				Proposed Fee			
Residential Permit Type	Base Fee	Fee per Sq.-Ft. of Finished Area	Fee per Sq.-Ft. of Un-finished Area	Fee per Porch Deck/Stoop	Residential Permit Type	Base Fee	Fee per Sq.-Ft. of Finished Area	Fee per Sq.-Ft. of Un-finished Area	Fee per Porch Deck/Stoop at Entry Doors
Single-Family Dwelling	\$25.00	\$0.18	\$0.10	\$25/each	Single-Family Dwelling	\$50.00	\$0.18	\$0.10	\$50/each
Mobile/Manufactured Home	\$25.00	\$0.18	\$0.10	\$25/each	Mobile/Manufactured Home	\$50.00	\$0.18	\$0.10	\$50/each
Townhouse & Duplex (less than 4 story)	\$25 per unit	\$0.20	\$0.10	\$25/each	Townhouse & Duplex (less than 4 story)	\$50 per unit	\$0.20	\$0.10	\$50/each
Residential Dwelling Addition	\$50.00	\$0.18	\$0.00	\$25/each	Residential Dwelling Addition	\$50.00	\$0.18	\$0.00	\$50/each
Residential Interior Room/Basement Renovation		\$50 + \$50/inspection			Residential Interior Room/Basement Renovation		\$150 + \$50/inspection		
Chimney/Fireplace (added to existing dwelling)	\$100.00				Chimney/Fireplace (added to existing dwelling)		\$250 per chimney		
Sheds/Garage/Structure ancillary to Residence	\$50.00	plus \$0.08/sq.-ft.			Sheds/Garage/Structure ancillary to Residence	\$150.00	plus \$0.08/sq.-ft.		
Decks	\$50.00	plus \$0.08/sq.-ft.			Decks	\$150.00	plus \$0.08/sq.-ft. of deck area		
Swimming Pool	\$50.00	plus \$0.08/sq.-ft. of pool area and patio area.			Swimming Pool	\$150.00	plus \$0.08/sq.-ft. of pool area and patio area.		
Demolition - Residential Dwelling	\$50.00	plus \$0.08/sq.-ft.			Demolition - Residential Dwelling	\$150.00	\$0.00	\$0.00	
Retaining Wall (4' or more from footer to top wall)		\$50 plus \$0.08/lineal foot of wall			Retaining Wall (4' or more from footer to top wall)		\$150 plus \$0.08/lineal foot of wall		
Fence (6' or more in height above ground surface)		\$50 plus \$0.08/lineal foot of fence			Fence (6' or more in height above ground surface)		\$150 plus \$0.08/lineal foot of fence		
Re-inspection Fee		\$50/each re-inspection, paid prior to re-inspection			Re-inspection Fee		\$50/each re-inspection, paid prior to re-inspection		
Plan change after permit issued		\$50 plus \$50 for each additional inspection due to plan change.			Plan change after permit issued		\$50 plus \$50 for each additional inspection due to plan change.		
Permit Application Denied & Resubmitted within 90 days for review; \$75 re-application fee		\$75 re-application fee			Permit Application Denied & Resubmitted within 90 days for review; \$75 re-application fee		\$75 re-application fee		
Beginning Construction Without a Permit		1st time = \$50 2nd time = \$150 3rd time = \$300			Beginning Construction Without a Permit		1st time = \$50 2nd time = \$150 3rd time = \$300		

**Chart 2**

Jefferson County, West Virginia  
 Engineering Department  
 Office of Building Permits & Inspections

