

AGENDA  
JEFFERSON COUNTY PLANNING COMMISSION  
**DECEMBER 14, 2010**

**PUBLIC MEETING PROCEDURE:**

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

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

The President may limit the presentation time of speakers.

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

PC members may ask questions at any time.

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

Once all speakers have finished, the PC will discuss and then vote on a motion to approve, disapprove, or impose conditions on the application .

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

1. Approval of the minutes from the November 9, 2010 Planning Commission meeting.
2. Citizen Communications.
3. A call for postponements.
4. Tabled from the October 12, 2010 meeting: 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.
5. Request by Far Away Farm, LLC for a variance from Section 6.3 of the Subdivision Ordinance to extend the expiration of the Community Impact Statement until March 2, 2015. This 121.8 acre property is located at 1901 Trough Road, Shepherdstown and is designated as Tax District: 9, Map: 9, Parcels: 7.2 and 8.
6. Reconsideration of the following motion regarding the Federal Land Rezoning Petition:  
***Qouted from September 14, 2010 Planning Commission Meeting Minutes*** ~ Mr. Maxey also presented a draft Resolution to Petition the Jefferson County Commission to amend the zoning map. Mr. Maxey moved to approve the resolution as drafted. Mr. Trumble seconded the motion which carried unanimously.
  - Resolution to Petition the Jefferson County Commission to Amend the Zoning Map
7. Appointment of Subcommittee for Budget and Work Plan.
8. Reports from Legal Counsel and legal advice to PC.
  - Written opinion from legal regarding new zoning map policy.
  - Discussion of Annexation and UGB Law.

AGENDA  
JEFFERSON COUNTY PLANNING COMMISSION  
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- Policies.
  - Policy for Submitting a Petition for Public Hearing (Not included because not yet reviewed by legal)
  - Policy for Zoning Text Amendments
  - Policy on land use change requests with defined Planning Commission Study Area (WITHDRAWN – See included e-mail)
  - Policy on submittal of supporting information for actionable items.
- 9. Policy neutral technical amendments of the Zoning Ordinance.
  - Scheduling of Planning Commission Work Session in January 2011.
- 10. Discussion of Amended Land Development Review Fees. (to be distributed at meeting)
- 11. Director's Report.
- 12. County Commission Liaison Report.
- 13. Planning Commission Exchange.
  - Water Advisory Committee notes from November 15, 2010 meeting.
  - Public Service District meeting notes from December 6, 2010 meeting.
- 14. President's Report.
- 15. Actionable Correspondence.
- 16. Non-Actionable Correspondence.

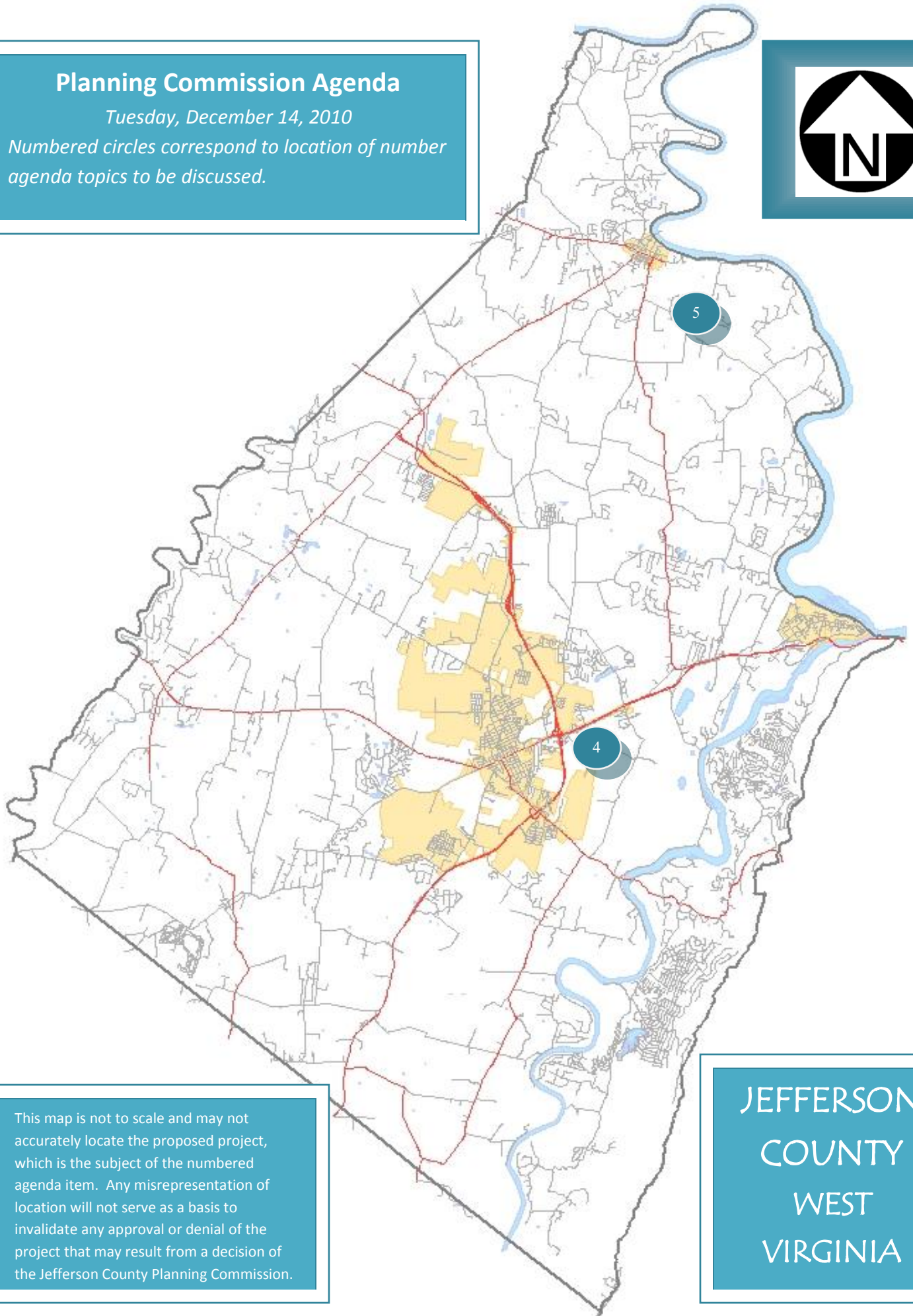
The Planning Commission welcomes written comments at any time. Our office is open Monday through Friday, 9:00 a.m. to 5:00 p.m., and is located at 116 East Washington Street, P.O. Box 338, Charles Town, WV 25414. Our phone number is (304) 728-3228; our fax number is (304) 728-8126; our email address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

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

# Planning Commission Agenda

Tuesday, December 14, 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  
NOVEMBER 9, 2010

The Jefferson County Planning Commission met on Tuesday, November 9, 2010, with the following Commission members present: John Maxey, President; Thomas Trumble, Vice President; Frances Morgan, Morgan Etters, Daniel Hayes, Arnold Dailey, Kelly Baty, and Gene Taylor. Staff members present included Jennifer Brockman, Director of Planning and Zoning; Seth Rivard, Planner; Steve Barney, Zoning Administrator; Jonathon Saunders, County Engineer; Stephen Groh, Assistant Prosecuting Attorney; and Julie Quodala, Planning and Zoning Office Manager.

