

JEFFERSON COUNTY, WEST VIRGINIA
Departments of Planning & Zoning
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MEMORANDUM

TO: JEFFERSON COUNTY PLANNING COMMISSION
FROM: JENNIFER BROCKMAN, DIRECTOR OF PLANNING
DATE: OCTOBER 22, 2010
SUBJECT: OCTOBER 26, 2010 PLANNING COMMISSION MEETING

Please find attached the following documents for consideration at the October 26, 2010 Planning Commission meeting.

Documents provided:

- **October 26, 2010 agenda and map.**

1. Approval of the minutes from the October 12, 2010 Planning Commission meeting.
Approval of the minutes from the October 19, 2010 Special Planning Commission Meeting.

Documents provided:

- **The minutes of the October 12, 2010 meeting**
- **The minutes of the October 19, 2010 meeting**

2. Citizen Communications.
3. A call for postponements.
4. Request by Roderick Planes, LLC for a variance from Subdivision Ordinance Article 6, Section 6.3 to allow for an extension of the Community Impact Statement until July 1, 2012 to comply with design impacts. This property is located northwesterly of the intersection of Old County Club Road with Flowing Springs Road and is designated as Tax District: 2, Map: 4, Parcel: 19.

Documents provided:

- **Staff Report**
- **Staff Recommended Motion**
- **Aspen Greens Waiver**
- **Aspen Greens Supporting Documents**

5. Request by The William H. Scott Inter Vivos Trust Property for a waiver from the Subdivision and Land Development Regulations Section 20.102 B to alter the existing order of process for plan review. This property is located at the front entrance at the Summit Point Race Track of Summit Point Road and is designated as Tax District: 6, Map: 17, Parcel: 2.

Documents provided:

- **Staff Report with attachments**

- **Staff Recommended Motion**
 - **William H. Scott Waiver**
 - **William H. Scott Supporting Documents**
6. Action on Final Draft of the Amendments to Article 4B, Wireless Telecommunications Facilities, and related sections of the Zoning and Land Development Ordinance.
- Documents provided:**
- **Memo regarding 10-20-10 draft Wireless Ordinance Amendments**
 - **Staff Recommended Motion**
 - **Final Draft of the Amendments to Article 4B, Wireless Telecommunications Facilities.**
 - **Related Zoning Ordinance Amendments for Review and Adoption Concurrent with Article 4B**
7. Discussion regarding proposed Amendments to the Zoning and Land Development Ordinance (Sections 4.4, 4.10, 5.4, 5.6, 5.7, 7.2, 7.8, 11.2, 11.3) regarding Subdivision Regulation References.
- Tabled from the October 12, 2010 meeting: Discussion on proposed draft amendment to Section 4.4 (H) of the Zoning and Land Development Ordinance.
- Documents provided:**
- **Memo regarding Subdivision Reference Amendments**
 - **Zoning Ordinance Amendments Referencing Subdivision and Land Development Regulations**
8. Discussion and possible action regarding Memorandums of Understanding with the Municipalities concerning Development Referrals.
- Documents provided:**
- **Memo regarding MOU's**
9. Planning Commission response to a letter from County Commission regarding certain US 340 Federal Lands rezoning as petitioned by the Planning Commission.
- Documents provided:**
- **Letter from Lynn Widmyer**
 - **Response letter from John Maxey**
10. Discussion of possibly appointing Planning Commission Liasons to attend PSD, WAC, JCDA, and Health Department meetings.
- Documents provided:**
- **Schedule of meetings**
11. Reports from Legal Counsel and legal advice to PC.
12. Director's Report.
- Documents provided:**
- **Director's Agenda**
 - **Activity Report**
13. County Commission Liaison Report.
14. Planning Commission Exchange.

15. President's Report.

16. Actionable Correspondence.

Documents provided:

➤ **Letter from Mike Cassell regarding US 340 Federal Lands Rezoning**

17. 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 26, 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

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2. Citizen Communications.
3. A call for postponements.
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6. Action on Final Draft of the Amendments to Article 4B, Wireless Telecommunications Facilities, and related sections of the Zoning and Land Development Ordinance.
7. Discussion regarding proposed Amendments to the Zoning and Land Development Ordinance (Sections 4.4, 4.10, 5.4, 5.6, 5.7, 7.2, 7.8, 11.2, 11.3) regarding Subdivision Regulation References.
 - Tabled from the October 12, 2010 meeting: Discussion on proposed draft amendment to Section 4.4 (H) of the Zoning and Land Development Ordinance.
8. Discussion and possible action regarding Memorandums of Understanding with the Municipalities concerning Development Referrals.

AGENDA
JEFFERSON COUNTY PLANNING COMMISSION
OCTOBER 28, 2010
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9. Planning Commission response to a letter from County Commission regarding certain US 340 Federal Lands rezoning as petitioned by the Planning Commission.
10. Discussion of possibly appointing Planning Commission Liasons to attend PSD, WAC, JCDA, and Health Department meetings.
11. Reports from Legal Counsel and legal advice to PC.
12. Director's Report.
13. County Commission Liaison Report.
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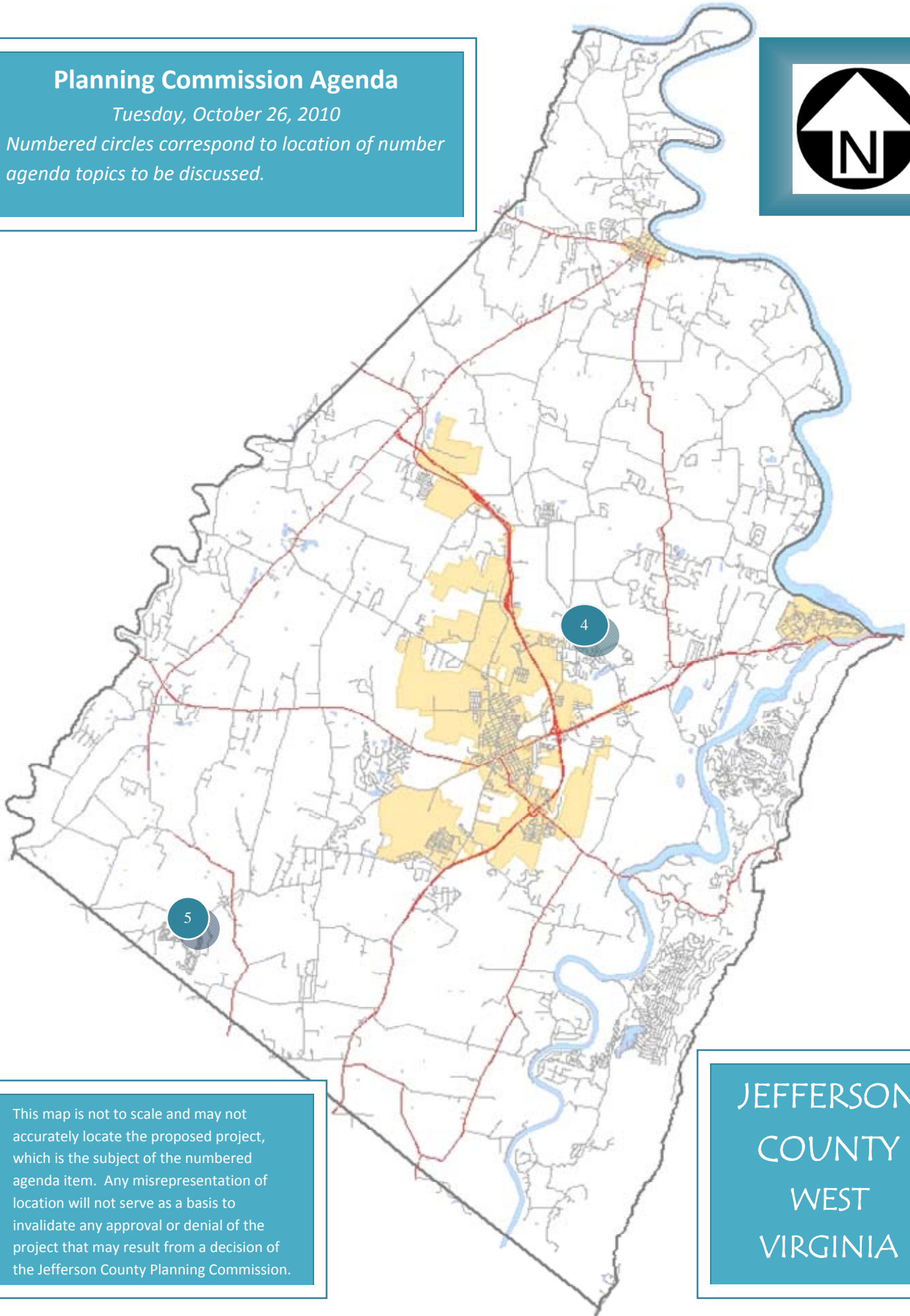
The Planning Commission welcomes written comments at any time. Our office is open Monday through Friday, 9:00 a.m. to 5:00 p.m., and is located at 116 East Washington Street, P.O. Box 338, Charles Town, WV 25414. Our phone number is (304) 728-3228; our fax number is (304) 728-8126; our email address is planningdepartment@jeffersoncountywv.org and our website is www.jeffersoncountywv.org.

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

Planning Commission Agenda

Tuesday, October 26, 2010

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



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

JEFFERSON
COUNTY
WEST
VIRGINIA

MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
OCTOBER 12, 2010

The Jefferson County Planning Commission met on Tuesday, October 12, 2010, with the following Commission members present: John Maxey, President; Thomas Trumble, Vice President; Frances Morgan, Morgan Etters, Eric Smith, 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. Dailey and Mr. Hayes were absent with notification.

Mr. Maxey called the meeting to order at 7:01 PM.

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

Mr. Trumble raised concern regarding whether the voice recording or the written minutes are the official record of the meeting. He suggested that all motions and outcomes be included in an appendix at the end of the minutes. Mr. Maxey asked that, if Mr. Trumble would like to amend the policy to include an appendix, that it be discussed at the next meeting.

Ms. Morgan suggested that, if a policy of that nature is adopted, the Planning Commission be responsible for providing correct wording of that motion to staff by the end of a meeting.

Mr. Maxey moved to amend the minutes on page 2, paragraph 3 to add a comma instead of a period after the word "lawsuit" and to change "The" to "the". There were no objections.

Mr. Maxey moved to adopt the minutes with the discussed changes. Mr. Trumble seconded the motion which carried 6 for and 1 abstention (Mr. Smith).

Mr. Maxey introduced the newest member to the Planning Commission, Mr. Eric Smith.

2. Citizens Communication: None.

3. A call for postponements: None.

Mr. Maxey asked that agenda item #5 be heard before agenda item #6.

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.

Mr. Rivard read from his staff report and recommended approval to waive the required access width. He presented photographs along with his report. In response to questions raised by Ms. Morgan, Ms. Brockman explained that the property had setback violations due to the Cottage Industry classification and that Ms. Feldman had submitted a variance from the setback requirements to be heard by the Board of Zoning Appeals in November.

Mr. Saunders explained that the Engineering Department felt she only met one of the four criteria for a waiver. He stated that he felt that the stormwater management requirement should not be waived. Mr. Saunders recommended denial of the waivers. He requested that if the waivers were approved that limitations be set by the Planning Commission.

Mr. Maxey opened the public hearing. Ms. Barbara Feldman, owner, presented additional photographs detailing the property. She stated that classes would be separated by 20 minutes to change the flow of traffic and that there would only be about 8 cars daily traveling the access road and that students being dropped off would use the residential driveway and not the access road. Ms. Feldman explained that she had no previous issues with stormwater management, as the property had no water related issues even with the large amounts of snow that occurred this past winter. She reported the benefits to individuals in the community that take her healing arts and martial arts classes.

Ms. Stephanie Simpson, one of Ms. Feldman's students, who is also an agriculturalist and a licensed contractor, stated that she had viewed the property and saw no stormwater management issues. She reported to the quality of the property and the access road and supported the approval of the waivers.

Ms. Kirsten Lee, one of Ms. Feldman's students, attested to the benefits of the healing arts classes provided by Ms. Feldman.

Mr. Mark Salowitz, Ms. Lee's husband, echoed the benefits of Ms. Feldman's classes.

Mr. Maxey closed the public hearing.

Mr. Taylor moved to table this item until following the Board of Zoning Appeals decision and to rehear at the December 14, 2010 Planning Commission meeting. Mr. Trumble seconded the motion which carried unanimously.

Mr. Maxey directed staff to attempt to contact the neighbor who had not submitted any favorable or unfavorable response to these issues and to request that the Addressing/GIS Department provide a map with elevations.

4. Public hearing regarding amendments to Article 4B, Wireless Telecommunications Facilities and related amendments to and related amendments to 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.

Mr. Barney presented the draft amendments and new correspondence in regards to Article 4B, Wireless Telecommunication Facilities. He stated that he had just received the markup of the draft submitted by the PCIA. Mr. Barney reported that the website, where the most recent version of the draft amendments were posted, was not functional the weekend prior to the meeting. Mr. Barney explained the staff recommendation that wireless facilities follow a

Concept Plan Process instead of a Minor Site Plan Process due to the limited timeframe a Minor Site Plan Process provides.

Mr. Maxey opened the public hearing. Mr. Tim Dennis, Global Tower Partners, apologized to the Planning Commission for the delay in getting the document to staff.

Mr. Charles Ryan, Attorney, commented on Section 4B.5 2 (a), (b) and (c). He stated that these specific amendments, regarding collocated wireless telecommunications facilities, present substantial compliance problems for the contractor and carrier. Additionally, it would favor to the existing carrier, which violates the Federal Telecommunications Act. He detailed the need for platforms and catwalks on a tower. Mr. Ryan also raised concern that 4B.5 2 (c) does not allow attachments of antennas to be interconnected which may interfere with Building Officials and Code Administrators (BOCA) codes. He expressed that, in 4B. 7 (D), he was unsure of how a bona fide need would be proven.

Mr. Paul Rosa, citizen of Charles Town, discussed the applicant's burden of proof and explained that before and after propagation maps and an engineer's affidavit would demonstrate a bona fide need. He rebutted Mr. Ryan's comments concerning platforms.

Ms. Morgan suggested that the Planning Commission allow time for review of the industry comments.

Mr. Rosa suggested to change the word "and" to "or" in Section 4B.6 (2) line 6.

Mr. Trumble suggested having a deadline to which comments would be accepted.

Mr. Maxey recommended holding a special meeting allowing staff to review the industry comments and suggesting changes in regards to those comments. Mr. Maxey appointed a subcommittee consisting of Mr. Maxey, Ms. Ethers, Mr. Taylor, Ms. Morgan, and Mr. Trumble, who would be empowered by the Planning Commission to approve changes to the draft of Article 4B, Wireless Telecommunication Facilities Amendments. It was decided that a special meeting would be held Tuesday, October 19, 2010 at 4 PM. Mr. Maxey asked Mr. Groh to review the draft following the approval of changes made at the special meeting and provide a legal opinion of the draft at the October 26, 2010 Planning Commission meeting. Additionally, Mr. Maxey asked for Ms. Brockman to send an agenda request form to the County Commission staff in order for the draft to be presented at the October 28, 2010 County Commission meeting.

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

Mr. Barney presented a change to Section 4.4(H) of the Zoning and Land Development Ordinance which referenced Section 14.2 of the Subdivision Ordinance. That ordinance is no longer in effect. Mr. Barney stated that the reference had been changed to "Section 22.504 Protection of Resources on the Subdivision and Land Development Regulations".

Mr. Maxey suggested tabling this agenda item until the October 26, 2010 Planning Commission meeting and asked staff to also address incorrect references to Sections 4.10, 5.4, 5.6, 5.7, 7.2, 7.8, 11.2, and 11.3 of the Zoning and Land Development Ordinance and to provide all the amendments at the next meeting. Mr. Trumble moved to table this item to the October 26, 2010 Planning Commission meeting. Mr. Taylor seconded the motion which carried unanimously.

7. **Blue Ridge Mountain Community Plan.**

Mr. Rivard updated the Planning Commission regarding the Blue Ridge Mountain Community Plan. He stated that a draft had been posted to the website and that comments would be taken until November 8, 2010. Ms. Brockman stated that there would be a joint meeting with County Commission on December 7, 2010 unveiling the vision statement for the Blue Ridge Mountain Community Plan.

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

Mr. Groh reported that County Commission had approved hiring another attorney who may take over representing the Planning Commission for Mr. Groh in January. Mr. Maxey asked that the Planning Commission have a chance to review the incoming resumes.

9. **Director's Report.**

- a. **Activity Report.** This report was provided in the agenda packet.
- b. **Status of Land Development Fees.** Ms. Brockman reported that she had presented the Land Development Fees to County Commission on October 7, 2010 and that County Commission felt the fees were too high. She stated that County Commission had sent a request back to the Planning Commission to review those fees and provide a recommendation. Mr. Maxey moved that staff be directed to obtain cost scenarios for the four scenarios that were presented to the County Commission from the jurisdictions of Fredrick and Loudon County and that those be presented at the November 9, 2010 Planning Commission meeting along a proposal of new fees that would represent no more than a 20% increase over current fees for any of those projects. Mr. Trumble seconded the motion which carried unanimously.
- c. **Quarterly Report on Fiscal Year 2011 Work Plan.** Ms. Brockman presented the quarterly report and stated she would also submit it to the County Commission. She discussed the upcoming Annual Report prepared by the Planning Commission to be submitted to the County Commission and suggested appointing a subcommittee to work on that report. Mr. Maxey asked that an item for discussion be placed on the October 26, 2010 Planning Commission Meeting agenda. Mr. Maxey expressed interest in obtaining the number of buildable platted lots that have been approved during the year to include in the annual report. Ms. Brockman stated that she would obtain information from Mr. Todd Fagan of the GIS Department.
- d. **Work Plan for Long Range Planning Activities.** Ms. Brockman explained upcoming goals of the department: the Vision Statement for the Blue Ridge Community Plan to be completed in December, the Zoning Ordinance Map Amendments to be presented in December, and the Zoning Ordinance Text

Amendments to have a draft completed in November. Discussion ensued regarding priorities in presenting the Zoning Ordinance Text Amendments. Ms. Brockman also explained that the presentation of Fees and work on the Federal Rezoning Petition were also being done.