**PROPOSED IBC BUILDING PERMIT FEE SCHEDULE  
 FINAL DRAFT  
 (As of Feb. 22, 2010)**

**IBC - Commercial/Industrial Building Permit Fee Schedule**

Date: 5/21/2009

Commercial Permit Type	Current Fee			Proposed Fee		
	Base Fee	Fee per Sq.-Ft. of Finished Area	Fee per Sq.-Ft. of Un-finished Area	Base Fee	Fee per Sq.-Ft. of Finished Floor Area	Fee per Sq.-Ft. of Un-finished Floor Area
Commercial/Industrial/Multi-Family Buildings (value less than \$50,000)	\$250.00	\$0.18	\$0.18	\$250.00	\$0.18	\$0.18
Commercial/Industrial/Multi-Family Buildings (value greater than \$50,000)	\$500.00	\$0.18	\$0.18	\$500.00	\$0.18	\$0.18
Commercial Interior Room Renovation	\$1,000 plus \$50 per required inspection			\$1,000 plus \$50 per required inspection		
Church Building	\$500.00	\$0.18	\$0.18	\$500.00	\$0.18	\$0.18
Church Addition, Pavilions & Ancillary Structures (value less than \$25,000)	\$50 plus \$50 per required inspection			\$200 + \$50/inspection per required inspection		
Church Addition, Pavilions & Ancillary Structures (value greater than \$25,000)	\$250.00	\$0.18	\$0.18	\$350	\$0.18	\$0.18
Institutional (hospital, school, fire hall, etc.)	none	none	none	\$500	\$0.18	\$0.18
Commercial Swimming Pool	none	none	none	\$1,000 per pool & \$200 per Whirlpool/Hot Tub		
Demolition Permit	\$200.00	\$0.00	\$0.00	\$300.00	\$0.00	\$0.00
Cell Tower or Electric Substation & Equipment	\$250.00	\$0.00	\$0.00	\$750.00	\$0.00	\$0.00
Temporary Construction Trailers	\$50.00	\$0.00	\$0.00	\$350.00	\$0.00	\$0.00
Sign Permit: Value less than \$25,000	\$50.00	N/A	N/A	\$250.00	N/A	N/A
Sign Permit: Value \$25,000 or more	\$250.00	N/A	N/A	\$400.00	N/A	N/A
Retaining Wall (4' or more from footer to top wall)	\$50 plus \$0.08/lineal foot of wall			\$150 plus \$0.08/lineal foot of wall		
Fence (6' or more in height above ground surface)	\$50 plus \$0.08/lineal foot of fence			\$150 plus \$0.08/lineal foot of fence		
Re-inspection Fee	\$50/each re-inspection, paid prior to re-inspection			\$50/each re-inspection, paid prior to re-inspection		
Plan change after permit application reviewed	\$50 plus \$50 for each additional inspection due to plan change.			\$50 plus \$50 for each additional inspection due to plan change.		
Permit Application Denied & Resubmitted within 90 days for review; \$75 re-application fee.						
Beginning Construction Without a Permit	1st time = \$50 2nd time = \$150 3rd time = \$300			1st time = \$50 2nd time = \$150 3rd time = \$300		

Example Project	Current Fee	Proposed Fee	Charles Town	Ranson	Martinsburg	Berkeley County
<b>Subdivisions</b>						
Parent to Child - 1 Lot Minor Subdivision	\$600.00	\$1,550.00	\$200.00	\$250.00	\$400.00	\$350.00
100 Lot Residential Subdivision	\$41,600.00	\$75,050.00	\$2,250.00*	\$60,000.00	\$2,450.00	\$39,450.00
10 Lot Commercial Subdivision	\$5,850.00	\$19,700.00	\$10,200.00*	\$15,350.00	\$4,100.00	\$5,050.00
<b>Site Plan</b>						
Industrial Commercial Development including a 100,000 sq. ft. building Site Plan	\$0.00	\$15,800.00	\$2,200.00*	\$3,950.00	\$400.00	\$2,500.00

\* This is merely a base fee that includes a minimum \$2,000 escrow.

Example Project	Current Fee	Proposed Fee	% Increase	Newly Proposed Fee	% Increase
<b>Subdivisions</b>					
Parent to Child - 1 lot Minor Subdivision	\$600.00	\$1,550.00	61%	\$1,550.00	61%
100 Lot Residential Subdivision	\$41,600.00	\$75,050.00	45%	\$65,250.00	36%
10 Lot Commercial Subdivision	\$5,850.00	\$19,700.00	70%	\$13,550.00	57%
<b>Site Plan</b>					
Industrial Commercial Development including a 100,000 sq. ft. building Site Plan	\$0.00	\$15,800.00	100%	\$16,400.00	100%

First Quarterly Report on FY 2011 Work Plan							
PRIORITY	PROJECTS	TIME FRAMES from FY 10-11 Work Plan	Status or Number Completed (July 10 -- Sept. 10)	Outstanding Tasks	REQUIRED RESOURCES/STAFF	REQUIRED HEARINGS	ANTICIPATED RESULTS
	<b>Day to Day Customer Service</b>	on-going	75				
	Walk in Customers - general information, zoning requests, process questions						
	Information Request Forms		38				
	Zoning Certificates Issued		5				
	Call-in customers - general info, zoning, questions		537				
	E-mail to general planning/zoning mailboxes (note: individuals receive over 100 per month each)		105				
	<b>Day to Day Development Review Responsibilities:</b>	on-going					
	Minor Site Plans		1				
	Merger Deeds, Lot Line Adjustments		12				
	Major Site Plans		3				
	Minor Subdivision Plats		new submittals -3;				
	Major Subdivision Plats (Concept, Preliminary, Final)		recorded - 5				
	Conditional Use Permits/Neighborhood Compatibility Meetings		new submittals - 2				
	Zoning Variances - dimensional variances		2				
	Zoning Variances - Time extension related to CUPs		7				
	Subdivision Variances - waivers related to time frames or requirements		0				
	Pre-proposal Conferences		3				
	Follow up meetings with applicants		17				
			14				
	<b>Staff to Planning Commission meetings, including staff reports and presentations</b>	on-going	6 regular PC meetings; 4 special called meetings; 4 special CC meetings related to PC items; 4 staff reports related to land development applications				
	<b>Staff to Board of Zoning Appeals meetings, including staff reports and presentations</b>	on-going	3 BZA meetings; 17 staff reports for land development applications				
	<b>Participation in County Commission, WAC, JCDA, Health Department, Joint Utility Meeting, HEPMPO, Region 9</b>	on-going	JB - 128 meetings attended; SR - 72 meetings attended; SB - 58 meetings attended				
Special Project	<b>Blue Ridge Mountain Study</b>	Nov 09 - Mar 11	3 meetings	Draft Vision statement to be available for public review in mid-October; grant work to be completed by 12/31/10; administrative work to be completed by 3/31/11	SR, JQ, JB	Joint Meeting of PC/CC for unveiling of vision statement and recommendations 12/7/10	Endorsement of Vision Statement and Next Steps Recommendations
Special Project	<b>Revise, rewrite, update Subdivision Regulations</b>	Nov 09 - April 10	1st round of "policy neutral" amendments approved by PC 4/10 and by CC 8/19/10;	List of additional amendments required generated by public input - overall amendments anticipated to continue through Summer 2011	SR, AP, JQ, JB	Hearings Required by PC and CC at various stages of	Adoption of Amendments