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

1. **Approval of the minutes from the October 26, 2010 Planning Commission Meeting.**  
Mr. Trumble moved to approve the minutes of the October 26, 2010 Planning Commission Meeting. Mr. Hayes seconded the motion which carried 5 for and 1 abstention (Mr. Taylor).
2. **Citizens Communication:** None.
3. **A call for postponements:** Ms. Brockman asked for a postponement to the December 14, 2010 meeting for item #7, Report on Revised Fee Schedule. Item #7 was stricken from the agenda.

Ms. Morgan entered the room at 7:02 PM.

4. **Informational Item: US 340 rezoning of certain Federal Lands Petition Discussion.**  
Ms. Brockman explained that the County Commission had voted to cancel the public hearing for the rezoning of Federal Lands Petition finding the petition being inadequate according to the requirements sited in the Jefferson County Zoning Ordinance Section 12.3. A memorandum and a copy of the petition filed with the County Clerk on November 1, 2010 were provided in the agenda packets.

Ms. Lynn Widmyer, County Commissioner, thanked the Planning Commission for their services. She explained that, due to legal counsel, the County Commission voted to cancel the public hearing and that the petition could be resubmitted, however time frames would start over. She expressed concern regarding the timing of the petition and suggested that waiting to submit another petition until the US 340 Study had been started may be beneficial.

Mr. Smith entered the room at 7:17 PM. Mr. Baty entered the room at 7:22 PM.

Mr. Maxey asked Commissioner Widmyer of the proper timing of the scheduling of the Wireless Telecommunications Amendments Public Hearing. Ms. Widmyer confirmed that January would be best. Mr. Maxey also raised concern that adequate legal advice is not being provided to staff. Ms. Widmyer suggested, when the process of a situation is unclear,

to write a policy detailing steps being taken and have the Planning Commission's legal staff and the County Commission's legal staff sign that policy.

Mr. Maxey distributed two draft policies that he had written, Policy on Land Use Change Requests within a Defined Planning Commission Study Area and Policy on Submission of Recommendations for Amendments to the Zoning Ordinance, to be reviewed and voted on at the December 14, 2010 Planning Commission meeting. Ms. Widmyer suggested that these policies be reviewed by legal to ensure state law is being upheld before voting on.

Mr. Hayes moved to reconsider the vote of submitting a petition for the Federal Lands Rezoning to the County Commission. There was no second. The motion did not carry.

**5. Tabled from the October 26, 2010 Planning Commission Meeting: Request by Roderick Planes, LLC for a variance from the 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.**

Mr. Rivard read from his staff report and recommended approval for a time extension until July 1, 2012. Mr. Saunders read from his staff report and raised concern of flooding and floodplain issues and sewer design issues. Mr. Saunders deferred to the applicant on how these issues would impact a time extension. He stated that, although he was not opposed to the time extension, he did not believe the documentation submitted supported a time extension.

Mr. Fred Gates, with Gates Associated, Inc., discussed the concerns of the Engineering Department with flooding and floodplain and sewer design issues. He gave a history and timeline of delays and issues that the project had encountered to date and his projection of how any outstanding issues will be handled.

Mr. Maxey opened the public hearing. There was no public comment. Mr. Maxey closed the public hearing. Mr. Dailey asked to hear from Sue Lawton of the Jefferson County Public Service District. Mr. Taylor moved to reopen the public hearing. Mr. Dailey seconded the motion which carried 7 for and 2 opposed (Mr. Trumble and Mr. Baty).

Ms. Lawton addressed the Planning Commission and explained the changes that the sewer lines required stating that the Public Service District had not finalized those changes. She voiced support of the project.

Mr. Gates stated that the project is not dependent upon the future sewer line plan proposed by the Public Service District. He explained that there is a working pump station on site that will be upgraded however it would still flow into the Charles Town Sewer Plant.

Mr. Patrick Henry, attorney for the developer, stated that the developer has complied with all measures in an attempt prevent legal action. He reiterated the issues in getting the Conditional Use Permit and the tight timeframes of getting approvals.

Mr. Morris Gladhill, owner and developer of Aspen Greens, explained that the downfall of the economy was not a reason for the delays of the project and that no attempt to abuse the process had been made. He clarified reasons that the extension was being requested.

Mr. Will Hoss, Antrack Engineering, stated the importance of ensuring that flooding and sewer issues are addressed before approval.

Mr. Maxey closed the public hearing.

Mr. Trumble moved to go into executive session. Mr. Baty seconded the motion which carried unanimously. Executive Session began at 8:52 PM.

Mr. Dailey moved to come out of executive session and resume regular session. Mr. Hayes seconded the motion which carried unanimously. Regular session resumed at 9:09 PM.

Mr. Dailey moved to grant the variance for Roderick Planes, LLC for an extension to July 1, 2012 with staff contingencies. Mr. Taylor seconded the motion which carried 8 for and 1 opposed (Mr. Baty).

**6. Update and status report on policy neutral technical amendments for the Zoning Ordinance.**

Mr. Barney provided the Planning Commission with an update on policy neutral technical amendments for the Zoning Ordinance. He stated that the first phase would be just a cleanup of the ordinance by fixing typographical changes and small discrepancies within the text. Mr. Barney gave an overview of proposed changes and stated that a complete draft of the first phase of amendments was projected to be prepared by the December 14, 2010 Planning Commission meeting. Mr. Maxey asked that the scheduling of a work session be added to the December 14<sup>th</sup> agenda.

**7. Report on Revised Fee Proposals.**

This item was stricken from the agenda.

**8. Appointment of a sub-committee for the Annual Report.**

Ms. Brockman gave an update on her discussions with the GIS/Addressing Department. Mr. Maxey explained that a sub-committee would be needed to draft the Annual Report and volunteered for that sub-committee. Ms. Brockman stated that she would send out last year's Annual Report to all Planning Commission members as a reference to details needed in the report. Mr. Trumble and Mr. Hayes also volunteered for the Annual Report sub-committee.

Mr. Maxey asked that sub-committees for the Budget Report and for the Work Plan be appointed at the December 14, 2010 Planning Commission meeting.

**9. Discussion of updated Zoning Map and draft Zoning Map Policy.**

Ms. Brockman detailed the work accomplished by the joint effort of the GIS/Addressing Department and the Planning and Zoning Department. A draft of the updated Zoning Map was provided in the agenda packets. Ms. Brockman explained that the only Urban Growth Boundaries that have been adopted were for Charles Town and Ranson and therefore those were the only Urban Growth Boundaries shown on the draft map. She stated that she would like to present a policy regarding updates to the Zoning Map when Zoning Ordinance Amendments deem necessary. Mr. Maxey asked that Legal review the map policy and provide a written opinion at the December 14, 2010 Planning Commission meeting.