- e. **Draft Policy on meeting involving PC members without a quorum present.** Ms. Brockman presented the draft policy. Mr. Maxey moved to approve the memo, as written by staff (attached), as an additional item to Planning Commission policy. Mr. Trumble seconded the motion which carried unanimously.
- f. **Informational Item: Recent Internal Policy on application of the word “days” for the purpose of public notice requirements.** Ms. Brockman presented a staff policy to interpret the word “days”, in regards to any public notice requirement, to mean calendar days.
- g. **Report on Urban Growth Boundary meetings.** Ms. Brockman stated that she had attended a Harpers Ferry Town Council Meeting where she explained the purpose of the Urban Growth Boundary to be shown on the County map. She stated that she had requested to attend the next Shepherdstown Town Meeting; however there had been no response. Ms. Brockman reported that staff was close to completing the updated draft zoning map which she hoped to be able to present at the December 14, 2010 Planning Commission meeting.
- h. **Upcoming meetings.** Ms. Brockman reported that there would be a National Trust for Historic Preservation meeting November 12, 2010. She stated that the County Commission had tentatively scheduled a public hearing for the Federal Lands Rezoning for November 18, 2010 at 7 PM. She presented a letter from County Commission requesting for the Planning Commission to delay or withdraw the petition for the Federal Lands Rezoning until the 340 Corridor Plan had been drafted. Mr. Maxey stated that he felt the Planning Commission could continue to move forward with the petition. Discussion ensued on drafting a response to County Commission. Mr. Maxey offered to draft a response for review at the October 26, 2010 meeting.

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

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

12. **President’s Report.** None.

13. **Actionable Correspondence.** None.

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

Mr. Maxey moved to adjourn at 10:39 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.

JEFFERSON COUNTY, WEST VIRGINIA
Department of Planning & Zoning
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MEMO

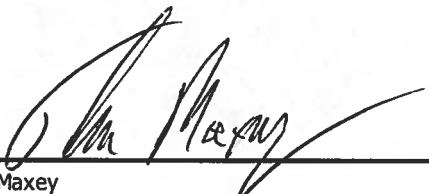
TO: Planning & Zoning Staff
FROM: John Maxey, Planning Commission President
DATE: October 12, 2010
RE: Planning Commission Policy – Meetings with Planning Commission Presence

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 7 For, 0 Against on October 12, 2010.

Effective Date: October 12, 2010

X



John Maxey
Planning Commission President

MINUTES
JEFFERSON COUNTY PLANNING COMMISSION
WIRELESS TELECOMMUNICATIONS ORDINANCE SUBCOMMITTEE MEETING
October 19, 2010

A quorum of the Jefferson County Planning Commission met on Tuesday, October 19, 2010, with the following Commission members present: John Maxey, President; Thomas Trumble, Vice President; Frances Morgan, Morgan Etters, Daniel Hayes, and Gene Taylor. Staff members present included Jennifer Brockman, Director of Planning and Zoning; Seth Rivard, Planner; Steve Barney, Zoning Administrator; and Julie Quodala, Planning and Zoning Office Manager.

Mr. Maxey called the meeting to order. It was clarified that the intent of the meeting was to review and either approve, deny or amend all recommended changes to the Draft Wireless Telecommunication Facilities Ordinance. It was further clarified that after reviewing and voting on all recommended changes, staff will amend the Draft Wireless Telecommunication Facilities Ordinance accordingly. The amended version will be presented to the entire Planning Commission at their regularly scheduled meeting on October 26, 2010. At the October 26, 2010 Planning Commission meeting, the Planning Commission will vote to recommend the Draft Wireless Telecommunication Facilities Ordinance be considered for adoption by the County Commission at their next regularly scheduled meeting on October 28, 2010.

Mr. Barney presented each proposed change, stating the source, detailing the proposed change itself and then provided staff's recommendation. A total of 37 votes were called and passed. After all recommended changes had been reviewed, Mr. Barney requested that staff be able to adjust the numbering in the Draft Wireless Telecommunication Facilities Ordinance for consistency and clarity. Mr. Barney's request was approved by unanimous consent.

As a result of the efforts previously stated, a red line version of the Draft Wireless Telecommunication Facilities Ordinance is available in its entirety. In order to provide detail regarding the passing of each motion, each reviewed change has been numbered within the document. The numbers below correspond with the numbers within the red line version of the Draft Wireless Telecommunication Facilities Ordinance. Each reference provided below shows how each reviewed change was carried and each corresponding reference within the red line version of the Draft Wireless Telecommunication Facilities Ordinance provides the detail and context of each reviewed change.

Minutes
 Wireless Telecommunications Ordinance Subcommittee Meeting
 October 19, 2010
 Page 2 of 2

Action Number	Ordinance Section	Comment	Action
1	4B.1.A	Staff recommendation.	Mr. Taylor motioned. Mr. Maxey seconded the motion. The motion carried unanimously.
2	2.2	Staff recommendation.	The motion was carried by unanimous consent.
3	2.2	Staff recommendation.	The motion was carried by unanimous consent.
4	4B.2	Staff recommendation.	Mr. Maxey motioned. Mr. Trumble seconded the motion. The motion carried unanimously.
5	4B.4B	Members voted to retain the existing language.	Mr. Trumble motioned. Mr. Maxey seconded the motion. The motion carried 4 for and 2 against (Ms. Etters; Mr. Hayes).
6	4B.4.G	Staff recommendation.	The motion was carried by unanimous consent.
7	4B.5	Staff recommendation.	The motion was carried by unanimous consent.
8	4B.5.B.1.a	Staff recommendation.	The motion was carried by unanimous consent.
9	4B.5.B.1.c	Staff recommendation.	Mr. Hayes motioned. Mr. Trumble seconded the motion. The motion carried unanimously.
10	4B.5.B.2-3	Staff recommendation.	Mr. Hayes motioned. Ms. Morgan seconded the motion. The motion carried unanimously.
11	4B.6.B	Members voted to strike "the Director of the Planning and Zoning Department, Zoning Administrator, County Administrator, and" as well as to add, "with notification to the Director of the Planning and Zoning Department."	Ms. Morgan motioned. Mr. Maxey seconded the motion. The motion carried unanimously.
12	4B.6.B	Staff recommendation.	The motion was carried by unanimous consent.
13	4B.7	Staff recommendation.	The motion was carried by unanimous consent.
14	4B.7	Members voted to retain the existing language.	Mr. Hayes motioned. Mr. Maxey seconded the motion. The motion carried unanimously.
15	4B.7.A	Staff recommendation.	Mr. Maxey motioned. Mr. Taylor seconded the motion. The motion carried unanimously.
16	(through 3.b)	Staff recommendation.	The motion was carried by unanimous consent.
17	4B.7.B.3.c	Staff recommendation; in addition, Members voted to strike the words, "an analysis of"	Ms. Morgan motioned. Mr. Trumble seconded the motion. The motion carried unanimously.
18	4B.7.B.3.c	Staff recommendation.	Mr. Hayes motioned. Mr. Trumble seconded the motion. The motion carried unanimously.
19	4B.7.B.3.c	Staff recommendation.	Mr. Maxey motioned. Mr. Hayes seconded the motion. The motion carried unanimously.
20	4B.7.B.3.c	Staff recommendation.	Ms. Morgan motioned. Mr. Trumble seconded the motion. The motion carried 5 for and 1 against (Mr. Hayes).
21	4B.7.B.3.c	Staff recommendation.	Ms. Morgan motioned. Mr. Hayes seconded the motion. The motion carried unanimously.
22	4B.7.B.3.d	Staff recommendation.	The motion was carried by unanimous consent.
23	4B.7.C	Staff recommendation.	Ms. Morgan motioned. Mr. Hayes seconded the motion. The motion carried unanimously.
24	4B.7.C	Members voted to retain the existing language.	Mr. Maxey motioned. Ms. Morgan seconded the motion. The motion carried unanimously.
25	4B.7.D	Staff recommendation.	Mr. Hayes motioned. Ms. Morgan seconded the motion. The motion carried unanimously.
26	4B.7.E	Staff recommendation.	Ms. Morgan motioned. Mr. Hayes seconded the motion. The motion carried unanimously.
27	4B.7.F	Staff recommendation.	Mr. Maxey motioned. Mr. Taylor seconded the motion. The motion carried unanimously.
28	4B.7.G.2	Staff recommendation.	The motion was carried by unanimous consent.
29	4B.7.G.3	Staff recommendation.	Ms. Morgan motioned. Mr. Taylor seconded the motion. The motion carried unanimously.
30	4B.7.H.4	Staff recommendation.	Ms. Morgan motioned. Mr. Hayes seconded the motion. The motion carried unanimously.
31	4B.7.H.1.a	Staff recommendation.	The motion was carried by unanimous consent.
32	4B.7.H.2.a	Staff recommendation.	The motion was carried by unanimous consent.
33	4B.7.I.1.b	Staff recommendation.	Ms. Morgan motioned. Mr. Taylor seconded the motion. The motion carried unanimously.
34	4B.7.I.1.b	Staff recommendation.	The motion was carried by unanimous consent.
35	4B.7.J.1	Staff recommendation.	The motion was carried by unanimous consent.
36	4B.7.J.2	Staff recommendation.	Mr. Hayes motioned. Mr. Maxey seconded the motion. The motion carried unanimously.
37	4B.7.J.8	Staff recommendation.	The motion was carried by unanimous consent.

ARTICLE 4B. WIRELESS TELECOMMUNICATION FACILITIES

Section 4B.1 Purpose and Legislative Intent

The purpose of Article 4B, Wireless Telecommunication Facilities, is to balance the needs of residents of and visitors to Jefferson County for reliable access to wireless telecommunication 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 Article is intended 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 Article establishes parameters for the siting of Wireless Telecommunication Facilities. It is Jefferson County's intent to:

- A. Ensure access to reliable ~~and robust~~ wireless communications services throughout Jefferson County consistent with the aforementioned objectives;
- B. 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;
- C. Encourage the location of new Wireless Telecommunication towers in non-residential areas, with taller towers limited to the Industrial-Commercial zoning district;
- D. Minimize the number of new Wireless Telecommunication Towers that would otherwise need to be constructed by providing incentives for the use of existing structures;
- E. 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.

Comment [SB1]: Action #1

- F. 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;
- G. Ensure public health, safety, welfare, and convenience; and
- H. Conform to Federal and State laws that allow certain antennas to be exempt from local regulations.

2.2 Definitions

Accessory Equipment	Any equipment serving or being used in conjunction with a Wireless Telecommunications Facility. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.
Alternative Structure	For antenna-mounting purposes, a structure which is not primarily constructed for the purpose of holding antennas but on which one or more antennas may be mounted. The term Alternative Structure includes, but is not limited to, buildings, silos, water tanks, pole signs, lighting standards, steeples and electric distribution, electric transmission or other utility poles.
Antenna	Any structure or device used to collect or radiate electromagnetic waves for the provision of cellular, paging, Personal Communications Services (PCS) and microwave communications. Such structures and devices include, but are not limited to, directional antennas, such as panels, microwave dishes and satellite dishes, and omni-directional antennas, such as whip antennas.
Antenna Array	Two or more antennas that operate as components of a complete antenna suite for a single Wireless Telecommunication Facility.
Antenna, Concealed	An antenna that is designed and/or erected on or in a building or alternative structure in such a way that it blends in with the existing façade and/or is located in such a way that it is not readily visible or discernible to the average individual at the adjacent street level.
Appalachian Trail Overlay District	For purposes of the Wireless Telecommunication Facilities Ordinance, the area within one mile of the centerline of the Appalachian Trail.

Broadcast Tower	A structure situated on a lot that is intended for transmitting television or AM/FM radio signals.
Cell on Wheels “COW”	A portable self-contained cell site that can be moved to a location and set up to provide personal wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the antenna support structure.
Co-location	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.
Commercial Wireless Service Provider	Persons or entities who operate radio systems requiring an FCC license and who employ those facilities to provide point-to-point microwave links for wireline communication services (or connectivity between adjacent antenna sites), fixed wireless (including microwave), or mobile wireless communication services to third parties for compensation. Commercial Wireless Service Providers include, but are not limited to Cellular, Personal Communication Services (PCS), Specialized Mobile Radio (SMR), Enhanced Specialized Mobile Radio (ESMR), paging, Competitive Local Exchange Carriers (CLEC) utilizing point-to-point microwave, and other point-to-point microwave links for wireline communication services.
Department	The Jefferson County Planning and Zoning Department.
Discernible	Capable of being distinguished with the eye or mind from its surroundings as a telecommunications tower.
Electric Distribution Poles	Metal, wooden or concrete towers and poles used to suspend wires transporting electricity between substations at the terminus of transmission lines and individual customer premises.
Electric Transmission Towers	Metal, wooden or concrete towers and poles used to suspend wires transmitting electricity between generating plants and substations supplying electricity to distribution and feeder lines.

Comment [SB2]: Action #2

Equipment Enclosure	For purposes of regulating Wireless Telecommunication Facilities, equipment enclosure means a building, cabinet or shelter used to house transmitters, receivers and other electronic equipment and accessories.
FAA	Federal Aviation Administration.
FCC	Federal Communications Commission.
Functionally Equivalent Services	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).
Governmental User	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.
Harpers Ferry Overlay District	For purposes of regulating Wireless Telecommunication Facilities, 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.
Historic Resource	A site, structure, area, or district possessing historic importance as defined by the U.S. Department of Interior, West Virginia State Historic Preservation Office, Jefferson County Historic Landmarks Commission, or other governmental agency.
Lattice Tower	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.

Monopole	A support structure constructed of a self-supporting hollow metal tube securely anchored to a foundation.
Neighborhood	An area generally confined to a one-mile radius from the perimeter of a proposed development.
PCS	Personal Communication Services.
Primary Public Safety Provider	An FCC licensed governmental user that uses wireless telecommunication facilities to provide primary communications for law enforcement, fire, ambulance or related emergency services. Primary Public Service Provider does not include Commercial Wireless Service Providers, or Competitive Local Exchange Carriers (CLEC), who provide telecommunication services on a commercial basis to Primary Public Service Providers, or who deliver emergency calls or messages from its customers to a Public Safety Answering Point (PSAP).
Private Business User	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.
Support Structure	A structure designed to support Wireless Telecommunication Facilities including, but not limited to, monopoles, lattice towers, utility poles and other freestanding self-supporting structures.
Tower Base	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.
Tower Height	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.
Tower Site	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.
Utility Poles	Metal, wooden or concrete poles used to suspend wires or cables for electric, telephone or television cable services.
Visible	Capable of being seen by the unaided eye in the daylight.

Wireless Telecommunication Antenna	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.
Wireless Telecommunication Equipment Shelter	The structure in which the electronic receiving, transmitting and relay equipment for a wireless telecommunications facility is housed.
Wireless Telecommunication Facility	A facility consisting of the equipment and structures involved in transmitting or receiving telecommunications or radio signals to or from a mobile radio communications source and transmitting those signals to a central switching computer which connects the mobile unit with the land-based telephone lines.
Wireless Telecommunication Facility, Co-Located	See Co-location.
Wireless Telecommunication Facility, Concealed	A wireless telecommunication facility with all antennas camouflaged to match or complement the color and architectural treatment of the surface of an existing structure upon which they are mounted; or which have all facility components concealed behind a façade or parapet wall, or inside a radome on a monopole that does not exceed the diameter of the monopole, or interlaced within or atop an electric distribution tower.
Wireless Telecommunication Facility, Temporary	A vehicle-mounted or portable wireless telecommunication facility including portable towers, antennas, equipment enclosures, generators and associated electronics, cabling, wiring and hardware. Such a facility may include, but is not limited to, "cell on wheels" mobile equipment.
Wireless Telecommunication Tower	A structure intended to support equipment and antennas used to transmit and/or receive telecommunications signals including monopoles, guyed and lattice construction steel structures.
Wireless Telecommunication Tower, Speculative	A Wireless Telecommunications Tower developed without 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.

Comment [SB3]: Action #3

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

For purposes of administering this Article, Wireless Telecommunication Facilities (hereafter “Facilities” or “Facility”) 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 [submittal of a Concept Plan](#) and 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 ten~~ (30) days of receiving ~~an a~~ [Concept Plan](#) application for a Facility the Department shall notify the applicant in writing (1) that the application is ~~complete sufficient~~ or (2) the particular information needed ~~as required by the provisions of this Article and the Jefferson County Subdivision and Land Development Regulations, to constitute a sufficient application~~. Once the additional information is received and the application is found to be ~~complete sufficient~~, the Department shall notify the applicant of that finding.

Comment [SB4]: Action #4

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:

- A. 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.
- B. Residential antennas for receiving television or AM or FM radio broadcast signals.
- C. 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 Facilities are permitted in all zoning districts. The Department may issue a Zoning Certificate for a Concealed Facility consistent with the following terms and conditions:

- A. Concealed Facilities are permitted on buildings and alternative structures (other than telecommunication towers).
- B. For purposes of this section antennas mounted on electric transmission towers shall qualify as Concealed 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.
- C. 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 Facility provided antennas associated with such facilities shall not extend more than twenty (20) feet above the top of the existing support structure.
- D. Utility poles may be extended up to twenty (20) feet in height to accommodate antennas for a Concealed Facility.
- E. 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.
- F. 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.
- G. Antennas associated with Concealed 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.
- H. Antennas associated with a Concealed Facility shall not be co-located on a tower or other support structure developed as an Exempt Facility pursuant to this Article for the use of an amateur radio operator.
- I. Equipment enclosures associated with Concealed 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.

Comment [SB5]: Action #5

Comment [SB6]: Action #6

- J. All cabling and wiring connecting antennas, equipment enclosures, and other components of Concealed Facilities shall be colored or concealed in a manner that renders them unobtrusive.
- K. 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.
- L. Equipment associated with a Concealed 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 Facility consistent with the following terms and conditions:

- A. Antennas associated with a Co-located Facility shall not be co-located on a support structure developed as an Exempt Facility pursuant to this Article for the use of an amateur radio operator.
- B. Co-located Facilities shall meet the following design standards:
 1. Antennas associated with a Co-located 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:
 - a. Antennas within a cylindrical radome matching the diameter of a monopole;
 - b. Antennas mounted at the end of straight or curved davit arms or brackets extending from the sides of the tower.
 - c. Antennas mounted as an array arranged around a platform extending from the monopole.
 2. ~~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. 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.~~
 3. ~~2.~~ All equipment enclosures and other improvements accessory to a co-located 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.