First Quarterly Report on FY 2011 Work Plan							
PRIORITY	PROJECTS	TIME FRAMES from FY 10-11 Work Plan	Status or Number Completed (July 10 -- Sept. 10)	Outstanding Tasks	REQUIRED RESOURCES/STAFF	REQUIRED HEARINGS	ANTICIPATED RESULTS
Special Project	Proposed amendments to Zoning Ordinance	summer 2010	"policy neutral" amendments have been initiated; put on hold due to wireless ordinance efforts	Overall amendments anticipated to continue through Summer 2011	SB, JH, SR, JQ, JB	Hearings Required by PC and CC at various stages of	Adoption of Amendments
Special Project	Zoning Map Update	summer 2010	Staff has completed research and worked with GIS Dept. to complete a good draft; efforts related to UGBs and Federal Land Rezoning to be included	Final review of map data and decisions regarding depiction of non-zoning data underway; potential draft of policy to guide routine updates to zoning map to reflect current data layers	JH, JB, SB, SR	Public Hearing may be required by both PC and CC	Approval of new map product and possibly policy
Special Project	Urban Growth Boundary - follow up with municipalities; proposed changes to zoning ordinance text and map; public hearings	Summer 2009 - Summer 2010	Ranson and Charles Town have adopted the UGBs as agreed upon by the County; Harpers Ferry, Bolivar, and Shepherdstown are in discussion with staff to determine best course of action				
Special Activity	Leadership Jefferson	Sept 09 - May 2010	completed				
	Staff Training -- new skills, planning and zoning related functions	on-going	SR - APA Conf. (4/10); JQ -- 3 day Grant Writing course (7/10), NCTC; SR & SB - Eastern Panhandle GIS Users Group (8/10); JB -- 5 day Green Infrastructure Conf. (9/10), NCTC; SB -- 2 day KARST Conf. (9/10), NCTC; JQ - Smart Code webinars (8/10 & 9/10); JB, SB, SR -- 1 day Smart Code On-Site Workshop	Basic GIS training and Project Management software training may be pursued			
	Census	Spring 2010	No activity required				
Special Project	Proposed amendment to Land Development Fees	July 09 - March 2010	July 2010 CC held Roundtable Discussion; Staff worked to address comments and concerns -- on 10/7/10 CC meeting agenda				

First Quarterly Report on FY 2011 Work Plan							
PRIORITY	PROJECTS	TIME FRAMES from FY 10-11 Work Plan	Status or Number Completed (July 10 -- Sept. 10)	Outstanding Tasks	REQUIRED RESOURCES/STAFF	REQUIRED HEARINGS	ANTICIPATED RESULTS
Special Project	<b>340 Corridor Gateway Enhancement Study</b>	Spring 2011 - Summer 2012	In late June, 2010 staff attended a meeting re: a Nat'l Governor's Assoc. project that includes the 340 Corridor and a meeting with the WV DOH re: their 340 Corridor project; in late September, staff met with Comm. Widmyer to discuss potential work program for project	Formation of Technical Advisory Committee for the purpose of defining study area boundary, determining what data exists, and developing an existing conditions report and related maps; goal of kick-off public meeting for 2/11 ; discussion with DOH re: requirements for an enforceable Access Mgt. Plan	JB, SR,	Public Hearing will be required when plan is drafted	Adoption of Small Area Plan as an amendment to the Comprehensive Plan; recommended amendments to the Zoning Ordinance and Subdivision Regulations; possible development of an Access Management Plan
Special Project	<b>2014 Comprehensive Plan</b>	Fall 2011 - Fall 2013; adoption 2014	No activity				
<b>NEW PROJECTS NOT INCLUDED IN FY 2011 WORK PLAN</b>							
Special Project	Urban Tree Canopy Grant and Planting Event	October 2010 - May 2011	Grant has been approved; MOU is being reviewed prior to signing	Advertise for and hire intern; hold kick off meeting	JB and city planners		
Special Project	JCOHOA Study Follow Up	September 2010 -- ?	Initial contacts have been made with WVU to determine interest and costs				
Special Project	Region 9 Model Stormwater Regulations	May 2010 - February 2011	Monthly Meetings and Review/Input into draft ordinance	Once draft is complete County needs to consider amending stormwater regulations	JB	Public Hearing may be required by both PC and CC	Stormwater regulations that reflect Chesapeake Bay standards