Ms. Brockman reported that the Harper's Ferry Town Council adopted an Urban Growth Boundary and approved an annexation within that boundary. She stated that she needs legal advice on if that action falls within regulations. Mr. Maxey also asked that Legal research whether County Commission needs to approve each of the Urban Growth Boundaries and report back at the next Planning Commission meeting.

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

Mr. Groh asked that the Planning Commissioners each fill out the Volunteer Registration form provided in the agenda packet.

Ms. Brockman reported that a letter had been submitted from Nathan Cochran, Attorney, requesting a time extension for Far Away Farms to July 29, 2015. She stated that the Planning Department request for Mr. Cochran to submit a formal application to which he responded with refusal to do so and requested to be heard at the December 14, 2010 Planning Commission meeting. Ms. Brockman explained that staff policy is to place it on the agenda as actionable correspondence without a formal application unless directed differently by the Planning Commission. Mr. Groh explained that, through conversations with the attorney's office, he believes the representatives for Far Away Farms feel that a tolling of time should be granted to them without a formal application.

**11. Director's Report.**

- Activity Report. The Activity Report was provided in the agenda packets.
- Update on availability of topographic data from the County GIS office. Ms. Brockman stated that the GIS Department could provide a map of 2 foot contours, however, the data could only be retrieved from 2005 and if the land had been changed since then, the data would not be accurate. Ms. Brockman stated that this information could be provided for Barbara Feldman's waiver that will be heard on the December 14, 2010 Planning Commission meeting.
- Ms. Brockman provided an overview of the November 3, 2010 EPA Chesapeake Bay meeting re: WV Water Implementation Plan (WIP). Ms. Brockman stated that she would provide the Planning Commission with a copy of the presentation given to County Commission by Craig Yonn regarding the Chesapeake Bay and Nutrient Trading at the next Planning Commission meeting.

- Staff Policy regarding Clarification of Definition of a Minor Site Plan. Ms. Brockman clarified that if a site plan did not require a building permit and is under 5,000 square feet, then it would be considered a Minor Site Plan.
- Draft Planning Commission Policy on submittal of supporting information for actionable items. Ms. Brockman presented a policy stating that all supporting information for any agenda item must be provided no less than two weeks before the scheduled meeting. Mr. Maxey asked that legal review this policy.
- Ms. Brockman gave an overview on the October 28, 2010 County Commission items:
  - Wireless Telecommunications Ordinance Amendment. Ms. Brockman reported that this discussion had not been scheduled.
  - Response Letter re: US 340
  - Work Plan Quarterly Report
- Ms. Brockman reviewed upcoming County Commission Agenda Items:
  - Wireless Telecommunications Ordinance Amendment
  - Zoning Map Update and Zoning Map Policy
  - Proposal to Count Commission to set regular evening meeting dates to accommodate upcoming public hearing requirements for text amendments.
- Ms. Brockman reminded the Planning Commission of Up Coming Meetings:
  - National Trust for Historic Preservation on November 12, 2010 at 7 PM.
  - Shepherdstown Planning Commission meeting on November 15, 2010 at 7:30 PM.
  - Joint Meeting of the Planning Commission and County Commission regarding the Blue Ridge Mountain Communities Watershed planning effort on December 7, 2010 at 7 PM.
- Ms. Brockman discussed upcoming Planning Commission Meetings:
  - December 14, 2010:
    - The Barbara Feldman waiver of various Subdivision standards would be continued.
    - There would be a report back on the Scott noise agreement and noise regulations.
  - December 21, 2010:
    - This meeting was previously rescheduled from the regularly scheduled December 28, 2010 meeting.
    - Ms. Brockman reported that there were no agenda items for this meeting scheduled. She asked if the meeting would have a quorum or if it should be cancelled. Mr. Maxey stated that a decision on whether to cancel this meeting or not would be discussed at the next Planning Commission meeting.

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

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

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

MINUTES  
JEFFERSON COUNTY PLANNING COMMISSION  
NOVEMBER 9, 2010  
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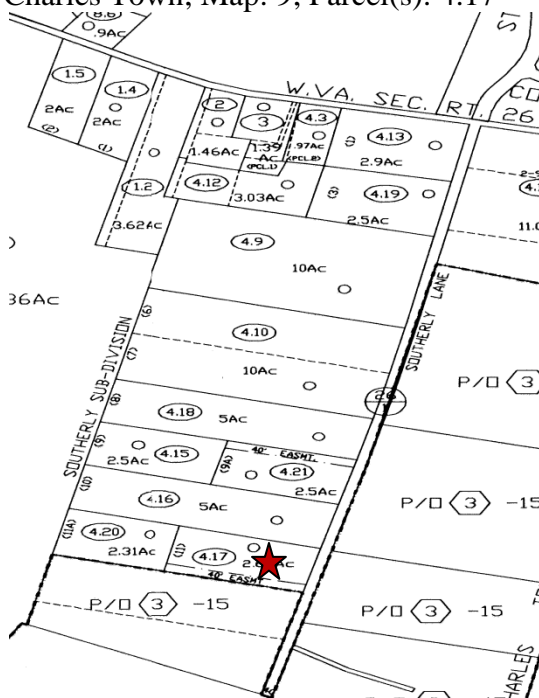
15. **Actionable Correspondence.** None.

16. **Non-Actionable Correspondence.** This item was previously discussed.

Mr. Hayes moved to adjourn at 11:00 PM. Mr. Trumble seconded the motion, which carried unanimously. A detailed transcript of the meeting, which was recorded by Julie Quodala, Office Manager, may be found on our website. These minutes were prepared by Amy Puetz, Planning Clerk.

**Barbara Feldman & Barry Whitebook Waiver Request**

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

|                         |  |
|-------------------------|--|
| APPLICANT:              | Barbara Feldman and Barry Whitebook  |
| OWNER:                  | Barbara Feldman and Barry Whitebook  |
| DEVELOPER:              | Barbara Feldman and Barry Whitebook  |
| SURVEYOR/ENGINEER:      | N/A  |
| PROPERTY LOCATION:      | This property is located south of Keyes Ferry Road in Southerly Lane Subdivision on Southerly Lane.                                    |
| LEGAL DESCRIPTION:      | District: Charles Town; Map: 9; Parcel(s): 4.17<br> |
| ZONING DISTRICT:        | 2002 Zoning Map: Rural   |
| SURROUNDING PROPERTIES: | 2002 Zoning Map<br>North: Rural<br>South: City of Charles Town<br>East: City of Charles Town<br>West: Rural                            |
| LOT AREA:               | 2.6937 acres   |
| PROPOSED DENSITY:       | N/A  |