Comment [SB7]: Action #7

Comment [SB8]: Action #8

Comment [SB9]: Action #9

Comment [SB10]: Action #10

4.3. 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.

5.4. 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.

6.5. Signage at any ground-based portion of a Co-located Facility site shall conform to FCC and FAA standards. No commercial signage is permitted.

7.6. Before an application for a Co-located 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 Facilities are permitted in all zoning districts. The Department may issue a Zoning Certificate for a Temporary Facility consistent with the following terms and conditions:

- A. Temporary Facilities, including but not limited to Cell on Wheels (COW), may be placed at or near the location of an existing, proposed or approved 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.
- B. In the event of a natural disaster, catastrophic event or public emergency that either renders an existing Facility unusable, or creates an urgent need for supplemental capacity to manage the emergency, temporary facilities may be

placed in any area as necessary to provide coverage or capacity 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, with notification to the Director of the Planning and Zoning Department.

Comment [SB11]: Action #12

- C. 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.
- D. Fees for permits for Temporary Facilities shall be in accordance with the Department of Planning and Zoning schedule of fees and charges.

Comment [SB12]: Action #11

Section 4B.7 Wireless Telecommunication Towers

Wireless Telecommunication Towers (hereafter “Tower” or “Towers”) are permitted in all zoning districts subject to the provisions of this section. The provisions of this section apply to an application for a new Tower, as well as for a major modification to an existing 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.

Comment [SB13]: Action #13

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

Comment [SB14]: Action #14

A. Site Plan Required

A minor site plan shall be required for all new Towers, as well as for Major Modifications to an existing Facility or Support Structure resulting in a substantial change to the Facility or Structure. In addition to the site plan review requirements of the Subdivision and Land Development Regulations, the site plan shall include all elements of a Concept Plan as established in Subsection B, and shall address conditions established by the Planning Commission in its review of the Concept Plan.

Comment [SB15]: Action #15

B. Concept Plan Submittal and Public Hearing Required

In addition to the requirements for a minor site plan, a proposed Tower shall require the submittal of a Concept Plan, subject to the following requirements:

1. Required elements for a Wireless Telecommunications Tower Concept Plan shall be the same as for a site plan as established in the Subdivision and Land Development Regulations, Appendix A, Sec. 1.3A, with the exception of Subsections 1.3A.20-22, 24-29, 31-35.
2. The following additional elements must be submitted:
 - a. Outside dimensions, use, and setbacks of all existing and proposed buildings, structures, towers, antennas, utility lines, driveways, and parking areas
 - b. Height of the proposed tower measured from ground level at the center of the proposed structure, and height comparison to any nearby

- buildings or trees, or other applicable structures and natural landforms part of the site's background and foreground landscape
- c. Elevations and Cross-Section: Display topography with all proposed facilities including tower, equipment shelter and existing buildings
 - d. Number, size and location of proposed and existing antennas; number of co-locations possible
 - e. Method of camouflage (if any)
 - f. Locations of known historic structures
 - g. A description of the anticipated construction and installation schedule
 - h. Documentation verifying compliance with applicable Federal Communications Commission (FCC) standards and requirements to provide the proposed services
 - i. Narrative addressing the design criteria of this section
 - j. Dates, address list, and notice for Balloon Test
 - k. Balloon Test exhibits as required in subsection G of this section
 - l. Propagation maps as required in subsection F of this section
 - m. Any other relevant information
 - n. Additional application requirements of subsection H of this section.
3. Submittal and review of a Concept Plan shall follow the review process and timeline established in Sections Sec. 24.119 – 24.122 of the Subdivision and Land Development Regulations, with the following exceptions:
- a. The application shall be exempt from 24.120A, Agency Reviews, and 24.120D, WVDOH, except as otherwise provided in this subsection.
 - b. Following the Department's determination of the sufficiency of a Concept Plan application,
 - i. the Department shall notify the Jefferson County Historic Landmarks Commission of an application filing.
 - ii. the Applicant shall provide a copy of the completed Concept Plan application to the Appalachian Trail Conservancy and the National Park Service, if required by the Cultural and Historic Resources Review standards of this section.
 - c. The Concept Plan 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 a demonstration of need as required under this article, 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 Article. The Planning Commission shall review the proposed Tower for compliance with the standards in this article and, if applicable, provide conditions relevant to the scope of the public hearing and/or unique characteristics of the proposed development site, 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

Comment [SB16]: Action #16

Comment [SB17]: Action #17

Comment [SB18]: Action #18

Comment [SB19]: Action #19

Comment [SB20]: Action #20

~~completeness, the Department shall notify the Jefferson County Historic Landmarks Commission of an application.~~
 a.d. - Before the Department may ~~issue a Zoning Certificate~~ approve a site plan for a Tower, the Planning Commission must find, by a majority vote, that the Concept Plan application complies with ~~all submittal and design criteria of~~ this article, and that the application is consistent with the Comprehensive Plan.

Comment [SB21]: Action #21

Comment [SB22]: Action #22

C. Retention of Consultants

The Department may elect to retain outside consultants or professional services to review a Concept Plan or site plan application for a Tower and to make recommendations on relevant issues including, but not limited to, verification of the applicant's compliance with the provisions of this article, analysis of alternatives, conditions of approval, and compliance with State and Federal rules and regulations at the applicant's expense.

Comment [SB23]: Action #23

Comment [SB24]: Action #24

D. Applicant's Burden of Proof

The applicant for a site plan for any 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 as required in subsection F, "Demonstration of Need," and that it has met all submittal and design criteria in this Article.

Comment [SB25]: Action #25

E. Proof of Eligibility

Speculative Towers are prohibited. Before an application for a 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.

Comment [SB26]: Action #26

F. Demonstration of Need

As part of its application submission for a Concept Plan and 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.

Comment [SB27]: Action #27

October 20, 2010

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 to the Planning Commission for a Wireless Telecommunication Tower on the property and provide the Planning Commission casefile 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.

Comment [SB28]: Action #28

Comment [SB29]: Action #29

H. **Preferred Structures and Locations Policy**

1. Co-location Encouraged. Prior to the approval of the construction of a new 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 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

Comment [SB30]: Action #31

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

Comment [SB31]: Action #32

3. Preferred Locations. For new 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

4. 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 Tower:

- a. The application must demonstrate that the proposed 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: an affidavit from the tower owner affirming that, subject to exceptions for structure height, topography, or other factors which make co-location unfeasible, the tower is available for co-location. 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.
- b. A site plan for a Tower shall not be approved if an electric transmission tower with capacity of 230 kV or less 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 Tower, unless the applicant can demonstrate that:
 - (1) Sufficient easements or other interests in real property cannot be obtained to accommodate the Facility on the electric transmission tower;
 - (2) The electric utility owning the electric transmission tower is unwilling to allow its use for wireless facilities;
 - (3) Reasonable terms, rates, or conditions cannot be negotiated with the electric utility;
 - (4) The location of the tower will not allow the applicant to meet coverage or capacity requirements; or
 - (5) Other unforeseen reasons make it infeasible to locate the planned telecommunications equipment upon existing or approved towers.

c. Where suitable electric transmission towers are not available for co-location of antennas, a site plan for a 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 Tower due to one or more of the following reasons:

- (1) 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;
- (2) 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;
- (3) Reasonable terms, rates, or conditions cannot be negotiated with the owner of the structure and/or property;
- ~~(2)~~(4) The location of the structure will not allow the applicant to meet coverage or capacity requirements; or
- ~~(3)~~(5) Other unforeseen reasons make it infeasible to locate the planned telecommunications equipment upon existing or approved towers, buildings or alternative structures.

d. Antennas associated with an application for a Facility may not be co-located on a tower or other support structure developed as an Exempt Facility pursuant to this Article for the use of an amateur radio operator.

I. Cultural and Historic Resources Review

1. In addition to the notification requirements of this Section, an application for a 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.

Comment [SB32]: Action #30

Comment [SB33]: Action #33

Comment [SB34]: Action #34

J. Design Criteria

Wireless Telecommunication Towers shall comply with the following design criteria:

1. Antenna Mounting Preferences

Antennas associated with a Tower 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:

- a. Antennas within a cylindrical radome matching the diameter of a monopole.
- b. Antennas mounted at the end of straight or curved davit arms or brackets extending from the sides of the tower.
- c. Antennas mounted as an array arranged around a platform extending from the monopole.

Comment [SB35]: Action #35

1.2. Height Restrictions

- a. 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 Tower.

Comment [SB36]: Action #36

2.3. Fall Zone

- a. With the exception of silos, 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.

3.4. Signage

Signage at any ground-based portion of a Facility site shall conform to FCC and FAA standards. No commercial signage is permitted.

4.5. Lighting & Marking

Towers shall not be lighted or marked unless required by the FCC or by the FAA.

5.6. 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.

6.7. Fencing

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.

7.8. Tower Color

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 **and such scheme is consistent with FCC and FAA standards for antenna structure marking.**

Comment [SB37]: Action #37

Section 4B.11 Maintenance & Removal Bonds

Prior to issuance of a Zoning Certificate, each applicant for a 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 Facility at their principal place of business and Governmental Users are exempt from this bond requirement.

Section 4B.12 Abandonment & Removal

- A. Any 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.
- B. If a structure is determined to be unsound, it will be considered abandoned.
- C. The owner or operator of any Facility or Support Structure shall remove the Facility pursuant to the requirements of the Jefferson County Property Safety Ordinance.

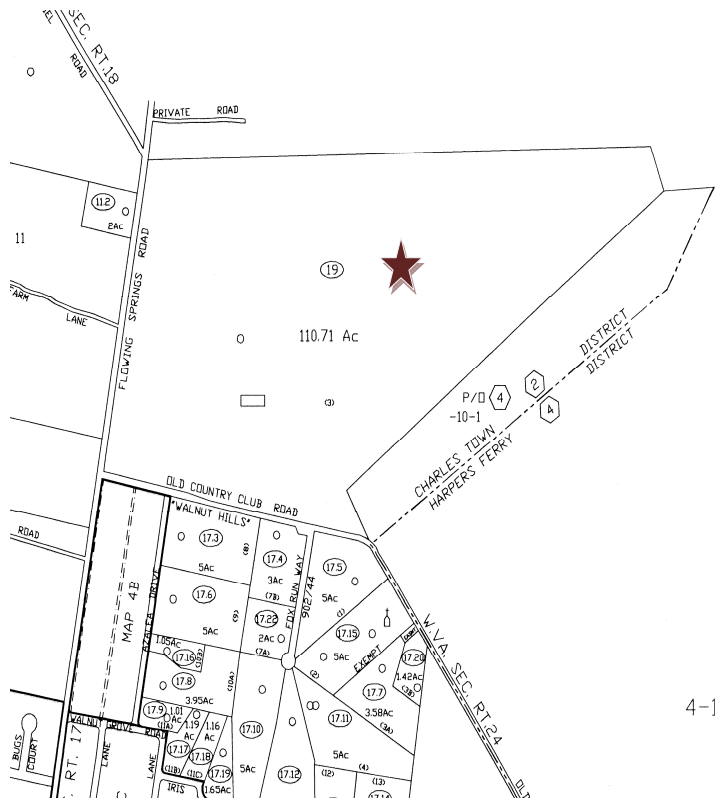
DRAFT

Staff Report
 Jefferson County Planning Commission Meeting
 October 26, 2010

Item # 4

**Aspen Greens Variance Request
 PC File #07-15**

Item #4: Request by Roderick Planes, LLC for a variance from Article 6, Section 6.3 of the Subdivision Ordinance to allow for an extension of the Community Impact Statement to July 1, 2012.

APPLICANT:	Roderick Planes, LLC
OWNER:	Same
DEVELOPER:	Same
SURVEYOR/ENGINEER:	Gates Associated, Inc.
PROPERTY LOCATION:	This property is located northeast of the intersection of Old Country Club Road with Flowing Springs Road.
LEGAL DESCRIPTION:	District: Charles Town; Map: 4; Parcel(s): 19 
ZONING DISTRICT:	2002 Zoning Map: Rural
SURROUNDING PROPERTIES:	2002 Zoning Map North: Rural South: Rural East: Residential Growth West: Rural
LOT AREA:	110.71 acres
PROPOSED DENSITY:	203 single-family lots

Staff Report
 Jefferson County Planning Commission Meeting
 October 26, 2010

Item # 4

PERMIT APPROVALS:	
Health Department Permit	N/A
Department of Highways	N/A
APPROVALS:	
Conditional Use Permit	Submitted: 08/08/02 Site Assessment Passed: 10/02/02 1 st Neighborhood Compatibility Scheduled: 10/30/02 2 nd Neighborhood Compatibility Scheduled: 05/10/06 Public Hearing Scheduled: 06/15/06 PH & BZA Action: Approved CUP Official Issuance Signature: 12/20/07 Expiration Date: 06/20/09 BZA Extended: 12/20/10
Community Impact Statement	Submitted: 06/15/07 Staff Review Meeting: 07/06/07 County Planner Approval: 02/2008 County Engineer Approval: 01/14/08 PC Approval: 03/25/08 Expires on: 07/06/09 PC Extended: 12/31/09; 12/20/10
Concept Plan	N/A
Preliminary Plat	N/A
Site Plan	N/A
Final Plat	N/A
Variance History	05/26/09 - PC approved variance to extend the file expiration date from 07/06/09 to 12/31/09. 06/18/09 - BZA approved a CUP extension request from 06/20/09 to 12/20/2010. 08/11/09 – PC approved variance to extend the file expiration date from 12/31/09 to 12/20/10.
OTHER APPROVALS:	N/A

Planning & Zoning Department Report

The applicant has requested a variance to allow for an extension of the Community Impact Statement (CIS) from December 20, 2010 to July 1, 2012. Previously, in 2009, the applicant received several extensions on the Aspen Greens project. On May 26, 2009 the applicant was granted a time extension for the CIS by the Planning Commission until August 11, 2009. The three month extension by Planning Commission allowed the applicant time to request an extension of the Conditional Use Permit (CUP) before the Board of Zoning Appeals. The Board of Zoning Appeals granted an extension of the CUP from June 20, 2009 until December 20, 2010. The applicant returned to the Planning Commission on August 11, 2009 to ask for an extension from December 31, 2009 until December 20, 2010. This allowed the CIS and the CUP to both expire on the same date, December 20, 2010.

The requested extension of time for the CIS for Aspen Greens Subdivision is based on a change in the Jefferson County Floodplain Ordinance. The applicant has stated that changes to the Floodplain

Ordinance have had impact on submitting a Preliminary Plat to staff for review. In the packet for the variance request, the applicant states there are multiple reviews occurring by multiple agencies and that has delayed the ability to submit a Preliminary Plat.

Staff called the applicant, inquiring about the application and the progress of the project over the last year. The applicant's representative stated there is a lot of information to be presented to fully explain the request. Moreover, due to the amount of information to be presented by the developer, surveyor and lawyer, the information would be more clearly illustrated in presentation form rather than described in an application to Staff. Furthermore, the applicant requested to make the presentation directly to the Planning Commission at the meeting, describing the full details of the occurrences over the last year. Staff explained to the applicant that it would be difficult to provide a positive recommendation, without understanding the full details of the past year's occurrences. The representative for the applicant did state that in addition to the updated Floodplain Ordinance, there is ongoing engineering related to a cross county effluent line and some points related to the West Virginia Department of Highways. The representative requested that staff keep an open mind and consider providing a recommendation at the Planning Commission meeting once all of the details have been explained.

Attached is a series of separate email correspondences, beginning in May 2010, between the surveyor, Fred Gates and the Planning and Zoning and Engineering Staff. This record chronicles the time frame and range of discussion with the applicant's representative.

Planning and Zoning Recommendation

Without further details regarding the occurrences and progress made on the Aspen Greens' project over the past year, the Planning and Zoning Staff recommends denial of an extension of the CIS. There is limited information for which to review the following four criteria below:

1. The request is not contrary to the public interest;
2. A literal enforcement of this Ordinance will result in unnecessary hardship;
3. The request is not the result of a self-imposed hardship; and
4. The spirit of this Ordinance will be observed and substantial justice done.

A denial of the CIS has no effect on the CUP. The Board of Zoning Appeals will hear the merits of a CUP extension, at their November 18, 2010 meeting date. As the CUP provides the zoning of the site and the CIS is the concept plan of the subdivision plan and provides the details of the use. A denial of the CIS would require the applicant to start the process under the amended 2008 Subdivision Regulations if they wanted to proceed with this development.

Jennifer Brockman

From: Planning Department [planningdepartment@jeffersoncountywv.org]
Sent: Friday, May 28, 2010 10:40 AM
To: gatesassociated@aol.com; engineering@jeffersoncountywv.org

Good morning Fred, Please note the Aspen Greens community impact statement was approved under the 1979 Subdivision Ordinance, therefore the preliminary plat is vested and may continue to process under this ordinance. Article 6, Section 6.1, subsection 9 states, "Subdivider submits to the Planning Commission office a completed subdivision application form, fees, two paper prints of the preliminary plat, and two copies of all support material required to accompany the preliminary plat. All items must be received by the Planning Commission office at least 15 days prior to the next staff conference. (First and third Friday of each month at 10: A.M.)" Subsection 10 directs staff to place a notice in the Spirit of Jefferson. Once the preliminary plat is submitted to our office we will schedule a staff review meeting that meets the 15-day requirement. Please note that the first review of the preliminary plat and its supporting documentation will occur during this time period. Staff comments may be returned on or before the staff review meeting. Any subsequent reviews of the preliminary plat will be handled in the order in which it is received. If you have any questions, or would like to know the dates of upcoming staff review meetings and their respective deadline, please feel free to contact us at 304-728-3228.
Sincerely, Jennifer Brockman

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

Jennifer Brockman

From: Jennilee Hartman [jhartman@jeffersoncountywv.org]
Sent: Friday, May 28, 2010 4:34 PM
To: jbrockman@jeffersoncountywv.org
Subject: FW: (no subject)
Attachments: Preliminary Plat checklist.pdf

The response to Fred...have a great weekend Jennie! ☺

From: Planning Department [mailto:planningdepartment@jeffersoncountywv.org]
Sent: Friday, May 28, 2010 4:37 PM
To: GatesAssociated@aol.com
Subject: Re: (no subject)

Fred, please find attached the preliminary plat checklist that should accompany your submission. This checklist outlined the submission requirements. Regarding the fees, it is dependent on the number of lots you will be platting at this time. If you provide us with a number we will be able to compute a cost. Please be advised that the County Commission is currently scheduling a workshop to discuss increasing submission fees. I believe this process will take approximately another month and a half. If you submit your preliminary plat after the adoption of the proposed fee schedule then those fees will be applied to your submission. Please feel free to contact our office at 304-728-3228 and we will provide you a cost break down based on the current fee schedule. Thank you again for your inquiry Fred. Have a pleasant weekend.