Ongoing/Upcoming Work Projects  
Interim Report 10/12/10

TASKS	Staffing	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11
<b>Blue Ridge Mountain Visioning</b>	SR, JQ, JB	Proof Read Consultant's Vision Document, Post to Web for public comment; submit annual fiscal report	Monitor website for public comment; potential topical citizen's committee meeting	12/7/10 Joint Meeting with CC/PC; Finalize document	Final financial report and preparation for closing out grant	Investigating additional grant resources for next citizen's committee re: this grant	Submittal of final report	
<b>Blue Ridge Mountain Plan and Implementation</b>	SR, JQ, JB					Investigating additional grant resources for next step	Grant application?	Grant application?
<b>Zoning Ordinance Map Amendments</b>	SB, JH, JQ, JB	Final Proofing of data layers and labeling of non-zoning attributes; on-going meeting with municipalities about UGB boundaries	Federal Land Rezoning (11/18/10)	Present to the PC final draft map				
<b>Zoning Ordinance Text Amendments</b>	SB, JH, JQ, JB	Finalizing cell tower ordinance -- to CC for PH; beginning to draft "policy neutral" amendments	Draft "policy neutral" amendments to PC					
<b>Subdivision Regulation Amendments</b>	SR, AP, JQ, JB	Finalize list of additional topics that need to be addressed (from PH input) and prioritize	Begin to work on priority amendments					
<b>US 340 Commerce Gateway Corridor Plan</b>	JB, SR, SB, JQ	Form Technical Advisory Committee; Kick off TAC meeting; initiate existing conditions data collection	Existing conditions research and mapping	Existing conditions research and mapping	Existing conditions research and mapping	Kick-off public meeting on 340 Plan		
<b>Urban Tree Canopy grant</b>	JB	Get MOU and grant signed; hire intern	Kick-off meeting within intern and city planners	on-going supervision of intern				
<b>JCOHOA Study Follow Up</b>	JB	Follow with Jennifer Syron and WVU						

**NOTE: Professional staff has no more than 1/3 of their time available for Special Projects, totaling about 35 hours/week for SR, SB, JB**

**JEFFERSON COUNTY, WEST VIRGINIA**  
**Department of Planning & Zoning**  
116 East Washington Street  
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[zoning@jeffersoncountywv.org](mailto:zoning@jeffersoncountywv.org)

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

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**MEMO**

**TO:** Planning & Zoning Staff  
**FROM:** John Maxey, Planning Commission President  
**DATE:** October 12, 2010  
**RE:** Planning Commission Policy – Meetings with Planning Commission Presence

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Any meeting or conference call, the setting of which was approved by the Planning Commission at a regularly scheduled Planning Commission meeting, which requires Planning Commission representation without the presence of a quorum shall require Staff to document, in memorandum form, a summary of the discussion or actions which occurred at said meeting. The memorandum shall be provided to all Planning Commission members, for their information, within their packet at the next regularly scheduled Planning Commission meeting, under the heading of Planning Commissioner Exchange.

Approved by vote \_\_\_\_\_ For, \_\_\_\_\_ Against on October 12, 2010.

Effective Date: October 12, 2010

**X**

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John Maxey  
Planning Commission President

**JEFFERSON COUNTY, WEST VIRGINIA**  
**Department of Planning & Zoning**  
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[zoning@jeffersoncountywv.org](mailto:zoning@jeffersoncountywv.org)

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**TO:** Planning and Zoning Staff  
**FROM:** Jennifer M. Brockman, AICP, Director, Departments of Planning & Zoning  
**DATE:** October 5, 2010  
**SUBJECT:** Interpretation of “days” in the Subdivision Regulation in regards to posting, adjoiner notification, and advertising requirements.

When determining deadlines in regards to property posting, adjoiner notification, and advertising requirements, the department will interpret the word “days” in the Subdivision Regulations to mean calendar days. All other references will continue to be interpreted as working days. Enforcement of this policy will allow structured timeframes and it is believed to be the original intent when the Subdivision Regulations were adopted.

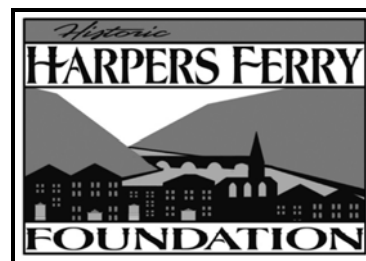
# Eastern Panhandle Workshop on Historic Preservation and Land-Use Issues

A presentation by the National Trust for Historic Preservation



Friday November 12, 2010  
7:00 to 9:00 p.m.

Galilean Fisherman's Hall  
321 South West Street  
Charles Town, West Virginia



The National Trust for Historic Preservation is excited about the opportunity to deliver educational programming to decision-makers and key preservation leaders working with historic preservation and land-use issues in West Virginia's Eastern Panhandle. This 2-hour educational program has been developed by the National Trust in cooperation with Jefferson, Berkeley, and Morgan counties to help strengthen local government and community-level efforts to protect and preserve historic places in the Eastern Panhandle. The event is being sponsored by the Harpers Ferry Historic Town Foundation.