**Barbara Feldman & Barry Whitebook Waiver Request**

|                            |   |
|----------------------------|---|
| <b>PERMIT APPROVALS:</b>   |   |
| Health Department Permit   | N/A   |
| Department of Highways     | N/A   |
| <b>APPROVALS:</b>          |   |
| Community Impact Statement | Submitted: 07/12/74<br>Staff Review Mtg.: 07/26/74<br>PC Approval: 08/1/74<br>Expires on: 07/26/76  |
| Preliminary Plat           | Submitted: 10/31/74<br>Staff Review Mtg.: 11/15/74<br>Staff Approval: 11/15/74  |
| Final Plat                 | Submitted: 01/13/75<br>PC Approval: 01/14/75  |
| Variance History           | 10/15/09 – The BZA denied a variance to waive the requirement for a site plan.<br>10/15/09 – The BZA granted a variance to increase the size of an existing one-story accessory structure from the allowable 1,000 sq. ft. to the built size of 1,232 sq. ft. for use in a cottage industry.<br>11/18/10 – The BZA granted a variance from Article 4, Sections 4.A3(k); to allow a proposed cottage industry within an existing residential subdivision.<br>11/18/10 – The BZA granted a variance from Article 4, Sections 4.A3(j); to allow the existing structure for a proposed cottage industry to be closer than 25’ to the property line. |
| <b>OTHER APPROVALS:</b>    | This parcel (4.17) was originally Lot 5 containing 5 acres. A parent to child lot was approved by the office on 05/22/90 which included the creation of a 40’ right-of-way.   |

**Planning & Zoning Department Report**

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

Prior to the requests before the Planning Commission, the applicant had applied to the Board of Zoning Appeals for two variances. The first variance was a total relief of all site plan requirements. That request was denied by the Board. The second variance was a request to allow an existing accessory

structure of 1,232 sq. ft. to be used for the Cottage Industry operations. The Cottage Industry states that, "Two subordinate structures shall be permitted not exceeding two stories and shall not have a footprint greater than 1,000 sq. ft." This variance was approved. More recently, the applicant applied for two additional waivers to the Board of Zoning Appeals. The first was to allow a cottage industry to operate within an existing residential subdivision. The second waiver allowed for the existing structure, used for the cottage industry, to be closer than 25 feet to the property line.

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

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

Currently, there is an access drive along the applicant's property line which is used to access one lot in the rear. Being a minor subdivision under the old standards, the only standard for access is a 40 foot access easement. The current paved access width is approximately 10 feet within the required 40 foot easement. Currently, the only standard for paved or gravel access widths is for 6 lots or more under residential use. This site has been determined to meet the Rural Site Plan standards of the Subdivision Regulations, which allows the applicant to use gravel for access aisles and parking.

Currently, there is no standard for either gravel or paved access to minor residential subdivisions. Consequently, the access drive request was evaluated from two different perspectives. First, for non-commercial subdivisions with 6-12 lots, a requirement of a 20 foot wide gravel access is required. This would allow sufficient two way access, considering the number of limited lots. Second, for non-residential site development, access to public roads shall be 22 feet to 24 feet because the Cottage Industry use is an accessory structure to the principal residence. As such, the requirement should be based on the non-commercial 6-12 lots with a 20 foot wide gravel access. The use is similar because the number of trips in the Cottage Industry are similar to that of a 6-12 lot subdivision.

Alternatively, while the minimum standard width for a gravel access would be 20 feet if held in comparison to a 6-12 lot subdivision, there is reason to maintain the access at the current width of 10 feet. As stated above, the site is under the Rural Site Plan standards. Doubling the width of the access for one lot, for a maximum of 12 trips per day, would impact the rural nature of the area. Many of the houses in this area are on 5 acre lots and reflect the rural character. Adding gravel along the paved access would impact this rural feel. Trees and additional landscaping could be negatively affected if the width of the drive was doubled.

**The following discusses how the application meets the waiver criteria:**

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

Not increasing the width of the access aisle will not result in any maintenance cost for the County, since the access easement is not maintained by the County or the state. As part of a minor subdivision, there

are no parkland or parks plan implications. The waiver would neither increase nor decrease the amount of impervious area. Additional gravel would create a certain amount of impermeability that could be avoided with the waiver.

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

Due to the limited use and nature of the access, the public health, safety or welfare or the rights of the adjacent property owner or residents would not be impacted. The neighbor to the north has submitted a letter stating that they understand the use of the site and traffic implications and are accepting of the situation. The neighbor to the rear has expressed serious concern about the use of the access drive for business operations. While additional traffic will be present at this location, the number of vehicle trips is similar to one single family home. As a condition of the the Board of Zoning Appeals variance, "Ms. Huddle also stated that the motion to approve was made with the understanding that the applicant's business will not impede traffic flow along the shared access easement."

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

The intent of the Regulations is to have reasonable access to a site or lot. While the width of the paved access does not meet the minimum width of 20 feet, the 10 foot drive aisle does meet the intent in this case. The applicant has stated that she will stagger her class times by at least 20 minutes to allow for traffic to leave and traffic for the next class to arrive. The intent is to reduce, as much as possible, any two way traffic. This essentially would result in traffic either coming or going but minimal traffic coming and going at the same time.

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

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

### **Engineering Department Report**

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

To be able to approve these waivers, the applicant needs to prove all of the following:

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

From the information provided, the Engineering Department feels that the applicant has only met 1 out of the 4 criteria above. Considering the natural landscape provided by the applicant, number 1 may

satisfy the greater open space. As for the other 3 requirements, they are not satisfactory because of the following:

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

At the October 12, 2010 Planning Commission meeting, the Planning Commission asked if contour/topographical data can be obtained from the GIS Department for this particular project. The GIS Department can provide a contour map from 2005 data. However, there are a few concerns in providing this map to the public.

First, the Engineering Department feels that this data can be provided for initial concept/layout planning where no actual engineering design is needed. We also feel that the information could be applied to limited site plans on a trial basis. To determine the reliability of the data, we recommend a trial period for one year or more to be able to compare the data to real properties in the field. As for full site plans and major subdivisions, current data should be provided.

Secondly, a major concern is taking the contour map and locating where the property line lies within it. In other words, find a landmark in the field that matches with a landmark on the map (i.e. property corner etc.). The GIS Department shows the county tax map as a reference, but this cannot be relied upon to designate the official place of the property line. Only a professional surveyor could verify the location of the property within the contour map.

In conclusion, providing contour data for public use is good being that it reduces cost to small businesses, but the County cannot be held liable for the accurateness of combining the contour map with field data.

### **Engineering's Recommendation**

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

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

### **Planning and Zoning Recommendation**

Planning and Zoning Staff recommends granting the waiver from the required access width. This decision was based on the limited number of users and that the current access is sufficient to meet the

Staff Report  
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Item # 4

intended use. Doubling the width of the access would only provide minimal convenience, not greater function to the users and would result in additional impervious area.

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

**Amy Puetz**

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**From:** Seth Rivard [srivard@jeffersoncountywv.org]  
**Sent:** Tuesday, November 09, 2010 11:14 AM  
**To:** apuetz@jeffersoncountywv.org  
**Subject:** FW: re:barbara feldman

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**From:** Steve Barney [mailto:sbarney@jeffersoncountywv.org]  
**Sent:** Friday, October 29, 2010 9:45 AM  
**To:** 'Seth Rivard'  
**Subject:** FW: re:barbara feldman

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**From:** Planning Department [mailto:planningdepartment@jeffersoncountywv.org]  
**Sent:** Friday, October 29, 2010 9:51 AM  
**To:** sbarney@jeffersoncountywv.org; jhartman@jeffersoncountywv.org  
**Cc:** jbrockman@jeffersoncountywv.org  
**Subject:** Fw: re:barbara feldman

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

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

**From: "Mills, Tena" <[tmills@jeffmem.com](mailto:tmills@jeffmem.com)>**  
**Sent 10/28/2010 3:38:42 PM**

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

**Subject: re:barbara feldman**

I faxed a letter regarding the meeting being held regarding Barbara Feldman's request to waive stormwater management and access road requirements. Again, I state as her neighbor, I do not necessarily have a problem with her having her business at her residence. I do, however, **do not** want my drive, which is the right of way through her property, used for access to her business. I understand there is another meeting scheduled regarding this matter and would like my opinion heard. I am unable to attend the meeting but wanted to email you my thoughts.