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

From:
Sent: 5/28/2010 9:57:31 AM
To: planningdepartment@jeffersoncountywv.org
Subject: Re: (no subject)

In a message dated 5/28/2010 10:37:03 A.M. Eastern Daylight Time,
planningdepartment@jeffersoncountywv.org writes:

"Subdivider submits to the Planning Commission office a completed subdivision application form, fees, two paper prints of the preliminary plat, and two copies of all support material required to accompany the preliminary plat.

Jennifer,

Succinctly comprehensive, thank you.

Could you enumerate "support material required" as some outside reviews will be simultaneous to yours and due before bonding? Please clarify this part for us as well. What is the fee schedule that applies to Aspen Greens for review, as in total and %?

Fred W. Gates, P.S., President
GATES ASSOCIATED, Inc.
153 Venice Way
Shepherdstown, WV 25443
304-876-6124 voicemail
240-720-5801 voip

Fred needs to know next submittal date for a variance for BZA – and what meeting that would put him on – and how to coordinate that with a variance request to PC.

Can we discuss later today?

Jennie

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

From: GatesAssociated@aol.com [mailto:GatesAssociated@aol.com]
Sent: Friday, September 10, 2010 10:33 AM
To: jbrockman@jeffersoncountywv.org; mgladhill@aol.com
Subject: Re: Timely response

In a message dated 9/9/2010 7:59:05 P.M. Eastern Daylight Time, jbrockman@jeffersoncountywv.org writes:

One option is to apply to the Planning Commission for a variance for an extension of time. If this is the direction you choose to go in, I would recommend that you do it sooner rather than later. The Planning Commission will want to know what progress has been made on this project to date and will want a work plan to ensure that the work can be completed within your proposed time line.

In either case, the expiration of the CUP is an issue for you. Your CUP requires you to have commenced construction by December 20, 2010. Because the plat has not yet begun to be processed, it will not be possible for you to meet this deadline. The Board of Zoning Appeals (BZA) is now the body that issues CUPs or variances for extensions of CUPs. The BZA only meets monthly and requires a lengthy public notice so you will need to apply for an extension of the CUP very soon in order to meet this requirement.

Jennifer,

Well written & cogent. Our initial meeting of the minds on your email brings the above two into focus. On our last trip to the Planning Commission for a court case delay timeline decision, members partially refused our request because we had not first obtained a blessing from BZA. I believe you were there. This would indicate that a BZA then PC dance step would be best. On that note what are our next submission of a variance request timeline to make these both happen in the above order within your time frame? The submission package status has all sheets complete (over 50%) less those showing applied engineering to the site which are still being added to. As you can see from my questions to Engineering the moving oversight window impacts of newly adopted ordinances has created an environment of uncertainty as to what standards to prepare for now. Hence our need to ask what were fairly understood questions here-to-fore.

Thank you for your timely input. Await your response to the above.

Fred W. Gates, P.S., President
GATES ASSOCIATED, Inc.
153 Venice Way
Shepherdstown, WV 25443

304-876-6124 - Voicemail
240-720-5801 - Voicemail
gatesassociated@aol.com - Email

Subj: **Re: Timely response**
Date: 9/9/2010 7:59:05 P.M. Eastern Daylight Time
From: jbrockman@jeffersoncountywv.org
To: gatesAssociated@aol.com
CC: rgoodwin@jeffersoncountywv.org, isaunders@jeffersoncountywv.org,
nkuroski@jeffersoncountywv.org, srivard@jeffersoncountywv.org, sbamey@jeffersoncountywv.org,
iquodala@jeffersoncountywv.org, apuetz@jeffersoncountywv.org, ihartman@jeffersoncountywv.org,
bburns@jeffersoncountywv.org

Fred –

Norma gave me a copy of your e-mail asking questions about the upcoming submittal for the Aspen Green subdivision. I think that the engineering staff may be working to provide you with some direction about the design questions that you posed.

I wanted to be sure that you clearly understood the July 26, 2010 letter addressed to Roderick Planes, LLC regarding the vesting provisions of the state law and Jefferson County Subdivision Regulations: Aspens Greens currently has two approval dates that relate to your ability to process. You are currently processing under the old zoning ordinance and the old 1979 subdivision ordinance. Both your CUP and your CIS, approved under these old ordinances, expire on December 20, 2010.

In order for your CIS approval to remain valid, you will need to have had a public hearing on your final plat by December 20, 2010. The last meeting available to you to meet this time line is December 14, 2010. This means you will have processed the preliminary plat to the point of staff approval and submitted the final plat in time to get it on the December 14, 2010 agenda. It may be very difficult to meet this time line.

If you do not think you can meet this time line, you have 2 options. One option is to apply to the Planning Commission for a variance for an extension of time. If this is the direction you choose to go in, I would recommend that you do it sooner rather than later. The Planning Commission will want to know what progress has been made on this project to date and will want a work plan to ensure that the work can be completed within your proposed time line.

Your second option is to understand that it might be difficult to meet this date and to choose to proceed under the newly adopted 2010 Subdivision Regulations. The new Regulations would require you to first submit a Concept Plan and have a public workshop. The submittal and processing requirements are different in the 2010 Regulations and we would be glad to meet with you to explain this process if you choose it.

In either case, the expiration of the CUP is an issue for you. Your CUP requires you to have commenced construction by December 20, 2010. Because the plat has not yet begun to be processed, it will not be possible for you to meet this deadline. The Board of Zoning Appeals (BZA) is now the body that issues CUPs or variances for extensions of CUPs. The BZA only meets monthly and requires a lengthy public notice so you will need to apply for an extension of the CUP very soon in order to meet this requirement.

If you have any questions about the direction being provided to you, please feel free to contact the Departments of Planning and Zoning for further information.

Thank you.

Jennifer M. Brockman, AICP, Director
Jefferson County Department of Planning and Zoning
116 East Washington Street
Charles Town, WV 25414
Office: (304) 728-3228
Fax: (304) 728-8126

Seth Rivard

From: Jonathan Saunders <jsaunders@jeffersoncountywv.org>
Sent: Wednesday, October 20, 2010 11:44 AM
To: Jennifer Brockman; Steve Barney; Seth Rivard
Cc: Roger Goodwin
Subject: FW: Timely Response - Storm Water Management Questions
Attachments: 2010-09-28 Fred Gates Questions & Response- Aspen Greens Subdivision.pdf

From: Roger Goodwin [mailto:rgoodwin@jeffersoncountywv.org]
Sent: Thursday, September 30, 2010 1:34 PM
To: GatesAssociated@aol.com
Cc: 'Engineering Department'; Roger Goodwin; 'Jonathan Saunders'; 'Norma Kuroski'
Subject: RE: Timely Response - Storm Water Management Questions

Fred,

Attached are the answers to your questions. If you need to discuss them, please feel free to schedule a meeting with us.

Roger Goodwin, P.E.
Chief County Engineer
Jefferson County Engineering Dept.
116 East Washington Street, Suite 100
Charles Town, WV 25414

304-728-3257

From: GatesAssociated@aol.com [mailto:GatesAssociated@aol.com]
Sent: Thursday, September 09, 2010 1:35 PM
To: nkuroski@jeffersoncountywv.org; jsaunders@jeffersoncountywv.org; rgoodwin@jeffersoncountywv.org
Subject: Fwd: Timely Response

From: GatesAssociated@aol.com
To: engineering@jeffersoncountywv.org
Sent: 9/9/2010 12:32:49 P.M. Eastern Daylight Time
Subj: Timely Response

Roger,

Need some direction on the attached. Please use another color and simply fill in your responses. Whoever fills it out need indicate so at the end. This should be simple, but important for our submission to be on track. Note five exhibits that will help you see what is known of the area of interest. I understand that most are obviously in the regs now, but between developer, engineer, submissions coverage, new ordinance changes and later discussions, your timely input will greatly help. They are simple and direct for your response. Show known inclusions where appropriate.

Time is of the essence, so would appreciate a quick turn around. Thank you.

Fred W. Gates, P.S., President
GATES ASSOCIATED, Inc.
153 Venice Way
Shepherdstown, WV 25443

304-876-6124 - Voicemail

240-720-5801 - Voicemail

gatesassociated@aol.com - Email

PROJECT: ASPEN GREENS JCPC FILE # 07-15
SUBJECT: REQUIRED CULVERT SIZING AND HOUSING FLOOR
ELEVATIONS
DATE: 9 Sept 10
RE: Timely Response for ASPEN GREENS Engineer Haas
SUBMITTED BY: Fred Gates, P.S.

ATTACHED: USGS Map - No flow thread shown.
 DOH Map - Flow Thread shown
 SOIL Map - Flow Thread shown
 FLOOD PLAIN Map - No Flood plain along flow
thread shown
 WETLANDS Map - No Wetlands or thread shown

OBSERVED CONDITIONS: No offsite cross site flows have been observed since 2000 during heavier rain events. Some on-site runoff is observed. No scour channel is visible on the project site or on lands to east or west.

METHODOLOGY: Proposed SWM for ASPEN GREENS intends to allow and aid West to East bottom flows, if any, to cross ASPEN GREENS facilitated by even bottom grading from Flowing Springs Road to a recorded grading easement approximately 100 feet wide by 300 feet long down the bottom on the Butler Lands to the east. New housing runoff shall be directed to SWM ponds in typical fashion. A generic rain garden will be sized to handle impervious and land runoff for each two paired common entry lots. West to East bottom grading will include typical rain garden depth bottom crossing berms to mediate based on the accumulated generic calculated rain garden area as to be provided. Additionally a zero degree Perimeter Dike/Swale (JC SC-23) shall be installed along the rear lot lines where lot flows concentrate impacts towards the West to East Bottom. Road grading shall direct water from the right-of-way line towards the road inclusive of water from lots lying above right-of-ways. Storm drains shall collect rain water for SWM pond management as needed. Phase 1A shall be limited to 20 lots lying south of the West East bottom. Quaking Aspen Way shall be extended so as to cross the bottom ending in a temporary cul-de sac in the common area near the next phase of lots. Grading of the West to East bottom shall be part of Phase 1A.

CULVERT sizing under Quaking Aspen Way allowing for West to East Bottom Flows -

1. This culvert should be sized for the computation of a 10 year 24 hour event according to Jefferson County Ordinances. True or False?

The 1979 Subdivision Ordinance, Section 8.2.c.1(c) requires that roadway culverts be sized for a 10-yr, 24 hour storm event. The roadway culvert will need to pass the flow without overtopping the roadway at the edge of pavement. Be advised that the subdivision regulations are considered minimum standards; therefore, the onus is on the engineer-of-record to evaluate site conditions and determine if a culvert sized to a larger storm event is the prudent thing to do.

2. Sizing this bottom culvert for greater events is unnecessary, and out of the norm. True or False?

Not clear as to what you mean by "this bottom culvert". It is hard to understand and visualize your situation without actually seeing the full storm water management plan. In any event, the 1979 Subdivision Ordinance, Section 8.2.c.1(c) requires that roadway culverts be sized for a 10-yr, 24 hour storm event. The roadway culvert will need to pass the flow without overtopping the roadway at the edge of pavement. Be advised that the subdivision regulations are considered minimum standards; therefore, the onus is on the engineer-of-record to evaluate site conditions and determine if a culvert sized to a larger storm event is the prudent thing to do.

3. Jefferson County's ordinances expects greater events (as the 100 year event) to flow over the road surface? True or False?

It is common practice to design a culvert for a particular storm event and allow a larger storm event to pass over a roadway without breaching the roadway embankment/fill. However, the engineer-of-record needs to evaluate if the water impounded by the culvert during a larger storm event causes problems such as flooding of adjacent lots/homes, etc. The onus is on the engineer-of-record to evaluate site conditions and determine if a culvert sized to a larger storm event is the prudent thing to do in order to prevent flooding of adjacent lots/structures and/or breaching of the roadway embankment, etc. If the site is designed such that the 100-year storm event causes water to back-up and create a flooding problem on lots and with proposed homes, then you might want to consider placing a note on the plat, or delineating these areas, so the developer, realtor and future home buyer know this up front and can account for it when building the home.

4. A standard TR-55 Q based on soils for the watershed arriving to the site without Karst reduction factors is the

correct report calculations that county engineering expects. True or False?

The 1979 Subdivision Ordinance, Section 8.2.c, Table 8.c.1, provides karst adjustment criteria. For pre-development, karst adjustment of the undeveloped off-site drainage areas only is allowed for stormwater management facilities.

5. Drainage Swales shall be sized by equally sized with equal calculations. True or False?

Don't understand the question. However, drainage swales/ditches are to be designed for the 10-year, 24 hour storm event. The minimum standards for roadway drainage ditches are in the 1979 Subdivision Ordinance, Section 8.2.a, Roads and Rights-of-Way. The onus is on the engineer-of-record to determine if the minimum standards are sufficient to carry the 10-year storm event; and if not, to design a swale/ditch that is sufficient. In addition, the engineer needs to determine if the minimum 15" diameter driveway culverts are sufficient to carry the 10-year storm event. If not, the engineer will need to size the driveway culverts to meet this requirement and show on the plans the size of driveway culvert required for each lot.

6. It is proper to assume that the drainage Q reaching the project site is without consideration for development projects or SWM in the up-shed since any that exist may be considered to have managed any runoff to equal or less impact than before those projects were approved and constructed. True or False?

Existing upstream, off-site, development without SWM needs to be modeled as such. In addition, you may need to take into account in your model, sites with storm water management facilities and model them as such.

7. Karst factors are not a part of the Q computations for culvert sizing. True or False?

True.

RESIDENT HOME FLOOR ELEVATIONS:

1. ASPEN GREENS having no flood plain indicated on site by the FEMA FLOOD PLAIN MAP, has no obligation to address 100 year flood plain elevations that might be generated by some other means or study by any ordinance or oversight known to impact Jefferson County Engineering, it's reviews or known similar subdivision submissions to date. True or False?

If the floodplain changed due to studies performed by an adjacent subdivision, then from an engineering standpoint it would seem to be prudent to take it into account. In addition, the onus is on the engineer-of-record to evaluate site conditions and the proposed development and determine if a 100-year floodplain study is a necessary and prudent thing to do. In addition, it is up to the engineer-of-record to evaluate site conditions and determine if a culvert sized to a larger storm event is the prudent thing to do in order to prevent flooding of adjacent lots/structures and/or breaching of the roadway embankment, etc. If the site is designed such that the 100-year storm event causes water to back-up and create a flooding problem on lots and with proposed homes, then you might want disclose this to the developer, realtors and future homebuyers by placing a note on the plat, or delineating these areas, so that it is known up front and can be taken into account when building the home.

2. ASPEN GREENS has no know known obligations to submit 100 year flood plain studies for this project. True or False?

Any FEMA mapped flood hazard area, or 100-year floodplain determined under a Letter of Map Amendment or Letter of Map Revision, that affects this property, needs to be shown on the preliminary plat and final plats. In addition, the onus is on the engineer-of-record to evaluate site conditions and determine if a 100-year floodplain study is the prudent thing to do, especially before setting the location of new homes/structures.

3. Proposed lot grading and building placement may address grading sufficient to direct water away from the buildings without other considerations. True or False?

Grading of individual lots is not regulated under the subdivision ordinance. However, the Building Code Enforcement Ordinance does have a requirement for grading around dwelling units so that water drains away from the foundation. I don't know what other considerations you are alluding to; however, if the site is designed such that storm water backs-up and creates a flooding problem on lots and possible flooding of proposed homes, then the engineer-of-record might want disclose this to the

developer, realtors and future homebuyers by placing a note on the plat or by delineating these areas, so that it is known up front and can be taken into account when building the home.

SWM COMPUTATION SUBMISSIONS:

1. Correct runoff management shall control the difference in Qs generated only on the proposed lots between the before project Q (TR-55) using the pristine woodland conditions as then further reduced by the Karst Factor subtracted from the post project Q after development with no Karst Factor. The intent is to make this difference greater to require a larger volume of Q that requires a larger SWM pond mitigation and therefore a margin of safety. True or false?

The storm water management requirements are in Section 8.2.c of the 1979 Subdivision Ordinance. Essentially, the post-development runoff shall not exceed the karst adjusted pre-development runoff for the entire site. The purpose for the karst adjustment is not to provide a margin of safety, but rather the belief that in areas with karst geology less runoff leaves the site than that calculated using traditional storm water models. The karst adjustment accounts for what is actually running off the site.

2. SWM ponds shall compute and manage the 100 year, 24 hour storm event and indicate the storage elevation on the plat only for the above #1 Q lot area of construction. True or False?

I don't quite understand the question, but normally, the engineer-of-record will determine the 100-year storm event storage elevation for all storm water management ponds. If this level causes water to back-up onto lots, then usually a drainage/storm water management easement is placed on the lot to allow for this to occur. Thus, making the developer, realtor and future home buyer aware up front that this condition may occur.

3. Other than this SWM pond 100 year, 24 hour event, no other 100 year, 24 hour studies or impacts are necessary for this project's review. True or False?

False – If the floodplain changed due to studies performed by an adjacent subdivision, it then must be taken into account. Any FEMA mapped flood hazard area, or 100-year floodplain determined under a Letter of Map Amendment or Letter of Map Revision, that affects this property, needs to be shown on the preliminary plat and final plats. In addition, the onus is on

the engineer-of-record to evaluate site conditions and determine if a 100-year floodplain study is the prudent thing to do, especially before setting the location of new homes/structures.