**Audience:** The program is being made available to commission members, council members, planning staff, and key preservation leaders in Jefferson, Berkeley, and Morgan counties.

**Content:** Staff from the National Trust for Historic Preservation will present a concise overview of historic preservation protections and design review processes relevant to the participating attendees. This is short 2-hour program, and hence, only a brief overview can be provided. However, based on feedback prior to the workshop from potential participants on issues that matter to them, the National Trust for Historic Preservation staff will refine the content to reflect participants concerns. Specific issues may include:

1. Community benefits of historic preservation review processes
2. Maintaining and strengthening historic preservation ordinances and commissions
3. Partnership of preservation advocacy groups and historic commissions to save historic places

**Format:** The program will combine an informational presentation and a dynamic facilitated exchange among the participants and with the presenters. Information about additional resources will be provided for those who want to study further.

**Logistics:** The Harpers Ferry Historic Town Foundation is sponsoring the event and recruiting participants. The African American Community Association of Jefferson County is graciously allowing the recently restored Galilean Fisherman's Hall (c. 1885) in Charles Town to be used for this event. The program will be made available to participants at no cost, and drinks and snacks will be provided. The Fisherman's Hall is handicapped accessible.

**Reservations:** Space in the Fisherman's Hall is limited (seats 50-70). If you would like to attend the workshop or you would like more information, please respond by Wednesday, October 13, 2010, to Don Burgess ([burgessdr@aol.com](mailto:burgessdr@aol.com)), chair of the Harpers Ferry Historic Town Foundation's Revitalization Committee (<http://historicharpersferry.org>).

**Jefferson County, West Virginia**  
**Department of Planning & Zoning**  
116 East Washington Street; 2<sup>nd</sup> Floor  
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Email:planningdepartment@jeffersoncountywv.org

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

August 27, 2010

**PRE-PROPOSAL CONFERENCE MEMORANDUM**

MEETING DATE: Wednesday, August 18, 2010 @ 10:00 a.m.

Company Name: Keller Engineers      PKIRBY@KELLER-ENGINEERS.COM  
Mailing Address: 420 Allegheny Street  
Hollidaysburg, PA 16648  
Phone Number: (814) 696-7340

Contact: Michael Pratt

Property Owner: Board of Trustees of Asbury United Methodist Church  
Physical Address: 4257 Kearneysville Pike; Shepherdstown, West Virginia 25443

PROPOSED PROJECT: NON-RESIDENTIAL MAJOR SITE DEVELOPMENT

DISTRICT/MAP/PARCEL: SHEPHERDSTOWN TAX DISTRICT/ MAP: 8 / PARCEL: 7.2

ZONING DISTICT: RESIDENTIAL GROWTH

TOTAL PARCEL SIZE: 4.98 Acres

**MEETING DESCRIPTION:**

- The meeting attendees included County Planner, Seth Rivard; Zoning Administrator, Steve Barney; County Engineer, Jonathan Saunders; and Paul Kirby, Keller Engineers.
- Overview: proposed project consists of the construction of a 13,100 sq. ft. addition to the existing 8,000 sq. ft. church, to include associated site improvements such as parking lot expansion, stormwater management and connection to nearby public water and sewer systems. Said addition will be used as a new sanctuary while the current building will be thereafter renovated as classrooms.
- Additional Landscaping.
- Possible connection to Starkey's Landing.
- Noted Subdivision Regulation amendments.
- Potential environmental constraints and mitigation measures as required by Zoning Ordinance.
- Anticipated Time-Frame and Deadlines.
- Additional relevant information to consider: None.
- FEES: Upon submission, all applicable Site Plan and Building Permit fees, as required by the Engineering Department.
- Payment(s): **None Received**

**FINDING:**

Per Section 4.10 of the Zoning Ordinance, the ILP Ordinance, and current Subdivision Regulations, the proposed plan concept will require a Full Site Plan submission, and may comply with the processing conditions for Major Site Development.

**EFFECT OF FINDING:**

The processing of a Site Plan is required. Building Permits must also be obtained, prior to the start of construction, and appropriate approvals from all Local, State and Federal Agencies, are necessary for the issuance of a Zoning Certificate. Contact the Jefferson County Addressing Department for additional processing information.

Sincerely,

Seth Rivard  
County Planner

SR/clc  
cc: Engineering and Building Permit Department

**Jefferson County, West Virginia**  
**Department of Planning & Zoning**  
116 East Washington Street; 2<sup>nd</sup> Floor  
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Phone: (304) 728-3228  
Fax: (304) 728-8126

August 27, 2010

**PRE-PROPOSAL CONFERENCE MEMORANDUM**

MEETING DATE: Wednesday, August 25, 2010 @ 3:00 pm

CONTACT NAME: William H. Gordon Associates, Inc.  
Address: 301 North Mildred Street, Suite 1  
Phone Number: Charles Town, West Virginia 25414

Project Name: PAYNES FORD STATION

Property Owner: Jefferson Orchards, Inc.