I initially complained about the use of the right of way because of the numerous vehicles using my drive to and from the business and impeding my entry into my home. I do not wish for this to be a problem again. Please feel free to call or email me if you have any further questions.

Thanks,

Tena Mills

**Tena Mills RN**

**[tmills@jeffmem.com](mailto:tmills@jeffmem.com)**

**Assistant Director of Surgical Services**

**Jefferson Memorial Hospital**

**300 S Preston St**

**Ranson WV 25438**

**304-728-1634**

**304-728-3037 Fax**

**"The ones who are hardest to love are usually the ones who need it the most."**

**A Motion regarding  
Waivers for Barbara Feldman & Barry Whitebook  
December 14, 2010**

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

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

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

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

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

RECEIVED

SEP 16 2010

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

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

**WAIVER REQUEST FORM**

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

Property Owner (s): Barbara Feldman and Barry Whitebook

Address: 448 Southerly Lane  
Charles Town, West Virginia 25414

Phone Number: (304) 725-3756

Location of Property: Same as above

Lot Size: 2.6937

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

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

Zoning District: Rural

Section of Ordinance: Section 24.300

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

See Attached -

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

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

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

---

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

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

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

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*Barbara Feldman*

Signature of Property Owner

Signature of Property Owner

**For Official Use Only**

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

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

Official/Administrative Body: Planning Commission

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

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

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

## Jefferson County Planning Commission Waiver Request Form

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

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

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

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

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

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

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

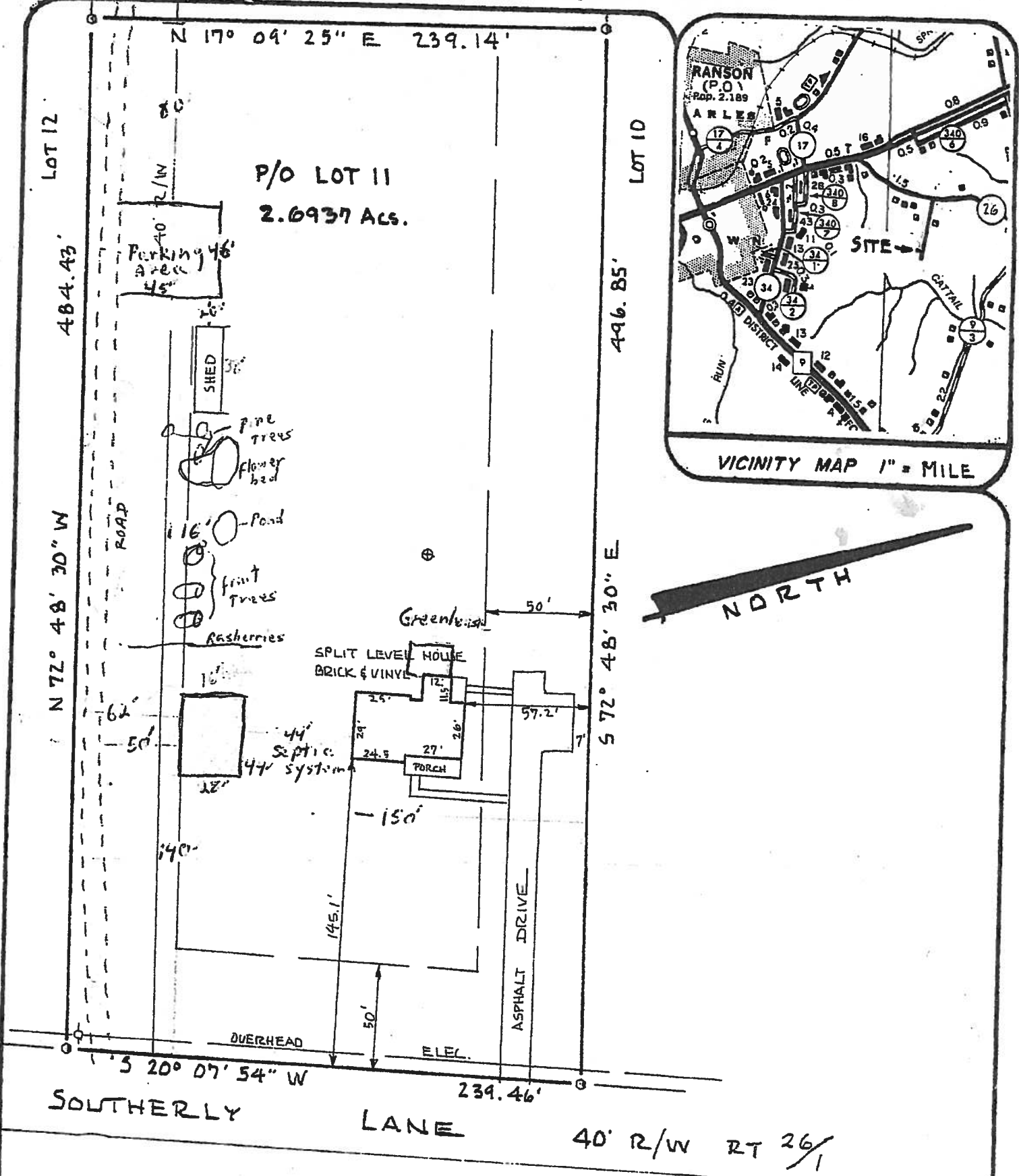
The karate classes I teach share the following benefits with tai chi and qigong: improvements in flexibility, coordination, agility, strength and power, awareness, reaction time, quality of sleep. The karate classes also teach self-discipline, focus, self-confidence, and peaceful ways of dealing with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

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

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

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

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



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

COV. & RES.- 418P492  
489-40

*Barbara Feldman*

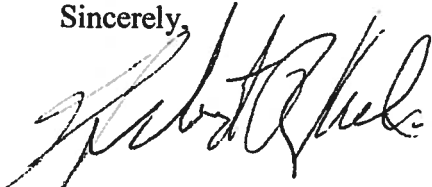
TO BE CONVEYED TO:  
RARRY A. WILHELMSON & BARBARA A. FELDMAN

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

To whom it may concern,

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

Sincerely,

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

Hubert and Elizabeth Keel

September 1, 2009

450 Paulas Circle  
Kearneysville, WV 25430

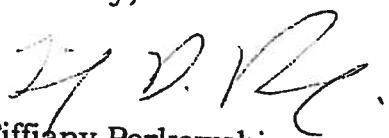
To Whom It May Concern:

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

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

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

Sincerely,



Tiffany Perkowski

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

Dear Sir or Madam:

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

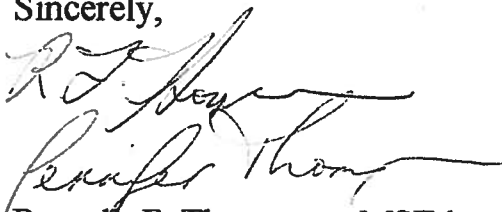
Three years ago our oldest son, Ethan, was diagnosed with PDD, Pervasive Developmental Delay, characterized by speech and fine motor delays. Karate was among the recommended treatments for him because it provides opportunities to interact with peers without the pressure of performing for a team. The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

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

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

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

Sincerely,



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

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

August 31, 2009

Dear Sir/Madam:

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

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

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

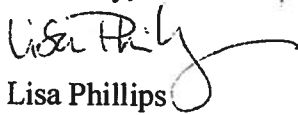
The convenience of the Blue Heron dojo for residents who work during the day and for school age children and others who require transportation is, we feel, an important consideration for the Office of Zoning Compliance.