PLAT NOTES:

1. A final plat note stating that the Quaking Aspen Way culvert was limited in size to the 10 year 24 hour event consistent with the prevailing review ordinances at the time of approval is acceptable. True or False?

False – The regulations are considered to be minimum standards. The onus is on the engineer-of-record to evaluate site conditions and determine if a culvert sized to a larger storm event is the prudent thing to do. The size of the culvert is not limited to the 10-year storm event.

2. A final plat note stating that the 100 Year Flood Plain FEMA map does not show any impact on this site and therefore housing elevations were not deemed of concern at the time of approval is acceptable. True or False?

Structures proposed to be built in a FEMA mapped flood hazard area shall meet the requirements of the Floodplain Management Ordinance. However, the onus is on the engineer-of-record to determine if other site design conditions make it prudent from an engineering standpoint to take a look at dwelling unit elevations, even if it is not required by the ordinances, especially if it is known that a potential problem may exist. I don't know if a note on the plat would relieve the engineer-of-record from any responsibility or obligation in this regard.

~~I have indicated either True or false by circling my answers and provided direction to any applicable parts of applicable ordinances where I have indicated a false response or conditional True response. Please carry on with the above approach or revise it as expressed herein.~~

~~JC Engineering Department _____ Date:~~

ADDED DIRECTION:

Jennifer Brockman

From: Amy Puetz [apuetz@jeffersoncountywv.org]
Sent: Thursday, September 16, 2010 12:46 PM
To: GatesAssociated@aol.com
Cc: 'Jennilee Hartman'; 'Jennifer Brockman'; Julia Quodala
Subject: RE: Timely response

Mr. Gates,

Thank you for your e-mail. In response to your inquiry about variance submittal deadlines, I am providing the following information:

Deadlines for Planning Commission Variances

<i>Submittal Deadline</i>	<i>to be on this</i>	<i>Meeting Date</i>
September 21, 2010	-----	October 12, 2010
October 5, 2010	-----	October 26, 2010
October 19, 2010	-----	November 9, 2010
November 23, 2010	-----	December 14, 2010

Deadlines for Board of Zoning Appeal Variances

<i>Submittal Deadline</i>	<i>to be on this</i>	<i>Meeting Date</i>
October 8, 2010	-----	November 18, 2010
November 12, 2010	-----	December 16, 2010

Please remember that the application and all fees must be in our office by 5 PM on the submittal deadline. We do require 11 copies of the application and any supporting documentation for both the Board of Zoning Appeals and the Planning Commission. Applications may be picked up in our office Monday – Friday, 9 AM – 5 PM. Please call us with any questions at 304-728-3228.

Thank You,

Amy Puetz
Planning Clerk
Planning and Zoning Department
Jefferson County, WV

From: Jennifer Brockman [mailto:jbrockman@jeffersoncountywv.org]
Sent: Friday, September 10, 2010 1:10 PM
To: 'Jennilee Hartman'; 'Amy Puetz'
Subject: FW: Timely response

**A Motion Recommending Denial of a
Variance for Aspen Green
October 26, 2010**

Whereas, the following facts relate to the processing of Roderick Planes, LLC application known as Aspen Greens Subdivision (PC File(s) #07-15):

1. Aspen Greens Subdivision is proposing 203 single family lots on 110.71 acres;
2. The Community Impact Statement for Aspen Greens Subdivision was approved on March 25, 2008 and most recently extended on August 11, 2009 to December 20, 2010.
3. Section 6.3 of the 1979 Jefferson County Subdivision Ordinance requires that a project advance through the stage of a Final Plat Hearing within 24 months of the Pre-application Conference.

Whereas, Roderick Planes, LLC has requested a variance to extend the CIS until July 1, 2012 to advance through the Final Plat Hearing;

Whereas, Roderick Planes has not provided sufficient information for staff to determine if a variance is warranted;

Whereas, Without adequate information, the Planning Staff recommends denial of an extension of the CIS;

Whereas, the following findings of Article 17, Section 17.1 of the 1979 Subdivision Ordinance cannot be supported based on the information provided:

1. The request is not contrary to the public interest;
2. A literal enforcement of this Ordinance will result in unnecessary hardship;
3. The request is not the result of a self-imposed hardship; and
4. The spirit of this Ordinance will be observed and substantial justice done.

Now, therefore, be it moved, that the Jefferson County Planning Commission _____ the requested variance for Roderick Planes, file (PC File(s) #07-15), (if granted that the extension be limited to July 1, 2012).

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 PLANNING COMMISSION

VARIANCE REQUEST

I/We request a variance from the provisions of the Jefferson County Subdivision and/or Salvage Yard Ordinance.

Property Owner(s): Roderick Planes, LLC

Address: 5509 Mt. Zion Road; Box 777
Frederick, Maryland 21705

Phone Number: 1-301-663-6060

Location of Property: Northeasterly of the intersection of Old Country Club Road
with Flowing Springs Road. See Attached USGS Map.

Lot Size: 0.41 Average; 203 Lots on 110 Acres

Deed Book Reference: Deed Book Number 952, Page Number 565

Tax Map Reference: District 2 - Charles Town Map 4, Parcel 19

Zoning District: Agricultural - (Was Residential on proposed draft)

Section of Ordinance: Subdivision Ordinance; Art. 6; Sect. 6.3

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

This request is for CIS extension to July 1, 2012 to comply with ordinance design impacts.

During preparation of preliminary plat submissions for ASPEN GREENS, this County adopted

a new Flood Plain Ordinance. Direct interaction by project professionals with other properties indicated

County interpretations that could impact these plans. Simultaneous multi-designed plans, submissions

and reviews for the same project was an undue and unintended hardship. A time block exists, given the

outstanding December 20, 2010 project construction start deadlines for both CIS and CUP. Aspen Greens is

in a non-flowing tributary of Elk Run. Nearest shed flood plain lies 7500 feet to the east approximately

50 feet in elevation below this site. See WV Flood Hazard Map attached. Assessing options and

project design, verifying the Flood Plain Administrator opinions are ongoing.

CONTINUED ON ATTACHED ADDENDUM PAGE.

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.

NOTE: Request is not identifiable on a sketch. Vicinity USGS Map Attached.

RECEIVED

OCT 05 2010

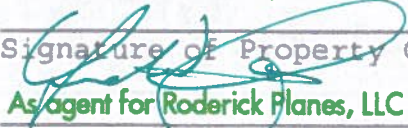
Please note variances to the Subdivision Ordinance must comply with Article 17 of the Ordinance; and, variances from the Salvage Yard Ordinance must comply with Article 6 of the Ordinance. To justify your variance request, please address the following items:

1. The request is not contrary to the public interest. It is contrary to the public interest to not allow time for subdivision design consistent with the adoption of new ordinances, to allow evaluation of interpretations to be explored so that the public welfare is best served.

2. A literal enforcement of this Ordinance will result in unnecessary hardship Denying this extension request would harm ASPEN GREENS opportunity to design within the ordinances placed in its path by County adoption that this body desires be applied. This work would remove currently harmful drainage flooding of roads that would remain. In anticipation of being able to progress in good faith, this developer has provided Jefferson County with the removal of a harmful intersection.

3. The request is not the result of a self-imposed hardship. This request is the result of actions taken by others. The adoption of a new Flood Plain Ordinance was advised to be applied retroactively. It had severe restrictive interpretations needing careful consideration before completing submission designs. This ordinance came months after gaining design change approval from our new Director with far reaching design impacts that needed study and inclusions.

4. The spirit of this Ordinance will be observed and substantial justice done. New Flood Plain Ordinances its ramifications, interpretations and administration can set design criteria in different directions. It is precisely in the spirit of orderly ordinance application that this extension is sought. Additionally serving utilities must review and observe proposed impacts to their own best technical interests taking coordination meeting times on several levels. These all require months of exchanged input.


Signature of Property Owner
As agent for Roderick Planes, LLC
Signature of Property Owner

For official use only: Amount of fees paid _____

Date of meeting/public hearing _____

Official/Administrative body _____

Posting requirements _____

Advertising dates _____

Official Signature and Seal _____

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

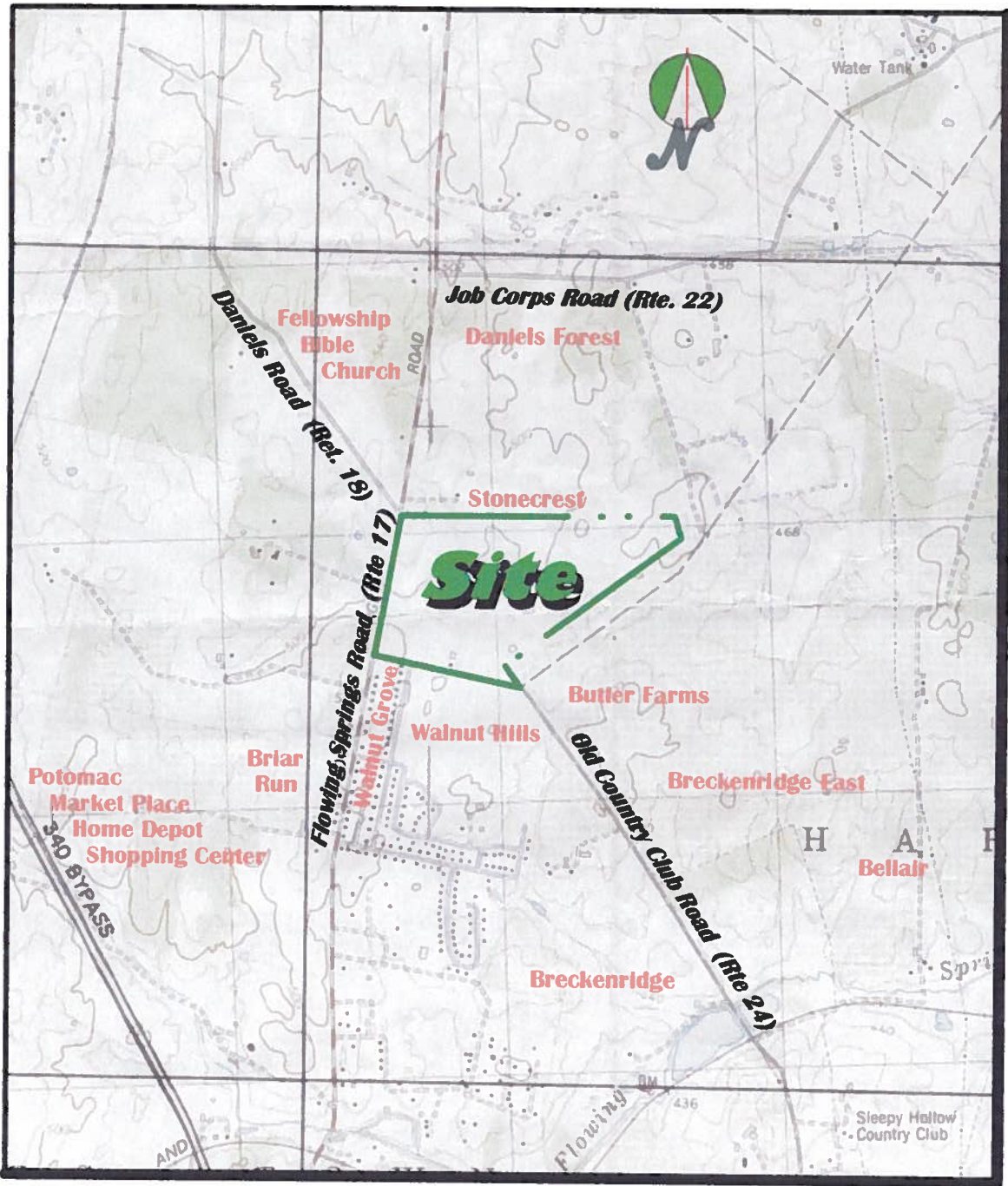
VARIANCE REQUEST ADDENDUM
Aspen Greens - 4 October 2010

ADDENDUM PAGE 1:

Besides time needed for the above interests work on drainage design includes working with JCPSD (planned cross county gravity lines - both easments and placement), working with WVDOH (removal of Right-of-Way impacts) and working to conduct basin flows through this site. Limited review time is acknowledged by the Jefferson County Planning and Zoning Director (attached email).

We have chosen to approach the Planning Commission sooner rather than later to permit this extension to be heard in a timely manner. This time block meets the four conditions required for your support to extend this project request to July 1, 2012.

ASPEN GREENS Site Location



USGS Charles Town Quad Map

Scale 1" = 2000'

(Roads & Development Names Added)



Gates Associated, Inc.

288 Venice Way (off Rte. 45)

Shepherdstown, West Virginia 25443

[email: gatesassociated@aol.com phone/fax/voicemail: 1-304-876-6124]



Map created by West Virginia GIS Technical Center

0 1657ft

Subj: **Re: Timely response**
Date: 9/9/2010 7:59:05 P.M. Eastern Daylight Time
From: jbrockman@jeffersoncountywv.org
To: gatesAssociated@aol.com
CC: rgoodwin@jeffersoncountywv.org, isaunders@jeffersoncountywv.org,
nkuroski@jeffersoncountywv.org, srivard@jeffersoncountywv.org, sbarney@jeffersoncountywv.org,
jquodala@jeffersoncountywv.org, apuetz@jeffersoncountywv.org, jhartman@jeffersoncountywv.org,
bbums@jeffersoncountywv.org

Fred –

Norma gave me a copy of your e-mail asking questions about the upcoming submittal for the Aspen Green subdivision. I think that the engineering staff may be working to provide you with some direction about the design questions that you posed.

I wanted to be sure that you clearly understood the July 26, 2010 letter addressed to Roderick Planes, LLC regarding the vesting provisions of the state law and Jefferson County Subdivision Regulations: Aspens Greens currently has two approval dates that relate to your ability to process. You are currently processing under the old zoning ordinance and the old 1979 subdivision ordinance. Both your CUP and your CIS, approved under these old ordinances, expire on December 20, 2010.

In order for your CIS approval to remain valid, you will need to have had a public hearing on your final plat by December 20, 2010. The last meeting available to you to meet this time line is December 14, 2010. This means you will have processed the preliminary plat to the point of staff approval and submitted the final plat in time to get it on the December 14, 2010 agenda. It may be very difficult to meet this time line.

If you do not think you can meet this time line, you have 2 options. One option is to apply to the Planning Commission for a variance for an extension of time. If this is the direction you choose to go in, I would recommend that you do it sooner rather than later. The Planning Commission will want to know what progress has been made on this project to date and will want a work plan to ensure that the work can be completed within your proposed time line.

Your second option is to understand that it might be difficult to meet this date and to choose to proceed under the newly adopted 2010 Subdivision Regulations. The new Regulations would require you to first submit a Concept Plan and have a public workshop. The submittal and processing requirements are different in the 2010 Regulations and we would be glad to meet with you to explain this process if you choose it.

In either case, the expiration of the CUP is an issue for you. Your CUP requires you to have commenced construction by December 20, 2010. Because the plat has not yet begun to be processed, it will not be possible for you to meet this deadline. The Board of Zoning Appeals (BZA) is now the body that issues CUPs or variances for extensions of CUPs. The BZA only meets monthly and requires a lengthy public notice so you will need to apply for an extension of the CUP very soon in order to meet this requirement.


If you have any questions about the direction being provided to you, please feel free to contact the Departments of Planning and Zoning for further information.

Thank you.

Jennifer M. Brockman, AICP, Director
Jefferson County Department of Planning and Zoning
116 East Washington Street
Charles Town, WV 25414
Office: (304) 728-3228
Fax: (304) 728-8126

The William H. Scott Inter Vivos Trust (SPARC) Waiver Request

Item #5: Request by The William H. Scott Inter Vivos Trust for a waiver from Section 20.102(B) to alter the existing order of process for plan review allowing a submission of a separate Grading/FDN Plan during the normal subdivision review process.

APPLICANT:	The William H. Scott Inter Vivos Trust (SPARC)
OWNER:	The William H. Scott Inter Vivos Trust (SPARC)
DEVELOPER:	The William H. Scott Inter Vivos Trust (SPARC)
SURVEYOR/ENGINEER:	William H. Gordon Associates, Inc. (Kevin Nelson)
PROPERTY LOCATION:	Front entrance at the Summit Point Race Track off of Summit Point Road.
LEGAL DESCRIPTION:	District: Kabletown; Map: 17; Parcel(s): 2 
ZONING DISTRICT:	2002 Zoning Map: Rural
SURROUNDING PROPERTIES:	2002 Zoning Map North: Rural South: Rural East: Rural West: Rural
LOT AREA:	420.6681 acres
PROPOSED ACTIVITY:	STASIS research facility

Planning & Zoning Department Report

This waiver request is unique from other waiver requests. The applicant is not requesting a waiver from any standards or procedures. In fact, the applicant is planning to meet all standards and processes as required in the Zoning Ordinance and Subdivision Regulations. The request is to split the approval and bonding in order to complete the project by a deadline imposed by the state, which is described below. In the current Ordinance and Regulations, the applicant is required to have an approved site plan before any site grading can occur.

The applicant would like to begin the rough site grading before receiving final site plan approval. A number of Staff members have had prior professional experiences at places where communities allow for rough site grading before issuance of a final site plan or issuance of a building permit. In these communities, often rough grading was a separate permit process. It is understood that the applicant shall assume the risk that during site plan review a change could occur which would affect the grading that was previously completed. A bond would be required for any work related to the rough grading.

A driving reason behind splitting the approval and bonding of the site plan order is that the applicant is under a state imposed time limit and funding constraint. This factor is beyond the applicant's control and their intent is to move forward to meet that deadline.

A memo by Roger Goodwin, Jefferson County Chief Engineer, to the applicant's builder succinctly sums up the request. In the memo, Mr. Goodwin states that he can accommodate this request, so long as the Planning Commission approves of splitting the approval and bonding. That memo is attached for your review.

Since the applicant is not requesting a waiver from any requirements and will follow all requirements, as any other applicant would, outlining the four criteria for a waiver is moot. The criteria are listed below for your review.