Physical Address: Intersection of Paynes Ford Road and Bowers Road

PROPOSED PROJECT: MAJOR RESIDENTIAL SUBDIVISION – CONCEPT PLAN

DISTRICT/MAP/PARCEL: MIDDLEWAY TAX DISTRICT / MAP: 6 / PARCEL: 8 /  
ZONING DISTRICT: RURAL

INDIVIDUAL PARCELS: 36 Lots  
TOTAL PARCEL SIZE: 142 (+/-) Acres

**MEETING DESCRIPTION:**

- Need to declare density as required in the Rural District.
- The meeting attendees included Director, Jennifer Brockman; Zoning Administrator, Steve Barney; Zoning Clerk, Jennilee Hartman; County Planner, Seth Rivard; County Engineer, Jonathan Saunders; Jefferson County Assistant Prosecuting Attorney, Stephanie Grove; and WHGA Representative, Mark Dyck.
- Overview: The proposed project consists of a Concept Plan for a Major Residential Subdivision consisting of 36 Lots and a Residue.
- Tentative site capacity calculations.
- Potential environmental constraints and mitigation measures as required by Zoning Ordinance, Art. 4.
- Anticipated Time-Frame and Deadlines.
- Additional relevant information to be considered: Zoning File #Z02-02.
- FEES: Upon submission, all applicable Site Plan and Building Permit fees, as required by the Engineering Department.
- Application Fee: \$ \_\_\_\_\_ Payment(s): **None Received**

**FINDING:**

The subdivision is required to follow the review and approval process established in the amended Subdivision Regulations adopted by the County Commission on August 19, 2010. The Subdivision Regulations can be found in the "Ordinances & Regulations" section of the Planning Department website, <http://www.jeffersoncountywv.org/planning-and-zoning.html>. The initial required submittal for a Major Subdivision is the Concept Plan. Concept Plan requirements and process are outlined in Sec. 24.106-109 and Appendix A, Plan & Plat Standards.

Following submittal of a Concept Plan, the Planning Department shall have 10 days to review the submission and determine completeness. Once the Concept Plan has been found sufficient, the applicant shall distribute the Concept Plan material to all reviewing agencies within seven days. Staff shall have 45 days to conclude a completeness review. Following completeness review, the Concept Plan shall be placed on the next regularly scheduled Planning Commission agenda to hold a public workshop. After the close of the public workshop, the Planning Commission shall, during their regular meeting or at a specific public meeting within 14 days, provide direction on the Concept Plan.

All Conditional Use Permit conditions must be included on the Concept Plan, in addition to a description of how each condition is addressed. Regarding the Applicant's request for staff to apply discretion in interpreting some of the CUP conditions, it should be noted that the Court upheld the CUP with all conditions imposed. Staff does not have the authority to override BZA imposed conditions. Accordingly, the CUP with all of the conditions must stand unless the Board of Zoning Appeals grants a variance from those conditions. The Applicant has the option of appealing any of the conditions to the Board of Zoning Appeals.

Regarding specific site design issues discussed in the PPC meeting:

- It is suggested that the requirement for a 1.0 mile walking path be fulfilled by designating a path area on both sides of the street network, including the Berkeley County section of the subdivision.
- Easement through the residue parcel (or between residential lots) will be required for pedestrian access to common area.
- If the Applicant seeks additional access to the residue parcel, other than an internal subdivision parcel, a variance from Appendix B, Sec. 2.3(A)(1) of the Subdivision Regulations will be required.
- The residue lot is considered to be part of the subdivision. As such, the CUP requirement "Provide a 100 foot buffer along Highland Meadows' border" applies to the residue lot.

The expiration date for the subdivision case will be 18 months from the date of Conditional Use Permit issuance.

**EFFECT OF FINDING:**

The Applicant may proceed with the submittal of a Concept Plan for a Major Subdivision. Upon receipt of the required material, the Department of Planning and Zoning will process said Concept Plan within the time line requisites stated in the Subdivision Regulations.

Sincerely,

Steve Barney  
Zoning Administrator

**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)

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

October 06, 2010

**PRE-PROPOSAL CONFERENCE MEMORANDUM**

MEETING DATE: Wednesday, September 8, 2010 at 10:00 am

Owner/Contact Name: Gregory Byrne      gregbyrne1@gmail.com

Mailing Address: P.O. Box 1419  
Shepherdstown, West Virginia 25443

Phone Number: 304-876-6217

Physical Address: 461 South King Street

PROPOSED PROJECT: RESIDENTIAL / MERGER

ZONING DISTRICT: TAX DISTRICT: 09 / MAP: 8B / PARCELS: 38, 39, 40 & 41  
RESIDENTIAL-GROWTH

INDIVIDUAL PARCELS:

TOTAL PARCEL SIZE:

**MEETING DESCRIPTION:**

- Need to declare density as required in the Residential Growth District.
- The meeting attendees included Planning & Zoning Director, Jennifer Brockman; Zoning Administrator, Steve Barney; County Planner, Seth Rivard; County Engineer, Jonathan Saunders; County Compliance Officer, Mason Carter; and Applicant, Greg Byrne.
- Overview: The proposed project consists of reconfiguring property's existing multiple lot boundaries for the purpose of creating a total of three (3) lots.
- Tentative site capacity calculations.
- Potential environmental constraints and mitigation measures as required by Zoning Ordinance, Art. 4.
- Anticipated Time-Frame and Deadlines.
- FEES: Upon submission, all applicable Site Plan and Building Permit fees, as required by the Engineering Department.
- Application Fee: \$ \_\_\_\_\_ Payment(s): **None Received**
- **ADDITIONAL RELEVANT INFORMATION**

Per the Applicant, a new sewer line has been installed at rear of property that can provide service to additional lots.

1. The Applicant seeks to consolidate/merge four existing lots, to include an existing abandoned alley, into three parcels. This subdivision can be accomplished as a lot line adjustment. Recordation of a plat (with deed) is required for a lot line adjustment, pursuant to Section 20.106 of the Subdivision Regulations.

2. Section 9.4a of the Zoning Ordinance (Setback Modifications) may be used to establish a shorter setback than otherwise required by zoning:

“Where the average setback line of at least two (2) existing buildings on lots which are on the same side of the street or road within two hundred (200) feet of the lot in question is less than the minimum setback prescribed by this ordinance, the minimum setback line shall be the average setback line of all buildings within two hundred (200) feet of the proposed building. However, in no case shall the setback line be less than thirty-five (35) feet from the centerline of any abutting road or street.”
3. Any lot with a secondary frontage on a “paper street” (i.e. a platted but unbuilt street such as Fairmont or Prospect) is considered to have a front yard facing this street. As such, the side of the lot facing the street must comply with the required 25’ front yard setback for the Residential Growth district. For this reason, the Applicant is encouraged to seek abandonment of the unbuilt streets and alley.
4. Per Sec 20.106 (“Adjustment of Lot Boundaries”) Lot boundary adjustments between non-conforming lots are exempt from minimum lot size criteria unless the lot from which the land is taken is rendered unbuildable.
5. Floodplain compliance review will include the following:
  - a. The proposed subdivision must be in compliance with the Jefferson County Floodplain Ordinance.
  - b. The plat must delineate the floodplain, using updated FEMA data. An elevation certificate may also be submitted.
  - c. No fill is permitted within the floodplain.
  - d. Lots must have a buildable area located 25’ outside the floodplain, pursuant to the Floodplain Ordinance.

**FINDING:**

The Minor Subdivision concept plan appears to satisfy the Subdivision and Land Development Regulation requirements.

**EFFECT OF FINDING:**

The Applicant may proceed with the engineering of the proposed Minor Subdivision. Upon receipt of the required material, the Department of Planning and Zoning will process said Minor Subdivision within the time line requisites stated in the Subdivision Regulations.

Sincerely,

Steve Barney  
Zoning Administrator

**Jefferson County, West Virginia**  
**Department of Planning & Zoning**  
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P.O. Box 338  
Charles Town, West Virginia 25414

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

September 21, 2010

**PRE-PROPOSAL CONFERENCE MEMORANDUM**

MEETING DATE: WEDNESDAY, SEPTEMBER 8, 2010 @ 2:00 p.m.

CONTACT NAME: JASON GERHART                   jgerhart@whga.com  
Company Name: WILLIAM H. GORDON ASSOCIATES, INC.  
Address: 301 North Mildred Street, Suite 1  
Charles Town, West Virginia 25414  
Phone Number: (304) 725-8456

Property Owner: David C. and Catherine A. Hott   (540) 668-7660

Physical Address: Charles Town Road (Rte. 9) / near Hostler Road (on Mountain)

PROPOSED PROJECT: RESIDENTIAL MINOR SUBDIVISION

DISTRICT: HARPERS FERRY / MAP: 15 / PARCELS: 47 & 56

ZONING DISTRICT:

INDIVIDUAL PARCELS: Lot #1: 2.3 acres; Lot #2: 2.25 acres; Lot #3: 2.26 acres; Lot #4: 2.5 acres;  
Residue Lot: 36.25 acres

TOTAL PARCEL SIZE: 59 (+/-) ACRES = Lot #47: 19.24 Acres; Lot #56: 39.81 Acres

**MEETING DESCRIPTION:**

- Need to declare density as required in the Rural District.
- The meeting attendees included Zoning Administrator, Steve Barney; County Engineer, Jonathan Saunders; Kristin Ringstaff and Jason Gerhart with WHGA; Dan Anderson with Greentree Realty; and Owner, Catherine Hott.
- Overview: The proposed project consists of two stages: (1) a merger plat; and (2) the creation of a four (4) lot Minor Subdivision with remaining Residue.
- Tentative site capacity calculations.
- Potential environmental constraints and mitigation measures as required by Zoning Ordinance, Art. 4.
- Anticipated Time-Frame and Deadlines.
- Additional Relevant Information to be Considered:
  1. Process: For a Cluster Subdivision, a Concept Plan is required pursuant to Zoning Ordinance Section 5.7(d)(2)(c). This process includes review of the Concept Plan by the Planning Commission.
  2. Recordation of a plat (with deed) is required for a lot line adjustment, pursuant to Section 20.106 of the Subdivision Regulations.
  3. Proposed new Lot A will be subject to density restrictions.