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

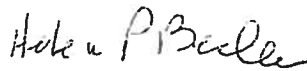
If Ms. Feldman were required to close the dojo, she might be able to continue teaching by renting other spaces. However, this would drive up the cost of practice sessions, perhaps beyond what many students could afford. In addition, and we feel that this merits consideration, the special ambiance of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

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

Sincerely,



Lisa Phillips  
PO Box 468  
Harpers Ferry, WV 25425



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

August 29, 2009

To Whom It May Concern:

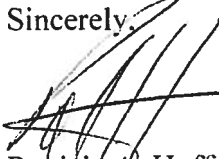
I am writing to support the petition of Barbara Feldman for two variances in order to come into compliance with zoning ordinances and continue to hold classes on her property.

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

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

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

Sincerely,



Patricia A. Hoffmann  
PO Box 72  
Gore, VA 22637

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

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

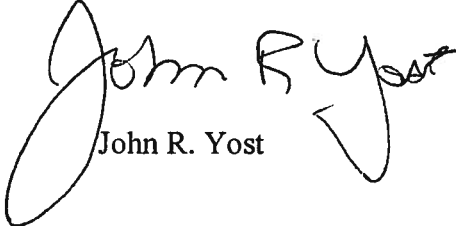
8-30-09

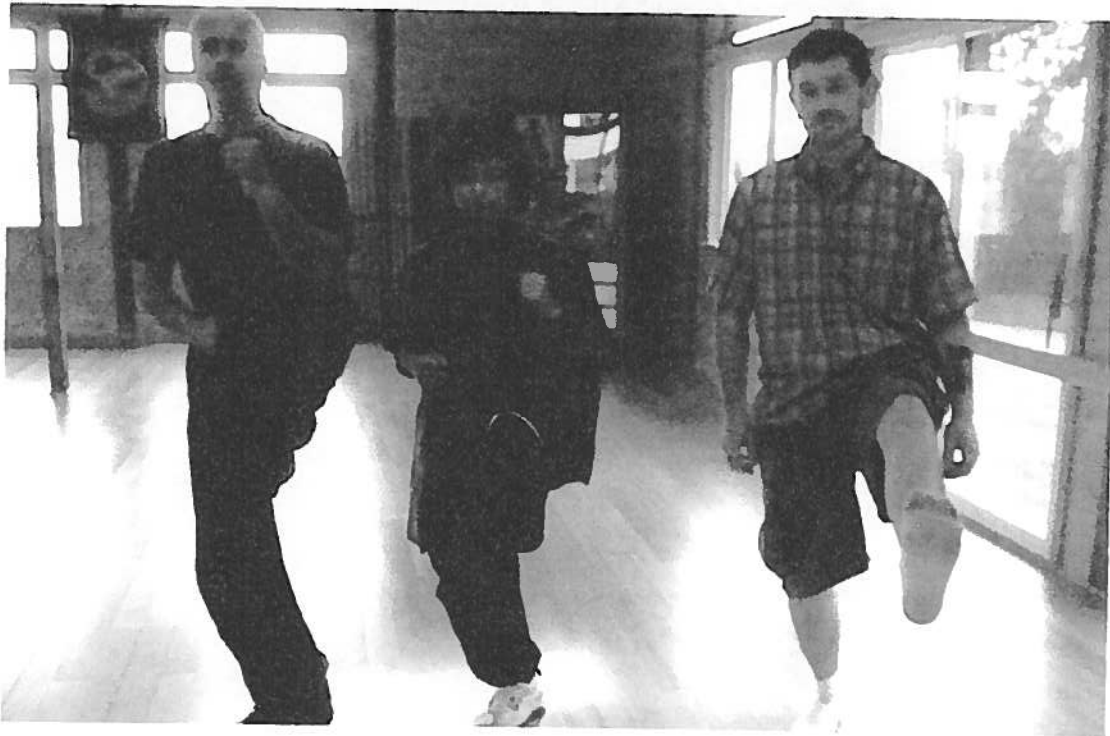
To Whom It May Concern:

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

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

Sincerely,

  
John R. Yost





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



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



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



Picture of structure taken from our rooftop



Entrance of structure and landscape taken from our rooftop



View of rear of structure from right of way



Inside of structure: Karate test—meditation



After karate test



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




Easterly view, parking area and shed

# STAFF REPORT

## Jefferson County Planning Commission Meeting

December 14, 2010

Item #4: Far Away Farm for a variance from Article 6, Section 6.3 of the Subdivision Ordinance to allow for an extension of the Community Impact Statement to March 2, 2015. (PC File #08-28)

|                    |   |
|--------------------|---|
| APPLICANT:         | Far Away Farm, LLC, c/o Mike Boltz  |
| OWNER:             | Same  |
| DEVELOPER:         | Same  |
| SURVEYOR/ENGINEER: | W.H. Gordon Associates, Inc.  |
| PROPERTY LOCATION: | The property is located to the northwest of Route 31/1 (Trough Road) approximately 0.4 miles north of the intersection of Route 31 (Engle Molar Road) and 31/1 (Trough Road). |
| LEGAL DESCRIPTION: | <p>District: Shepherdstown; Map: 9; Parcels: 7.2 &amp; 8.</p>                              |
| ZONING DISTRICT:   | 2002 Zoning Map Designation: Rural  |