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

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

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

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

Planning and Zoning Recommendation

Staff recommends approval of the waiver request. As stated above, the waiver is just to split the approval and bonding process. The applicant is to follow all standards and processes. As noted previously, the Chief Engineer's memo is attached and acts as its own recommendation.

ATTN: KRISTEN FYI

JEFFERSON COUNTY, WEST VIRGINIA

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

Phone: 304-728-3257

Fax: 304-728-3953

Email: engineering@jeffersoncountywv.org

September 14, 2010

Kubic Construction, Inc.
241 Edmond Road
Kearneysville, WV 25430

Attn: Mr. Pete Kubic, President

Re: STASIS Engineering Site Plan – Summit Point Raceway

Dear Mr Kubic:

This letter is a follow up to our meeting on September 13, 2010, to discuss how the STASIS Engineering project can “jump-start” its site development and building construction in order to be operational by a strict deadline.

In order to get the project moving while the site plan is being processed for approval by the Planning Commission, you requested the following:

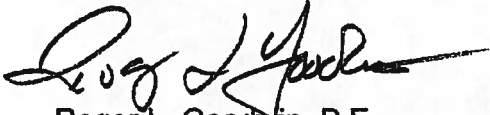
1. That a grading permit be issued to allow the owner to perform site grading for the building pads. You indicated that a sediment and erosion control plan will be submitted as part of the grading permit application and a construction bond will be posted for the site grading and sediment erosion control; and
2. That a building permit be issued for only the foundations of the proposed buildings (building construction will stop at the foundations until the site plan is approved).

You also indicated that the owner will assume all risk for jump-starting the project and understands that the final site plan design approved by the planning commission might necessitate some changes and additional construction costs.

Jefferson County does not have a grading permit process; under our regulations, a site plan needs to be totally approved before site work and building construction can begin. Issuing a building permit for a building foundation only is not uncommon; but, under the current process, we cannot issue a building permit without site plan approval first. The site plan approval is the issue in getting your project started. The Engineering Department is able to accommodate your request but you will first need to obtain Planning Commission approval.

Please let me know how you plan to proceed. If you have any questions, please feel free to contact me at 304-728-3257.

Sincerely,



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

C: Todd Cope, STASIS Engineering
P.O. Box 357
Summit Point, WV 25446

Jennifer Brockman, Planning & Zoning Director
Jonathan Saunders, P.E., County Engineer
Tom Bayuzik, Economic Development Director

Kubic Construction, Inc.
241 Edmond Road
Kearneysville, WV 25430
Office (304)728-4384 Fax (304)728-3924
kubicconstr@aol.com

October 14, 2010

Jennie Brockman, Director
Jefferson County Department of Planning and Zoning

RE: STaSIS—Summit Point Project

Mrs. Brockman,

Attached is a copy of letter from Roger Goodwin summarizing our discussion about the possibility of obtaining a grading and or foundation permit prior to formal site plan approvals. This grading/foundation plan will give us the opportunity to get ahead on earthwork while the weather is still reasonable (prior to freeze and thaw conditions.) I asked Mr. Goodwin if he would be able to accommodate our request and he recommended that we obtain planning commission approval first.

This letter is being submitted as a formal request to you for consideration. If you do not have any objections at this time with our request, please put this item on the next scheduled planning commission meeting agenda. Please inform me of when this meeting is taking place. Please note, site plan generation is currently underway and it is our hope to make a formal submission at the end of this month. If you have any questions, please feel free to call me.

Thank you,
Pete Kubic

**A Motion Recommending Approval of a
Waiver for The William H. Scott Inter Vivos Trust
October 26, 2010**

Whereas, the following facts relate to the processing of The William H. Scott Inter Vivos Trust application known as Stasis Site Plan:

Whereas, The William H. Scott Inter Vivos Trust has requested a waiver to split the approval and bonding process;

Whereas, The William H. Scott Inter Vivos Trust is not requesting a waiver to opt out of a standard or a process;

Whereas, The applicant is confined to a state imposed time limit and funding constraint;

Whereas, the following findings of Division 24.000 of the amended 2008 Subdivision Regulations are not applicable since the applicant is not opting out of any standards or procedures:

1. The request is not contrary to the public interest;
2. A literal enforcement of this Ordinance will result in unnecessary hardship;
3. The request is not the result of a self-imposed hardship; and
4. The spirit of this Ordinance will be observed and substantial justice done.

Now therefore be it moved, that the Jefferson County Planning Commission _____ the requested waiver for The William H. Scott Inter Vivos Trust.

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

John Maxey, Commission President

PCW10-04

COPY

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

WAIVER REQUEST FORM

RECEIVED

OCT 18 2010

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

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

Property Owner (s): THE WILLIAM H. SCOTT INTER VIVOS TRUST (AKA S.P.A.R.C)

Address: P.O. Box 190 Summit Point WV 25446

Phone Number: (304) 725-8444

Location of Property: Front Entrance AT THE Summit Point Race Track
Off of Summit Point Road

Lot Size: 420.70 Acres

Deed Book Reference: Deed Book #: 1071 Page #: 743

Tax Map Reference: District: Kabetown Map: 17 Parcel: 2

Zoning District: Rural

Section of Ordinance: 20.102 (B)

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

WE REQUEST THIS WAIVER TO ALTER THE EXISTING ORDER OF
Process for Plan Review. THIS WILL GIVE US THE CAPABILITY
TO SUBMIT A SEPARATE GRADING/FIN PLAN DURING THE
Normal Subdivision Review Process. PLEASE NOTE: WE
Intend) TO SUBMIT ALL (REQUIRED) PLANS AS PER THE Current Ordinance
THIS REQUEST WILL BE REVIEWED) BY THE ENGINEERING DEPT TO ENSURE
Bond) Compliance ETC.

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:

COPY

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

THE WAIVER WILL BENEFIT THE County IN THE form of Job creation
AS THE STASIS owners Plan on new HILLS WHEN THEIR NEW FACILITY IS Complete

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

YES IF GRANTED THIS WILL NOT ADVERSELY Affect THE PUBLIC HEALTH
SAFETY OR WELFARE OR RIGHTS OF ANY Property Owners

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

YES IF GRANTED WE ARE KEEPING WITH THE INTENT OF THE Ordinance

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

THE WAIVER IF GRANTED WILL HELP US JUMP START THE STASIS
Project, giving us the ability begin earthwork while the weather is
OPTIMAL AND HELPING COMPLETE THIS PROJECT FASTER, AS WV STATE FUNDING
DEADLINES EXIST 4/30/2011

Signature of Property Owner

Barbara L. Scott

Signature of Property Owner

For Official Use Only

Amount of Fees Paid: _____

Date of Meeting/Public Hearing: _____

Official/Administrative Body: _____

Property to be posted by: _____

Adjoiner letters to be mailed by: _____

Official Signature and Seal: _____

ATTN: KRISTEN FYI

JEFFERSON COUNTY, WEST VIRGINIA

Engineering Department

116 East Washington Street

P.O. Box 716

Charles Town, West Virginia 25414

Phone: 304-728-3257

Fax: 304-728-3953

Email: engineering@jeffersoncountywv.org

September 14, 2010

Kubic Construction, Inc.
241 Edmond Road
Kearneysville, WV 25430

Attn: Mr. Pete Kubic, President

Re: STASIS Engineering Site Plan – Summit Point Raceway

Dear Mr Kubic:

This letter is a follow up to our meeting on September 13, 2010, to discuss how the STASIS Engineering project can "jump-start" its site development and building construction in order to be operational by a strict deadline.

In order to get the project moving while the site plan is being processed for approval by the Planning Commission, you requested the following:

1. That a grading permit be issued to allow the owner to perform site grading for the building pads. You indicated that a sediment and erosion control plan will be submitted as part of the grading permit application and a construction bond will be posted for the site grading and sediment erosion control; and
2. That a building permit be issued for only the foundations of the proposed buildings (building construction will stop at the foundations until the site plan is approved).

You also indicated that the owner will assume all risk for jump-starting the project and understands that the final site plan design approved by the planning commission might necessitate some changes and additional construction costs.

Jefferson County does not have a grading permit process; under our regulations, a site plan needs to be totally approved before site work and building construction can begin. Issuing a building permit for a building foundation only is not uncommon; but, under the current process, we cannot issue a building permit without site plan approval first. The site plan approval is the issue in getting your project started. The Engineering Department is able to accommodate your request but you will first need to obtain Planning Commission approval.

Please let me know how you plan to proceed. If you have any questions, please feel free to contact me at 304-728-3257.

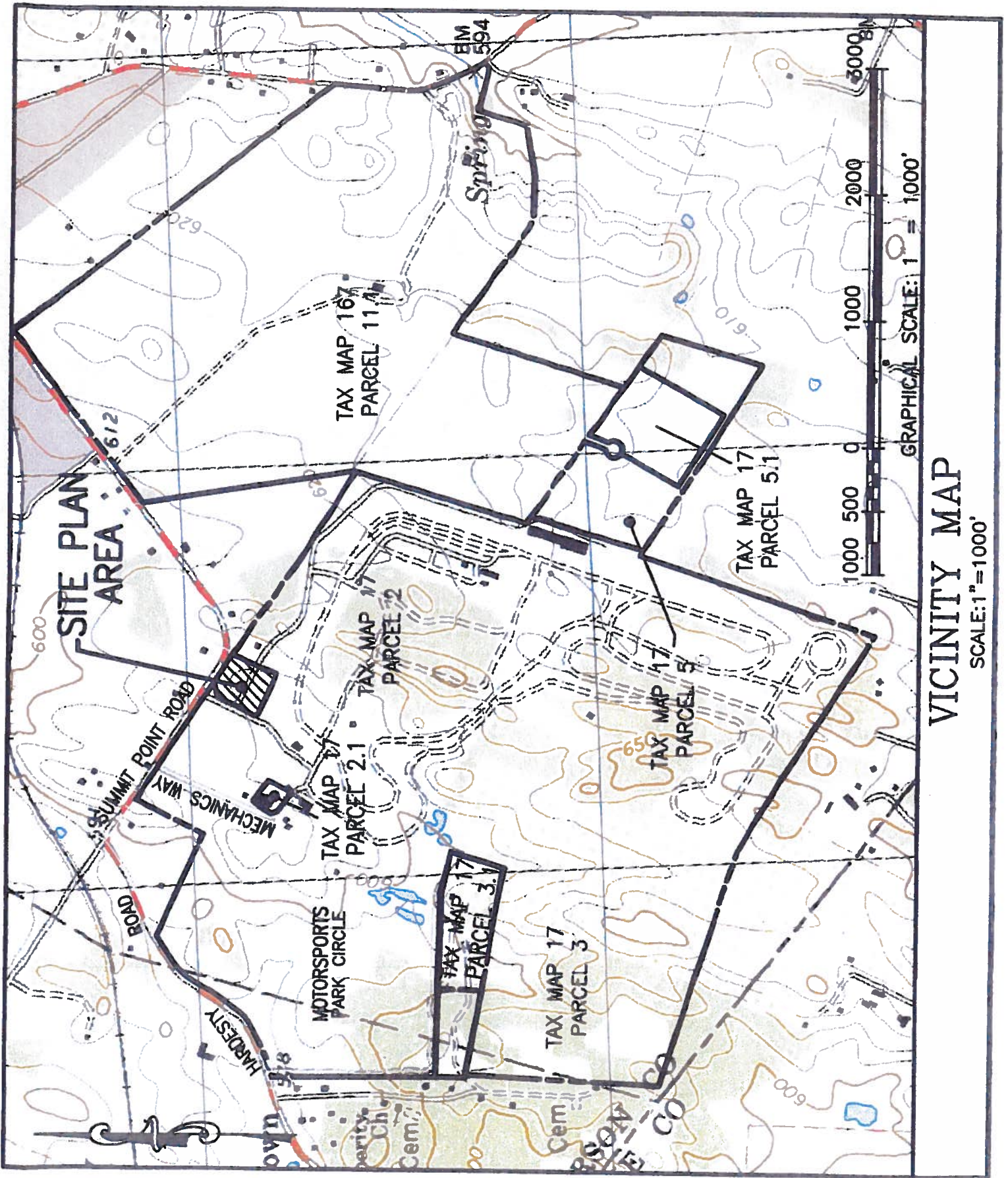
Sincerely,

A handwritten signature in black ink, appearing to read "Roger L. Goodwin", with a long horizontal flourish extending to the right.

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

C: Todd Cope, STASIS Engineering
P.O. Box 357
Summit Point, WV 25446

Jennifer Brockman, Planning & Zoning Director
Jonathan Saunders, P.E., County Engineer
Tom Bayuzik, Economic Development Director



VICINITY MAP
SCALE: 1" = 1000'

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

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

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

MEMO

TO: Planning Commission Members
FROM: Steve Barney, Zoning Administrator
DATE: October 22, 2010
RE: Final Draft of Wireless Telecommunications Ordinance (Amendments to Article 4B)

A subcommittee of the Planning Commission met on October 19 to review written and oral testimony received at the October 12, 2010 public hearing on the draft Wireless Telecommunications Ordinance. The Planning Commission also reviewed and acted on staff recommendations regarding technical amendments to the draft ordinance. The Planning Commission took action on 37 proposed changes to the ordinance.

The amended draft is included in the Planning Commission packet for this meeting, as well as the minutes for the October 19th meeting, which outline the actions taken on the recommended changes to the ordinance.

In addition to voting on the draft ordinance, staff recommends that the Planning Commission take action on the Zoning Ordinance amendments detailed in the attached document, "Related Zoning Ordinance Amendments for Review and Adoption Concurrent with Article 4B." These technical amendments would remove redundant definitions, delete subsections that are no longer relevant, amend code citations, and correct duplicative references.

The Planning Commission is scheduled to vote on recommending the draft ordinance and related amendments to the County Commission for adoption. The County Commission has received the revised draft of the ordinance, and is scheduled to vote at its October 28th meeting to set a public hearing for the draft amendments. A proposed motion is attached.

Please let me know if you have questions or need additional information.

Att: Proposed Motion Recommending Approval of Amendments to Articles 2.2, 4.3, 4.4, 4B, 4.7, 4.11, and 9.2
Related Zoning Ordinance Amendments for Review and Adoption Concurrent with Article 4B
Minutes - Wireless Telecommunications Subcommittee Meeting, 10-19-10
Draft Wireless Telecommunications Ordinance, Amendments to Zoning Ordinance Article 4B, 10-20-10
Draft Wireless Telecommunications Ordinance, Amendments to Zoning Ordinance Article 4B, 10-20-10 (redlined)

**A Motion Recommending Approval of
Amendments to Articles 2.2, 4.3, 4.4, 4B, 4.7, 4.11, and 9.2 of the Zoning Ordinance
October 26, 2010**

Whereas, The Jefferson County Planning Commission initiated amendments to the Zoning Ordinance related to Wireless Telecommunications; and

Whereas, The Planning Commission conducted meetings to review the draft Wireless Telecommunications Ordinance on August 6, August 10, August 24, September 14, September 28, October 19, and October 26, 2010; and

Whereas, The Planning Commission conducted a stakeholder meeting to receive input on the draft Ordinance on August 31, 2010; and

Whereas, The Planning Commission conducted a public hearing on the draft Ordinance on October 12, 2010; and

Whereas, The Planning Commission has approved amendments to the draft Ordinance as a result of stakeholder comments and staff recommendations;

Now therefore be it moved, that the Jefferson County Planning Commission recommends that the County Commission approve the following amendments to the Zoning Ordinance:

1. Rescind Article 4B; and
2. Adopt the Wireless Telecommunications Ordinance as Article 4B; and
3. Adopt related amendments to Sections 2.2, 4.3, 4.4, 4.7, 4.11, and 9.2.

Recommended _____ this ___ day of _____ 2010

By vote of the Jefferson County Planning Commission

By a vote of _ Yes _ No

John Maxey, Commission President

ARTICLE 4B. WIRELESS TELECOMMUNICATION FACILITIES

Section 4B.1 Purpose and Legislative Intent

The purpose of Article 4B, Wireless Telecommunication Facilities, is to balance the needs of residents of and visitors to Jefferson County for reliable access to wireless telecommunication 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 Article is intended 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 Article establishes parameters for the siting of Wireless Telecommunication Facilities. It is Jefferson County's intent to:

- A. Ensure access to reliable and robust wireless communications services throughout Jefferson County consistent with the aforementioned objectives;
- B. 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;
- C. Encourage the location of new Wireless Telecommunication towers in non-residential areas, with taller towers limited to the Industrial-Commercial zoning district;
- D. Minimize the number of new Wireless Telecommunication Towers that would otherwise need to be constructed by providing incentives for the use of existing structures;
- E. 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.

- F. 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;
- G. Ensure public health, safety, welfare, and convenience; and
- H. Conform to Federal and State laws that allow certain antennas to be exempt from local regulations.

2.2 Definitions

Accessory Equipment	Any equipment serving or being used in conjunction with a Wireless Telecommunications Facility. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.
Alternative Structure	For antenna-mounting purposes, a structure which is not primarily constructed for the purpose of holding antennas but on which one or more antennas may be mounted. The term Alternative Structure includes, but is not limited to, buildings, silos, water tanks, pole signs, lighting standards, steeples and electric distribution, electric transmission or other utility poles.
Antenna	Any structure or device used to collect or radiate electromagnetic waves for the provision of cellular, paging, Personal Communications Services (PCS) and microwave communications. Such structures and devices include, but are not limited to, directional antennas, such as panels, microwave dishes and satellite dishes, and omni-directional antennas, such as whip antennas.
Antenna Array	Two or more antennas that operate as components of a complete antenna suite for a single Wireless Telecommunication Facility.
Antenna, Concealed	An antenna that is designed and/or erected on or in a building or alternative structure in such a way that it blends in with the existing façade and/or is located in such a way that it is not readily visible or discernible to the average individual at the adjacent street level.
Appalachian Trail Overlay District	For purposes of the Wireless Telecommunication Facilities Ordinance, the area within one mile of the centerline of the Appalachian Trail.
Broadcast Tower	A structure situated on a lot that is intended for transmitting television or AM/FM radio signals.