4. A variance from Section 20.201(A)(2) will be required, in order for the access easement to be located adjacent to the property line of new Lot A. This variance may be requested at the time the Planning Commission reviews the Concept Plan.
  5. Following the platting of the proposed 4 lots and residue, in order for additional lots to be subdivided from the residue, application for a Major Subdivision will be required pursuant to Sec. 20.201.
  6. To establish access onto the easement from Lot A (or from additional lots subdivided from the residue), the easement must be upgraded to the design requirements of a Major Subdivision, or the Applicant must secure a Planning Commission variance to the 5-lot limit of Section 20.201(A)(2).
- FEES: Upon submission, all applicable Site Plan and Building Permit fees, as required by the Engineering Department.
  - Application Fee: \$ \_\_\_\_\_ Payment(s): **None Received**

COMMENTS:

Applicant has secured a WVDOH entry permit sufficient for two lots and will need to seek a permit for the additional four lots. The DOH has purchased a portion of the Applicant's property for construction of Route 9.

FINDING:

The proposed Merger Plat and Subdivision concept plan appear to qualify as a Minor Subdivision.

EFFECT OF FINDING:

The Applicant may proceed with the engineering of the proposed Minor Subdivision. Upon receipt of the required material, the Department of Planning and Zoning will process said Minor Subdivision within the time line requisites stated in the Subdivision Regulations.

Sincerely,

Steve Barney  
Administrator Zoning

**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

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

October 6, 2010

**PRE-PROPOSAL CONFERENCE MEMORANDUM**

MEETING DATE: Wednesday, September 22, 2010

Company Name: William H. Gordon Associates, Inc.  
CONTACT NAME: Jason Gerhart           jgerhart@whga.com  
Address: 301 North Mildred Street, Suite 1  
Charles Town, West Virginia 25414  
Phone Number: (304) 725-8456

Property Owner: William H. Scott Inter Vivos Trust  
Physical Address: Summit Point Raceway Property

PROPOSED PROJECT: NON-RESIDENTIAL MINOR SITE DEVELOPMENT  
PRINCIPAL PERMITTED USE:

ZONING DISTRICT: TAX DISTRICT: 06 / TAX MAP: 17 / PARCEL: 2  
RURAL  
TOTAL PARCEL SIZE: 450 Acres

**MEETING DESCRIPTION:**

- The meeting attendees included Zoning Administrator, Steve Barney; County Planner, Seth Rivard; County Engineer, Jonathan Saunders; Jason Gerhart with WHGA and Lynn Koerner, Consultant.
- Overview: The proposed project consists of the construction of a telecommunications tower and access drive. Per the Applicant, there would not be any required utilities or infrastructure to install the tower.
- Potential environmental constraints and mitigation measures as required by Zoning Ordinance.
- Anticipated Time-Frame and Deadlines.
- FEES: Upon submission, all applicable Site Plan and Building Permit fees, as required by the Engineering Department.
- Payment(s): **None Received**

**ADDITIONAL RELEVANT INFORMATION TO CONSIDER INCLUDES:**

Article 4B of the Zoning Ordinance is currently in the process of being revised. Submittal following County Commission adoption of the revised Article 4B will trigger new requirements.

It is currently anticipated that the development would be eligible for the minor site plan process. Pursuant to section 4B.4, an application for a wireless telecommunications tower located in the Rural District must be reviewed by the Planning Commission for visual mitigation. Site Plan standards for telecommunication towers are established in Section 10, Appendix B, of the Subdivision and Land Development Regulations (attached).

Per the GIS/Addressing Department, all utilities must have an address, including cell towers.

COMMENTS:

Per the Applicant, an updated DOH entrance permit will be sought. A balloon test has been conducted, in consultation with John Allen of the Historic Landmarks Commission. The concrete pad drains to the existing stormwater pond onsite. A 1000' gravel drive will connect to the existing drive. The new drive will be within a maintenance and access easement of approximately 20' in width. Proposed tower height is 195' with a 4' rod. A 235' setback is proposed. Space for a minimum of 3 collocations will be provided.

FINDING:

Per Section 4.10 of the Zoning Ordinance, the ILP Ordinance, and current Subdivision Regulations, the proposed plan concept will require Site Plan submission, and may comply with the processing conditions for Minor Site Development.

EFFECT OF FINDING:

The processing of a Site Plan is required. Building Permits must also be obtained, prior to the start of construction, and appropriate approvals from all Local, State and Federal Agencies, are necessary for the issuance of a Zoning Certificate. Contact the Jefferson County Addressing Department for additional processing information.

Sincerely,

Steve Barney  
Zoning Administrator

SB/clc  
Attachment

cc: Engineering and Building Permit Department  
Jason Gerhart / WHGA