# STAFF REPORT

## Jefferson County Planning Commission Meeting

December 14, 2010

|   |  |
|---|--|
| SURROUNDING PROPERTIES:                                 | 2002 Zoning Map<br>North: Rural<br>South: Rural<br>East: Rural<br>West: Rural  |
| LOT AREA:   | <b>Total Area of Property +/-121.88 ac</b>   |
| APPROVED DENSITY:                                       | CUP approved: 152 + 1 10 Acre Single-Family Residue Lot  |
|   |  |
| PERMIT APPROVALS:                                       |  |
| Health Department                                       | Permit No.: N/A  |
| Dept. of Highways                                       | Permit No.: N/A  |
| APPROVALS:  |  |
| Conditional Use Permit (CUP)<br><b>PC File # Z04-04</b> | Submitted: 06/23/04<br>Site Assessment Passed: 09/22/04<br>Neighborhood Compatibility:<br>Originally scheduled: 10/20/04<br>Rescheduled: 11/03/04<br>BZA Mtg Appealing CUP: 12/16/04<br>Neighborhood Compatibility:<br>Rescheduled: 04/13/05<br>BZA Public Hearing:<br>Originally scheduled: 06/16/05<br>Rescheduled: 07/26/05<br>Continued on: 08/09/05<br>BZA Mtg: 08/15/05<br>Continued: 09/15/05 (BZA denied CUP)<br>PC Granted CUP w/ conditions: 08/12/08<br>Staff Signed CUP: 10/06/08<br>CUP Extended on 1/21/2010 at BZA Meeting for 18 months<br>CUP Expires: 10/06/2011 |
| CIS   | Submitted: 11/07/08<br>Staff Review Meeting: 12/19/08<br>County Planner Approved: 02/18/09<br>County Engineer Approved: 02/26/09<br>CIS Public Hearing: 04/28/09<br>CIS Expires: 12/19/2010  |
| Preliminary Plat  | N/A  |
| Site Plan   | N/A  |

# STAFF REPORT

## Jefferson County Planning Commission Meeting

December 14, 2010

|                  |               |
|------------------|---------------|
| Final Plat       | N/A           |
| Variance History | N/A           |
| OTHER APPROVALS: | None required |

The applicant has requested "...an extension of time\tolling\variance to extend the time frame under all aspects of the former Jefferson County Subdivision Ordinance, including without limitation, Section 6.3 and any other references to allow time allowed under the Ordinance or law." Staff will only review this as a time extension of Section 6.3 of the 1979 Subdivision Ordinance as amended. No other time frames mentioned in the application will be considered. It should be noted that this is a request for an extension of time and does not pertain to the merits of this project.

The applicant has applied to be extended, until March 2, 2015 to advance through the stage of Final Plat Hearing. It is their assertion that a tolling of time from the date of the denied CUP should be granted. Thus, the applicant is counting the period from denial of the CUP in 2005 until June 9, 2010. The total amount of time is 1,727 days, hence the March 2, 2015 requested extension date. June 9, 2010 is the last date for which an appeal to the United States Court of Appeals for the Fourth Circuit could have been filed, if the County were to appeal. Below is the applicant's time line justifying the March 2, 2015 deadline:

2005 – 107 (Beginning on the date of the original denial of the CUP)

2006 – 365 days

2007 – 365 days

2008 – 365 days

2009 – 365 days

2010 – 159 days

Total delay is 1727 days through June 9, 2010

### ***The request is not contrary to the public interest.***

The request for a variance for an extension of time until March 2, 2015 is contrary to the public interest. A development of this magnitude should proceed in a timely and orderly fashion. Deadlines are to ensure that significant factors in the area have not changed by the time a project starts. Delayed starts of this length could result in a project that is nonconforming when site work begins due to changes in regulations.

There are reasons that long delays of this nature can have a negative impact on the public interest. Additional development in the area could result in the need for larger water and sewer pipes and larger pump stations, which could possibly require cooperation with developments that are not yet foreseen. Regulatory standards regarding the health department, sewer & water providers, land use regulations, and environmental standards could have significantly changed by the time site work begins on this project. A development that is not current with complying with these regulatory changes, would have a negative impact upon the community.

# STAFF REPORT

## Jefferson County Planning Commission Meeting

December 14, 2010

Additionally, if the Planning Commission granted an extension of this length, it would set a precedent and could allow any applicant the ability to avoid regulatory changes. This would not be in the interest of the public.

***A literal enforcement of this Ordinance will result in unnecessary hardship.***

The project is not likely to fundamentally change if submitted under the amended 2008 Subdivision Regulations compared to the 1979 Subdivision Regulations they were approved under.

***The request is not the result of a self-imposed hardship.***

The delays in this project have been due to the legal action that has impacted the timing and progress of this development. The legal action was not self-imposed.

***The spirit of this Ordinance will be observed and substantial justice done.***

Since the variance is only for a time extension and not a variance of the site layout, the spirit of the ordinance will be observed. The development will meet the intent of the Subdivision Regulations to provide useful and quality open space. The layout of the development has very few lots abutting each other in the rear yard. This is done by having the open space separating lots and providing nearly every lot an access to the open space. Although the design layout of this development less conventional, it creates a more imaginative and desirable neighborhood.

One of the purposes of the variance process is to keep the public informed of existing developments that are outstanding. The public notice provided for the applicant's requested extension until March 2, 2015 of the CIS is in keeping with the intent of substantial justice to keep the public informed of requests related to the project.

### **Planning and Zoning Recommendation**

Staff does not recommend granting the variance for an extension of time until March 2, 2015. However, Staff could support and recommends granting the variance for an extension of time from Section 6.3 until July 1, 2012 to advance through the Final Plat Hearing. An extension to July 1, 2012 would change staffs analysis under "The request is not contrary to the public interest" noted above. The following would be used as support in this section: "In view of the fact that the applicant intends to continue the development as approved by the Planning Commission, which has conditions, no change has occurred regarding proposed development that would negatively impact public interest. As the project has progressed, the public interest has been increased. This variance is for a time extension and not a variance to the site layout. This time extension would provide for the continuation of this development, as approved by the Planning Commission."

The applicant referenced *Jefferson Utilities, Inc. V Jefferson County Ed. Of Zoning Appeals*, in which the Jefferson Utilities, Inc. was granted a court-ordered tolling of time. The applicant has requested a similar tolling of time from the Planning Commission. However, in the Far Away Farm case, there never was a court ordered tolling of time. Therefore, the citation of the *Jefferson Utilities, Inc. V Jefferson County Ed. Of Zoning Appeals* is not relevant to the Planning Commission's decision in this case. Staff does not believe a tolling of time is owed to the applicant. Staff recommends a time extension until July 1, 2012.

## **STAFF REPORT**

### Jefferson County Planning Commission Meeting

December 14, 2010

The Following is for Planning Commission's informational use:

A denial of the variance to allow for the extension of the CIS has no effect on the CUP. The current CUP is valid until October 6, 2011. The CUP provides the zoning of the site while the CIS is the concept plan of the subdivision plan, which provides the details of the use. A denial of the CIS variance to allow for the extension would require the applicant to start the process under the amended 2008 Subdivision Regulations, if they desire to proceed with this development.