Cell on Wheels “COW”	A portable self-contained cell site that can be moved to a location and set up to provide personal wireless services on a temporary or emergency basis. A COW is normally vehicle- mounted and contains a telescoping boom as the antenna support structure.
Co-location	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), 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.
Commercial Wireless Service Provider	Persons or entities who operate radio systems requiring an FCC license and who employ those facilities to provide point-to-point microwave links for wireline communication services (or connectivity between adjacent antenna sites), fixed wireless (including microwave), or mobile wireless communication services to third parties for compensation. Commercial Wireless Service Providers include, but are not limited to Cellular, Personal Communication Services (PCS), Specialized Mobile Radio (SMR), Enhanced Specialized Mobile Radio (ESMR), paging, Competitive Local Exchange Carriers (CLEC) utilizing point-to-point microwave, and other point-to-point microwave links for wireline communication services.
Department	The Jefferson County Planning and Zoning Department.
Discernible	Capable of being distinguished with the eye or mind from its surroundings as a telecommunications tower.
Electric Distribution Poles	Metal, wooden or concrete towers and poles used to suspend wires transporting electricity between substations at the terminus of transmission lines and individual customer premises.
Electric Transmission Towers	Metal, wooden or concrete towers and poles used to suspend wires transmitting electricity between generating plants and substations supplying electricity to distribution and feeder lines.
Equipment Enclosure	For purposes of regulating Wireless Telecommunication Facilities, equipment enclosure means a building, cabinet or shelter used to house transmitters, receivers and other electronic equipment and accessories.

FAA	Federal Aviation Administration.
FCC	Federal Communications Commission.
Functionally Equivalent Services	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).
Governmental User	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.
Harpers Ferry Overlay District	For purposes of regulating Wireless Telecommunication Facilities, 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.
Historic Resource	A site, structure, area, or district possessing historic importance as defined by the U.S. Department of Interior, West Virginia State Historic Preservation Office, Jefferson County Historic Landmarks Commission, or other governmental agency.
Lattice Tower	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.
Monopole	A support structure constructed of a self-supporting hollow metal tube securely anchored to a foundation.
Neighborhood	An area generally confined to a one-mile radius from the perimeter of a proposed development.

PCS	Personal Communication Services.
Primary Public Safety Provider	An FCC licensed governmental user that uses wireless telecommunication facilities to provide primary communications for law enforcement, fire, ambulance or related emergency services. Primary Public Service Provider does not include Commercial Wireless Service Providers, or Competitive Local Exchange Carriers (CLEC), who provide telecommunication services on a commercial basis to Primary Public Service Providers, or who deliver emergency calls or messages from its customers to a Public Safety Answering Point (PSAP).
Private Business User	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.
Support Structure	A structure designed to support Wireless Telecommunication Facilities including, but not limited to, monopoles, lattice towers, utility poles and other freestanding self-supporting structures.
Tower Base	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.
Tower Height	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.
Tower Site	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.
Utility Poles	Metal, wooden or concrete poles used to suspend wires or cables for electric, telephone or television cable services.
Visible	Capable of being seen by the unaided eye in the daylight.
Wireless Telecommunication Antenna	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.

Wireless Telecommunication Equipment Shelter	The structure in which the electronic receiving, transmitting and relay equipment for a wireless telecommunications facility is housed.
Wireless Telecommunication Facility	A facility consisting of the equipment and structures involved in transmitting or receiving telecommunications or radio signals to or from a mobile radio communications source and transmitting those signals to a central switching computer which connects the mobile unit with the land-based telephone lines.
Wireless Telecommunication Facility, Co-Located	See Co-location.
Wireless Telecommunication Facility, Concealed	A wireless telecommunication facility with all antennas camouflaged to match or complement the color and architectural treatment of the surface of an existing structure upon which they are mounted; or which have all facility components concealed behind a façade or parapet wall, or inside a radome on a monopole that does not exceed the diameter of the monopole, or interlaced within or atop an electric distribution tower.
Wireless Telecommunication Facility, Temporary	A vehicle-mounted or portable wireless telecommunication facility including portable towers, antennas, equipment enclosures, generators and associated electronics, cabling, wiring and hardware. Such a facility may include, but is not limited to, "cell on wheels" mobile equipment.
Wireless Telecommunication Tower	A structure intended to support equipment and antennas used to transmit and/or receive telecommunications signals including monopoles, guyed and lattice construction steel structures.
Wireless Telecommunication Tower, Speculative	A Wireless Telecommunications Tower developed without 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.

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

For purposes of administering this Article, Wireless Telecommunication Facilities (hereafter “Facilities” or “Facility”) 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 submittal of a Concept Plan and a public hearing to allow for an analysis of demonstration of need, neighborhood compatibility, impact on cultural and historic resources, and visual mitigation.

Within ten (10) days of receiving a Concept Plan application for a Facility the Department shall notify the applicant in writing (1) that the application is sufficient or (2) the particular information needed as required by the provisions of this Article and the Jefferson County Subdivision and Land Development Regulations, to constitute a sufficient application. Once the additional information is received and the application is found to be sufficient, 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:

- A. 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.
- B. Residential antennas for receiving television or AM or FM radio broadcast signals.
- C. 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 Facilities are permitted in all zoning districts. The Department may issue a Zoning Certificate for a Concealed Facility consistent with the following terms and conditions:

- A. Concealed Facilities are permitted on buildings and alternative structures (other than telecommunication towers).
- B. For purposes of this section antennas mounted on electric transmission towers shall qualify as Concealed 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.
- C. 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 Facility provided antennas associated with such facilities shall not extend more than twenty (20) feet above the top of the existing support structure.
- D. Utility poles may be extended up to twenty (20) feet in height to accommodate antennas for a Concealed Facility.
- E. 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.
- F. 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.
- G. Antennas associated with Concealed 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.
- H. Antennas associated with a Concealed Facility shall not be co-located on a tower or other support structure developed as an Exempt Facility pursuant to this Article for the use of an amateur radio operator.
- I. Equipment enclosures associated with Concealed 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.
- J. All cabling and wiring connecting antennas, equipment enclosures, and other components of Concealed Facilities shall be colored or concealed in a manner that renders them unobtrusive.

- K. 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.
- L. Equipment associated with a Concealed 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), 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 Facility consistent with the following terms and conditions:

- A. Antennas associated with a Co-located Facility shall not be co-located on a support structure developed as an Exempt Facility pursuant to this Article for the use of an amateur radio operator.
- B. Co-located Facilities shall meet the following design standards:
 1. Antennas associated with a Co-located 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:
 - a. Antennas within a cylindrical radome matching the diameter of a monopole;
 - b. Antennas mounted at the end of straight or curved davit arms or brackets extending from the sides of the tower.
 - c. Antennas mounted as an array arranged around a platform extending from the monopole.
 2. All equipment enclosures and other improvements accessory to a co-located 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.
 3. 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.
 4. 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.

5. Signage at any ground-based portion of a Co-located Facility site shall conform to FCC and FAA standards. No commercial signage is permitted.
6. Before an application for a Co-located 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 Facilities are permitted in all zoning districts. The Department may issue a Zoning Certificate for a Temporary Facility consistent with the following terms and conditions:

- A. Temporary Facilities, including but not limited to Cell on Wheels (COW), may be placed at or near the location of an existing, proposed or approved 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.
- B. In the event of a natural disaster, catastrophic event or public emergency that either renders an existing Facility unusable, or creates an urgent need for supplemental capacity to manage the emergency, temporary facilities may be placed in any area as necessary to provide coverage or capacity for longer periods upon the authority of the Director of the Office of Homeland Security and Emergency Management, with notification to the Director of the Planning and Zoning Department.
- C. 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.
- D. Fees for permits for Temporary Facilities shall be in accordance with the Department of Planning and Zoning schedule of fees and charges.

Section 4B.7 Wireless Telecommunication Towers

Wireless Telecommunication Towers (hereafter “Tower” or “Towers”) are permitted in all zoning districts subject to the provisions of this section. The provisions of this section apply to an application for a new Tower, as well as for a major modification to an existing 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

A minor site plan shall be required for all new Towers, as well as for Major Modifications to an existing Facility or Support Structure resulting in a substantial change to the Facility or Structure. In addition to the site plan review requirements of the Subdivision and Land Development Regulations, the site plan shall include all elements of a Concept Plan as established in Subsection B, and shall address conditions established by the Planning Commission in its review of the Concept Plan.

B. Concept Plan Submittal and Public Hearing Required

In addition to the requirements for a minor site plan, a proposed Tower shall require the submittal of a Concept Plan, subject to the following requirements:

1. Required elements for a Wireless Telecommunications Tower Concept Plan shall be the same as for a site plan as established in the Subdivision and Land Development Regulations, Appendix A, Sec. 1.3A, with the exception of Subsections 1.3A.20-22, 24-29, 31-35.
2. The following additional elements must be submitted:
 - a. Outside dimensions, use, and setbacks of all existing and proposed buildings, structures, towers, antennas, utility lines, driveways, and parking areas
 - b. Height of the proposed tower measured from ground level at the center of the proposed structure, and height comparison to any nearby buildings or trees, or other applicable structures and natural landforms part of the site’s background and foreground landscape
 - c. Elevations and Cross-Section: Display topography with all proposed facilities including tower, equipment shelter and existing buildings
 - d. Number, size and location of proposed and existing antennas; number of co-locations possible
 - e. Method of camouflage (if any)
 - f. Locations of known historic structures
 - g. A description of the anticipated construction and installation schedule
 - h. Documentation verifying compliance with applicable Federal Communications Commission (FCC) standards and requirements to provide the proposed services

- i. Narrative addressing the design criteria of this section
 - j. Dates, address list, and notice for Balloon Test
 - k. Balloon Test exhibits as required in subsection G of this section
 - l. Propagation maps as required in subsection F of this section
 - m. Any other relevant information
 - n. Additional application requirements of subsection H of this section.
3. Submittal and review of a Concept Plan shall follow the review process and timeline established in Sections Sec. 24.119 – 24.122 of the Subdivision and Land Development Regulations, with the following exceptions:
- a. The application shall be exempt from 24.120A, Agency Reviews, and 24.120D, WVDOH, except as otherwise provided in this subsection.
 - b. Following the Department’s determination of the sufficiency of a Concept Plan application,
 - i. the Department shall notify the Jefferson County Historic Landmarks Commission of an application filing.
 - ii. the Applicant shall provide a copy of the completed Concept Plan application to the Appalachian Trail Conservancy and the National Park Service, if required by the Cultural and Historic Resources Review standards of this section.
 - c. The Concept Plan shall be reviewed at a public hearing conducted at a scheduled Planning Commission meeting. The scope of this public hearing shall include a demonstration of need as required under this article, 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 Article. The Planning Commission shall review the proposed Tower for compliance with the standards in this article and, if applicable, provide conditions relevant to the scope of the public hearing and/or unique characteristics of the proposed development site, to be addressed in the Department’s approval of the site plan.
 - d. Before the Department may approve a site plan for a Tower, the Planning Commission must find, by a majority vote, that the Concept Plan application complies with 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 Concept Plan or site plan application for a Tower and to make recommendations on relevant issues including, but not limited to, verification of the applicant’s compliance with the provisions of this article, analysis of alternatives, 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 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-as required in subsection F, "Demonstration of Need, and that it has met all submittal and design criteria in this Article.

E. Proof of Eligibility

Speculative Towers are prohibited. Before an application for a 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 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 Concept Plan and 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 to the Planning Commission for a Wireless Telecommunication Tower on the property and provide the file 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 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 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 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 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

4. 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 Tower:
- a. The application must demonstrate that the proposed 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 an affidavit from the tower owner affirming that, subject to exceptions for structure height, topography, or other factors which make co-location unfeasible, the tower is available for co-location.
 - b. A site plan for a Tower shall not be approved if an electric transmission tower with capacity of 230 kV or less 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 Tower, unless the applicant can demonstrate that:
 - (1) Sufficient easements or other interests in real property cannot be obtained to accommodate the Facility on the electric transmission tower;
 - (2) The electric utility owning the electric transmission tower is unwilling to allow its use for wireless facilities;
 - (3) Reasonable terms, rates, or conditions cannot be negotiated with the electric utility;
 - (4) The location of the tower will not allow the applicant to meet coverage or capacity requirements; or
 - (5) Other unforeseen reasons make it infeasible to locate the planned telecommunications equipment upon existing or approved towers.
 - c. Where suitable electric transmission towers are not available for co-location of antennas, a site plan for a 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 Tower due to one or more of the following reasons:
 - (1) 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;
 - (2) 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;
 - (3) Reasonable terms, rates, or conditions cannot be negotiated with the owner of the structure and/or property;
 - (4) The location of the structure will not allow the applicant to meet coverage or capacity requirements; or
 - (5) Other unforeseen reasons make it infeasible to locate the planned telecommunications equipment upon existing or approved towers, buildings or alternative structures.
- d. Antennas associated with an application for a Facility may not be co-located on a tower or other support structure developed as an Exempt Facility pursuant to this Article for the use of an amateur radio operator.

I. Cultural and Historic Resources Review

1. In addition to the notification requirements of this Section, an application for a 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.

J. Design Criteria

Wireless Telecommunication Towers shall comply with the following design criteria:

1. Antenna Mounting Preferences

Antennas associated with a Tower 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:

- a. Antennas within a cylindrical radome matching the diameter of a monopole.
- b. Antennas mounted at the end of straight or curved davit arms or brackets extending from the sides of the tower.
- c. Antennas mounted as an array arranged around a platform extending from the monopole.

2. Height Restrictions

- a. 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 Tower.

3. Fall Zone

- a. With the exception of silos, 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.

4. Signage

Signage at any ground-based portion of a Facility site shall conform to FCC and FAA standards. No commercial signage is permitted.

5. Lighting & Marking

Towers shall not be lighted or marked unless required by the FCC or by the FAA.

6. 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.

7. Fencing

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.

8. Tower Color

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 and such scheme is consistent with FCC and FAA standards for antenna structure marking.

Section 4B.11 Maintenance & Removal Bonds

Prior to issuance of a Zoning Certificate, each applicant for a 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 Facility at their principal place of business and Governmental Users are exempt from this bond requirement.

Section 4B.12 Abandonment & Removal

- A. Any 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.
- B. If a structure is determined to be unsound, it will be considered abandoned.
- C. The owner or operator of any Facility or Support Structure shall remove the Facility pursuant to the requirements of the Jefferson County Property Safety Ordinance.

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

[2.2 Definitions]

Comment [SB1]: Four existing definitions to be deleted and replaced with new definitions.

Collocation

The use of a wireless telecommunications facility by more than one wireless telecommunications provider.

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 1, 1998]

Monopole

A support structure constructed of a single, self-supporting hollow metal tube securely anchored to a foundation.

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE FEBRUARY 11, 1998]

Wireless Telecommunications Facility

A facility consisting of the equipment and structures involved in receiving telecommunications or radio signals 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.

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE FEBRUARY 11, 1998]

Wireless Telecommunications Tower

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

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE FEBRUARY 11, 1998]

[4.3, Nonconforming Uses Section]

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

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

[4.4, Prohibited Uses Section]

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

Comment [SB3]: Sec. 1.6 not in effect

[\[4.7, Essential Utility Equipment\]](#)

Essential utility equipment, as defined in Section 2.2, shall be permitted in any district, as authorized and regulated by law and ordinances of Jefferson County, it being the intention hereof to exempt such essential utility equipment from the application of this ordinance. ~~Communication~~ Wireless telecommunication towers, however, shall conform to the ~~setback~~ requirements ~~and be surrounded by a fence~~ of Article 4B.

[\[4.11, Landscaping, Screening, and Buffer Yard Requirements\]](#)

~~Section 4.11 —~~

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

Comment [SB4]: Duplicative. All landscaping requirements should be addressed in Article 4B.

[\[9.2 Building Height Limitations\]](#)

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

Comment [SB5]: Correct reference for height exception.

JEFFERSON COUNTY, WEST VIRGINIA
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MEMO

TO: Planning Commission Members
FROM: Steve Barney, Zoning Administrator
DATE: October 22, 2010
RE: Draft Amendments to Subdivision Regulations references in the Zoning Ordinance

At the Tuesday, October 12th Planning Commission meeting, the Commission directed staff to identify proposed changes to the Zoning Ordinance to address references to the Subdivision Regulations. The Zoning Ordinance contains several references that became outdated as a result of the adoption of the 2008 (and 2010 amended) Subdivision and Land Development Regulations.

Recommended changes are attached to this memo. In most instances in which a change is needed, staff recommends that the Zoning Ordinance refer to the Subdivision and Land Development Regulations broadly, rather than referring to a specific section or article. General references will help to preclude any incorrect citations that could result from future numbering changes in the Subdivision and Land Development Regulations.

However, for some sections of the Subdivision and Land Development Regulations, staff recommends identifying the full section/article number in the Zoning Ordinance reference. These sections include Section 22.504 (hillside development) and Appendix B, Divisions 5 and 6 (parking requirements for multi-family and townhouse residential uses).

In some cases, staff recommends deletion of references to the Subdivision and Land Development Regulations where the regulation referenced is no longer accurate or applicable.

In addition, staff recommends replacing two references to Chapter 8-24 of the West Virginia Code with references to Chapter 8A.

Please let me know if you have questions or need additional information.

Att: Zoning Ordinance Amendments: References to Subdivision and Land Development Regulations and West Virginia Code

**Proposed Draft - Zoning Ordinance Amendments:
References to Subdivision and Land Development Regulations and West Virginia Code**

Section 4.4 Prohibited Uses

(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.

Section 4.10 Site Plan Requirements

(e) The Site Plan format and informational requirements that must be followed are referenced in the Jefferson County Subdivision ~~Ordinance~~ and Land Development Regulations, and ~~Articles 4, 5, 10 and 11 of~~ this Ordinance.

~~(f) Additional Site Plan format requirements shall be the same as those for the Preliminary Subdivision Plat referenced in Article 8 of the Jefferson County Subdivision Ordinance.~~

Comment [SB1]: This reference is no longer accurate. Format requirements are addressed in 4.10(e) above.

~~(g) The Planning Commission shall review and approve or disapprove a completed application within sixty (60) days of the acceptance of the Site Plan in the Department of Planning, Zoning, and Engineering. The Planning Commission has the authority by to variance to reduce/waive any site plan standards as justified under in accordance with Article 17 of the Subdivision Ordinance~~ the Subdivision and Land Development Regulations.

Comment [SB2]: No longer accurate.

Section 5.4 Residential-Growth District

(a) Principal Permitted Uses

- (1) Single family detached dwelling units
- (2) Duplexes
- (3) Townhouses
- (4) Multi-family dwelling units
- (5) Mobile Home Parks (Subject to ~~Section 10.1; Jefferson County Subdivision Ordinance~~ the Subdivision and Land Development Regulations)

(b) Minimum Lot Area, Height, and Yard Requirements

The following minimum lot area requirements for residential dwelling units is based on the availability of central or public water and sewer facilities and West Virginia Board of Health regulations. When computing the dwelling unit yield for a parcel of land use the total area of parcel minus (1) lands contained in a wetland and (2) hillside lands to be retained in a natural, undisturbed condition as provided for in ~~Article 14 of the Subdivision Ordinance~~ Section 22.504 “Protection of Resources” of the Subdivision and Land Development Regulations the Subdivision and Land Development Regulations.

Section 5.6 Industrial - Commercial District

(f) Site Plan Requirements

All uses must be in compliance with ~~Article 11 of the adopted Subdivision Ordinance~~[the Subdivision and Land Development Regulations](#) and ~~Articles 4, 5, 10 and 22 of this Ordinance.~~

Section 5.7 Rural District

(d) Maximum Number of Lots Allowed

2. Clustering

b. Requirements

4. All clusters of three (3) or more lots shall be served by an internal road ~~pursuant to Article 8 of the Subdivision Ordinance.~~

Comment [SB3]: While staff currently recommends that this standard be maintained, the requirement is no longer in the Subdivision and Land Development Regulations.

Section 7.2 Zoning District Principal Permitted Uses

(a) All uses listed as permitted principal permitted uses within a zoning district shall be developed subject to ~~adopted Subdivision~~[the Subdivision and Land Development Regulations](#) and ~~the Site Plan~~ regulations [of this ordinance.](#)

Section 7.8 Board of Zoning Appeals Approval of Conditional Use Permit

(a) The Board of [Zoning Appeals](#) will consist of five members to be appointed by the County Commission. Their terms of office, succession, removal, filing of vacancies, and their powers and duties shall be provided in Chapter ~~8A, Article 24~~ of the West Virginia Code, as amended.

Comment [SB4]: State code reference corrected.

(b) The Board of Zoning Appeals shall:

(6) Provided, however, nothing in this Section shall be construed as permitting the Board of [Zoning Appeals](#) to exercise any power or refrain from the performance of exercise any power or refrain from the performance of any duty not authorized or directed by the provisions of Chapter ~~8A, Article 24, Section 55~~ of the West Virginia Code ~~of 1931~~, as amended, which provision of the Code is hereby incorporated herein by reference.

Comment [SB5]: State code reference corrected.

Section 11.2 Internal Circulation, Entrance and Parking Requirements

(a) All site plans for non-residential development are subject to the provisions and regulations for internal circulation, entrance requirements, and parking space and lane requirements referenced in ~~Article 11 of the Jefferson County Subdivision Ordinance~~[the Subdivision and Land Development Regulations.](#)

Section 11.3 Residential Parking Standards

(a) Spaces shall be required per residential uses as follows:

Type of Residences	Parking Requirements
Single family detached	Driveway only
Single family attached (duplex)	Driveway only
Single family attached (townhouses)	See the Jefferson County Subdivision and Land Development Regulations, Appendix B, Division 5.0 See Section 8.3 (e) 7. of Subdivision Ordinance
Multi-family apartments	See the Jefferson County Subdivision and Land Development Regulations, Appendix B, Division 6.0 See Section 9.3 of Subdivision Ordinance

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MEMO

TO: Planning Commission Members
FROM: Jennifer M. Brockman, AICP, Director, Planning and Zoning
DATE: October 26, 2010
RE: Proposed MOUs with Municipalities

At their regularly scheduled meeting on October 14, 2010, the County Commission requested that the Planning Commission initiate Memorandums of Understanding (MOUs) with each of the municipalities in the County. The MOUs are intended to provide for a mechanism and establish a policy regarding the referral of proposed development applications within certain adjoining geographic areas to each other, in order for the neighboring body to review the development proposal and provide advisory comment. This builds upon a previous discussion Staff had with the Planning Commission, regarding Shepherdstown's interest in being notified of applications near the town limits or within their water and sewer service areas.

The purpose of this memo is to open discussion with the Planning Commission and to receive direction regarding certain details that should be included in the MOUs. Staff recommends that for municipalities that have adopted an Urban Growth Boundary (UGB), the MOU should require that the County Planning Commission send a referral to the appropriate municipality on all requests that fall within the municipality's UGB. If the proposal is an urban level density, annexation may need to be considered by the municipality. If the municipality has not adopted a UGB, either a horizontal distance or contiguity factor should trigger such a referral. The MOU should also discuss whether the referral is for municipal staff review and input only or if there is some point at which actual Municipal Planning Commission review is triggered.

The MOU should also address what developments the cities should refer to the County for review and comment. Development occurring within the municipal boundaries does not fall under County authority, but can have an impact on County roads and stormwater issues. For this reason, it may be advantageous for the County to review significant projects that may have an impact on the County systems. The MOUs would need to delineate what triggers the referral (horizontal distance, contiguity, or size of development -- # of lots or square footage) and if it is for staff or Planning Commission review. Please note, that these are not projects that we would charge a fee to review.

Staff recommends making contacting the municipalities regarding this idea in order to gauge their interest in developing these MOUs and gain their input into this concept.



THE COUNTY COMMISSION OF JEFFERSON COUNTY

P.O. Box 250
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Charles Town, WV 25414

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Fax: 304-725-7916



October 8, 2010

John Maxey
335 Old Shenandoah Trail
Harpers Ferry, WV 25425

RECEIVED

OCT 12 2010

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

COPY

Dear Mr. Maxey and members of the Jefferson County Planning Commission:

At last week's County Commission meeting, the Commission discussed the date for the public hearing on the petition by the Planning Commission to rezone certain federal lands in the US 340 Corridor. A tentative date in November has been selected.

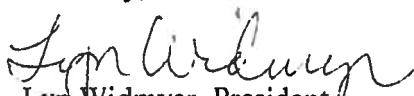
However, the Commission would like the Planning Commission to reconsider the timing of the petition and postpone its consideration until completion of the US 340 Corridor plan.

The US 340 Plan is in the Planning Commission's work program. The County Commission has approved the local match for a \$100,000 transportation analysis of the US 340 Corridor to be done in conjunction with the plan. Senator Herb Snyder has received a commitment from the WV DOH to re-examine bypass alternatives around Harpers Ferry. The cities of Ranson and Charles Town are evaluating "form based codes" for their municipalities and these codes may have merit in terms of the US 340 Plan.

We expect to receive other requests for rezoning if the rezoning petition goes forward. These requests will be made at the Public Hearing and require a response. The County Commission suggests any rezoning of properties in the US 340 Corridor should await completion of the plan for that corridor. This approach will allow all property owners to submit their requests at one time, rather than in a piecemeal fashion.

On behalf of the County Commission, I would like to extend our appreciation to the work you do and hope you will agree to defer the petition for rezoning of federal lands until completion of the US 340 Corridor Plan.

Sincerely,


Lyn Widmyer, President

October 26, 2010

Lyn Widmyer, President
Jefferson County Commission
124 East Washington Street
Charles Town, WV 25414

Dear Commissioner Widmyer and members of the Jefferson County Commission,

We appreciate the support that the County Commission has shown for the Planning Commission's efforts this year, and we look forward to continuing the progress we have made together to improve planning in Jefferson County.

The Planning Commission received your October 8th letter regarding our recent petition for rezoning at our meeting on Tuesday October 12th. We agree that the 340 Gateway/Commercial Corridor planning project is of crucial importance to Jefferson County. We are convinced that cleaning up the zoning map and properly zoning the Federal parcels is an important first step in this project.

The uncertainty surrounding the future of the Old Standard Brown Field Development project underlines the importance of making certain that parcels in this area are assigned the correct zoning category. County ordinances require that the zoning category of surrounding parcels be considered when evaluating requests for Conditional Use Permits or requests for rezoning of parcels. Some parcels now within the Harpers Ferry National Park and the U.S. Customs facility are currently zoned Industrial-Commercial, Residential-Growth, and Residential-Light Industrial-Commercial. Potential purchasers of property in this area may mistakenly believe that these assignments are intended, and may base investment decisions on this incorrect information.

In addition, required buffer zones vary depending on the zoning classification of adjoining properties. In order to require buffers that are appropriate for National Park or U.S. Customs property we need to have these parcels zoned rural.

The Planning Commission understands the County Commission's concerns, but we believe for the reasons mentioned in this letter that the public hearing on our rezoning petition should proceed as scheduled for Thursday November 18th.

Sincerely,

John Maxey, President
Jefferson County Planning Commission

JEFFERSON COUNTY, WEST VIRGINIA

Department of Planning & Zoning

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Date: October 26, 2010
To: Jefferson County Planning Commission
From: Jennifer M. Brockman, AICP, Director of Planning and Zoning
Subject: Meeting Schedule

SCHEDULE OF MEETINGS FOR WHICH VOLUNTEER LIAISONS ARE BEING REQUESTED

Department	Frequency	Day	Time	Location
PSD	once monthly	1 st Monday /month	7 PM	The PSD office in Kearneysville
WAC	once monthly	3 rd Monday/month	3 PM	Old Charles Town Library Meeting Room
JCDA	once monthly	3 rd Tuesday/month	3 PM	The JCDA Large Conference Room
Health Department	once monthly	1 st Friday/month	1 PM	The Health Department Office in Bardane
Historic Landmarks Commission	once monthly	3 rd Wednesday/month	7 PM	The Charles Town Visitors Center (108 N. George Street)

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Director's Report
October 26, 2010
Planning Commission meeting

- 1) Activity Report (attached)
- 2) Discussion of potential policy regarding motions and PC minutes

At the October 12, 2010 PC meeting, a question arose about how the minutes incorporate and reflect motions made related to development review agenda items. It was requested that this be discussed at the October 26, 2010 meeting. At this time, the practice of the staff is to reflect each motion made as close to "verbatim" as possible in the minutes of the meeting. Many motions have interruptions and modifications so it may not be possible to be word for word, but the effort is made. If the motion refers to or includes the staff recommended motion, then the minutes state "moved to approve the staff recommended motion" and the signed motion is attached to the minutes.

- 3) Upcoming CC agenda items (10/28/10 meeting):
 - a) Wireless Telecommunications Ordinance Amendment
 - b) Response Letter re: US 340
 - c) Work Plan Quarterly Report
- 4) Reminder of 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, County Commission Meeting Room
 - c) Join Meeting of Planning Commission and County Commission regarding
Blue Ridge Mountain Communities Watershed planning effort,
12/7/10, 7 pm, Blue Ridge Elementary School

5) Upcoming PC meetings:

a) 11/9/10

- Follow up on GIS analysis of platted, vacant, and built lots
- Update Zoning map and draft policy
- Report of Policy-neutral Zoning Ordinance Amendments
- Follow up on Fee Recommendations

b) 12/14/10

- Barbara Feldman (continued)

c) 12/21/10

- Previously rescheduled from 12/28/10
- Do we have a quorum? Do we want to cancel this meeting?

Christine Chalmers

To: PLANNING COMMISSION
Subject: FW: WEEKLY CALENDAR

MONDAY, OCTOBER 18, 2010

9:30 am JENNIE – “DROP-IN” APPOINTMENT WITH DAN McVICAR – PARKS & REC
RE: HITE ROAD PARK
11:30 am JENNIE – MEETING WITH TIM BOYDE
NOON JENNIE & JENNILEE / “ONE-ON-ONE” MEETING
3:00 pm – 5:00 pm JENNIE – “TIF” MEETING IN LIBRARY CONFERENCE ROOM

TUESDAY, OCTOBER 19, 2010

9:30 am – 10:30 am STAFF MEETING
11:00 am – 12:00 pm JENNIE & SETH – WEEKLY PLANNING MEETING
1:00 pm – 2:00 pm JENNIE & STEVE – WEEKLY ZONING MEETING
2:30 pm – 5:00 pm JENNIE – “EDA” BOARD MEETING
4:00 pm – 6:00 pm PLANNING COMMISSION – SPECIAL SUBCOMMITTEE MEETING /
RE: CELL TOWER AMENDMENTS

WEDNESDAY, OCTOBER 20, 2010

10:00 am STEVE, SETH & JONATHAN – SITE PLAN PPC / TWIN RIVERS GALLERY
2:00 pm – 3:00 pm STEVE – MEETING WITH PAUL RACO / RE: RIVER RIDERS CUP

THURSDAY, OCTOBER 21, 2010

9:00 am - COUNTY COMMISSION MEETING
1:30 pm – 3:30 pm JENNIE – ATTENDANCE AT COUNTY COMMISSION MEETING
2:00 pm – 3:30 pm SETH – CITY OF RANSON / SMARTCODE WORK WEBINAR
3:00 pm BZA MEETING - CANCELLED

FRIDAY, OCTOBER 22, 2010

9:30 am – 10:30 am JENNIE, STEVE & SETH – WEEKLY “IRF” UPDATE MEETING
11:00 am – 11:45 am JENNIE – MEETING WITH TODD / RE: RTE. 340 TECHNICAL COMMITTEE

Christine Chalmers

To: PLANNING COMMISSION
Subject: FW: WEEKLY CALENDAR

MONDAY, OCTOBER 25, 2010

NOON JENNIE & SETH / "ONE-ON-ONE" MEETING

TUESDAY, OCTOBER 26, 2010

9:30 am – 10:30 am STAFF MEETING
11:00 am SETH & JENNILEE ("OFFICE REP") - LIFESTYLE RETURN PROGRAM
MEETING IN LIBRARY CONFERENCE ROOM
11:00 am JENNIE – MEETING WITH TIM BOYDE & JILL KEIHN
1:00 pm – 2:00 pm JENNIE, STEVE & JENNILEE – WEEKLY ZONING MEETING
2:00 pm – 3:00 pm JENNIE & SETH – WEEKLY PLANNING MEETING

7:00 pm PLANNING COMMISSION MEETING

WEDNESDAY, OCTOBER 27, 2010

9:00 am – 12:30 pm JENNIE – REGION 9 STEERING COMMITTEE MEETING / LOCATION: TBD
10:00 am STEVE, SETH & JONATHAN – M/S PPC / RE: BARBARA WILLIAMSON & TREVOR HEWICK
11:00 am STEVE, SETH & JONATHAN – M/S PPC / RE: WINSTON THREADGILL (PETER LORENZEN)

5:00 pm JENNIE – COUNTY COMMISSION ROUNDTABLE MEETING

THURSDAY, OCTOBER 28, 2010

9:00 am - COUNTY COMMISSION MEETING
NOON JENNIE & JULIE – "ONE-ON-ONE" MEETING
3:00 pm JENNIE, STEVE & SETH – MEETING WITH PAUL RACO / RE: SECTION 5.7

FRIDAY, OCTOBER 29, 2010

9:30 am – 10:30 am JENNIE, STEVE & SETH – WEEKLY "IRF" UPDATE MEETING
11:00 am JENNIE, ROGER, BECKY, SETH, JONATHAN, STEPHEN GROH & STEPHANIE GROVE /
RESCINDING "ILP" MEETING
2:00 pm – 4:00 pm JULIE & SETH – "DOH" PRESENTATION AT ST. ANDREWS COMMUNITY CENTER



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FLANNERY**
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Facsimile: (304) 724-8009

J. Michael Cassell, Esq.
Principal
JCassell@CampbellFlannery.com

October 19, 2010

Hand Delivery

John Maxey, President
Jefferson County Planning Commission
Mason Building
Charles Town, WV

Re: Proposed US 340 Federal Lands Rezoning

Dear Mr. Maxey:

Old Standard, LLC and Eugene Capriotti retained me to represent them regarding the above-captioned proposal. Please place my name on the Agenda for the regular Jefferson County Planning Commission Meeting on October 26, 2010. My clients are adjoining landowners to various parcels owned by the Federal Government. We wish to lodge our objection to the proposed rezoning.

The proposal is to rezone all Federal Property as Rural or Agricultural, as I understand it. At a presentation before the County Commission you indicated to the Commission and the public that the purpose of the rezoning was to conform the zoning classification to the actual use of the property by the Federal Government. The proposal fails to accurately describe the use of the property under consideration.

The Customs and Border Protection Facility is a multi-use training complex. It includes shooting ranges, classrooms, residential facilities, food service, and parking. There may be other uses which are not apparent to public view for security reasons. This facility is clearly not Rural or Agricultural in nature.

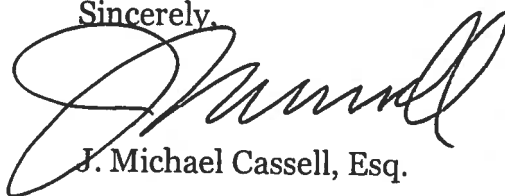
The basic purpose of the National Park Service Property is to generate tourism. The Harpers Ferry National Park is often used as an example of an "economic engine" which generates vast amounts of commercial tourism for Jefferson County. It is inconsistent to characterize the National Park as an agricultural concern.

There has been very little discussion of the effect of this large scale rezoning on adjacent landowners and other landowners in this part of the County. There should be a full disclosure of all predictable impacts on adjoining property. The Planning Commission Staff should prepare an Impact Study which would provide information to adjoining landowners on the expected effect that this proposal might have on their property.

There should also be a full disclosure of all information and communications between the Planning Commission, the Staff, and the participants in this Proposal from the Federal Government side. The public has no information from the Planning Commission or the Staff regarding the origination of this Zoning Proposal. A full disclosure of all information is necessary before there can be an informed discussion.

On its face, the Rezoning Proposal appears to be overly broad and heavy handed. There appears to be little or no thought given to a careful study of the impact that this massive rezoning may have on adjoining landowners. The Commission should be more forthright with the public and clearly delineate the objectives that this proposal is intended to accomplish.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Michael Cassell". The signature is fluid and cursive, with a large initial "J" and "M".

J. Michael Cassell, Esq.