**A Motion Recommending approval of a  
Variance for Far Away Farm  
December 14, 2010**

**Whereas**, the following facts relate to the processing of Far Away Farm, LLC application known as Far Away Farm Subdivision (PC File(s) #08-28):

1. Far Away Farm Subdivision is proposing 153 single family lots on 121.88 acres;
2. The Community Impact Statement for Far Away Farm Subdivision was approved on April 28, 2009 and expires on December 19, 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**, Far Away Farm, LLC has requested a variance to extend the CIS until March 2, 2015 to advance through the Final Plat Hearing;

**Whereas**, Staff has recommended that the Far Away Farm CIS not be extended until March 2, 2015 as requested by the applicant;

**Whereas**, the Staff Report recommends that the Far Away Farm CIS be extended until July 1, 2010, as outlined in the Staff Report;

**Whereas**, the following findings have been made in regards to the request in accordance with the provisions of Article 17, Section 17.1 of the 1979 Subdivision Ordinance:

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 Far Away Farm, LLC (PC File(s) #08-28) provided that the extension granted 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

#204-04

#08-28

## JEFFERSON COUNTY PLANNING COMMISSION

## VARIANCE REQUEST

Property Owner(s): Far Away Farm, LLC

Address: 305 Copper Oaks Drive, Woodsboro, MD 21798

Phone Number: (301) 318-3311

Location of property: 1901 Trough Road, Shepherdstown, WV 25443

Lot Size: 121.8 acres

Deed Book Reference: Deed Book Number 992, Page Number 223

Tax Map Reference: District Shepherdstown, Map 9, Parcel 7.2, & 8

Zoning District: Rural

Section of Ordinance: Section 6.3 and any other references to time allowed under the Ordinance or allowed by law.

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.

Far Away Farm requests an extension of time \tolling\ variance to extend the time frames under all aspects of the former Jefferson County Subdivision Ordinance, including without limitation, Section 6.3 and any other references to time allowed under the Ordinance or allowed by law. See prior CIS submitted on April 28, 2009 for detailed description of project.

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.

See attached plat and CIS approved on April 28, 2009

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. See attached.

\_\_\_\_\_  
\_\_\_\_\_

2. A literal enforcement of this Ordinance will result in unnecessary hardship. \_\_\_\_\_  
See attached.

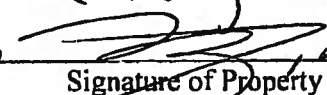
\_\_\_\_\_

3. The request is not the result of a self-imposed hardship. \_\_\_\_\_  
See attached.

\_\_\_\_\_

4. The spirit of this Ordinance will be observed and substantial justice done. \_\_\_\_\_  
See attached.

\_\_\_\_\_

*FAR AWAY FARM, LLC*  
*67*  *Managing member*  
Signature of Property Owner  
*Michael N. Soltes*

\_\_\_\_\_  
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

**FAR AWAY FARM**  
**ATTACHMENT TO VARIANCE REQUEST**  
November 16, 2010

**Variance Requested:**

Request for variance and/or extension of CIS time frame<sup>1</sup> and also time frame for submission of preliminary and final plat and related documents until March 2, 2015.

The Commission has informed Far Away Farm that the Commission may view this as a variance issue, or has at least directed Far Away Farm to file a Variance request as the appropriate procedural method to get the matter before the Commission. Consequently, if the Commission chooses to view this as a variance issue, and grant the extensions requested as a variance, then to that extent, please view this as a variance request. However, Far Away Farm's position is that the extension should be granted to it as a matter of right. This request should not be viewed as a waiver of Far Away Farm's position, but instead as an attempt to cooperate with the Commission and to follow the Commission's procedural directives to the extent possible.

**Background:**

As you know, the West Virginia Supreme Court has determined that Far Away Farm qualified for a conditional use permit. However, § 3-2(E) of the Jefferson County Zoning Ordinance that applies to Far Away Farm requires that action on a conditional use permit be commenced within 18 months of the issuance of the permit or the permit expires.

However, the project has been delayed by legal proceedings, of which you may be aware. While the BZA has already granted an 18 month extension on the CUP, the CIS and any other deadlines also need to be extended, since Far Away Farm has been informed that certain of those deadlines are due to expire in December, 2010.

Because of the legal proceedings that have resulted in delays, and for the reasons stated below, Far Away Farm requests that the Planning Commission extend the time for all aspects of the project, including without limitation those mentioned above, until March 2, 2015.

**History of the Proceedings:** Far Away Farm filed an Application for Conditional Use Permit pursuant to Article 6 of the Development Review System of the Jefferson County Zoning and Land Development Ordinance on the 24th day of June, 2004. As a result of the Application, a LESA score evaluation was undertaken by Paul J. Raco, Director of Planning and Zoning. Raco concluded that the applicable LESA score for the Far Away Farm was 46.2 points. The LESA score was challenged by appeal to the BZA on October 29, 2004 by Edward E. Dunleavy and Edward R. Moore.

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<sup>1</sup> The CIS was submitted and approved by the Planning Commission on April 28, 2009.

A hearing was held on the LESA appeal before the BZA on January 20, 2005. On the 7<sup>th</sup> day of February, 2005, the BZA entered its decision with Findings of Fact and Conclusions of Law, upholding in part and reversing in part the decision of the Director of Planning and Zoning. The BZA thereupon awarded Far Away Farm a LESA score of 50.2 points, thus advancing the Application for the Conditional Use Permit to the Compatibility Assessment Meeting provided in Section 7.6 of the Ordinance. On April 13, 2005, pursuant to Section 7.6 of the Ordinance, a Neighborhood Compatibility Assessment meeting for Far Away Farm subdivision was held. The matter was scheduled for a public hearing before the BZA on July 26, 2005, pursuant to 7.6(e) of the Ordinance.<sup>2</sup>

Ultimately, on August 9, 2005, the BZA called a special meeting for the purpose of considering the action they would take on the conditional use application for Far Away Farm. As a result of the August 9, 2005, BZA special meeting, the BZA issued an Order on September 15, 2005, denying Far Away Farm its Conditional Use Permit.

Far Away Farm challenged this decision in the Jefferson County Circuit Court.<sup>3</sup> Ultimately, the matter was appealed to the West Virginia Supreme Court of Appeals. On April 17, 2008, the West Virginia Supreme Court held that "the evidence in the record shows that FAF satisfied all of the requirements necessary to obtain the permit" *Far Away Farm, LLC v. Jefferson County Bd. of Zoning Appeals*, 222 W.Va. 252, 260, 664 S.E.2d 137, 145 (W.Va.,2008). Further, the Court held that the Ordinance that existed prior to the April 8, 2005 amendments was applicable to Far Away Farm.<sup>4</sup>

After failed Petitions for Rehearing filed by Dunleavy and the BZA, the matter was thereupon appealed by Dunleavy to the United States Supreme Court, which refused the appeal on or about November 10, 2008.<sup>5</sup>

Subsequent to the decision of the United States Supreme Court, the Jefferson County Planning Commission filed a Motion to Intervene with the West Virginia Supreme Court that attempted to seek what was in effect another appeal to the West Virginia Supreme Court, and, when that was rejected, filed a lawsuit against Far Away Farm in the United States District Court for the Northern District of West Virginia, which was dismissed on October 29, 2009. Upon dismissal, the Planning Commission filed a motion for reconsideration which was decided and rejected by the United States District Court on May 10, 2010. The time for appeal of that decision to the United States Court of Appeals for the Fourth Circuit expired on or about June 9, 2010.

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<sup>2</sup> Prior to the July 26, 2005 hearing, Far Away Farm had submitted documents in support of its position totaling approximately 320 pages. These documents included a traffic study, a preliminary ground water assessment supply study, architectural assessment study, an environmental report, an archeological report, and a preliminary geological site assessment.

<sup>3</sup> Edward E. Dunleavy filed an appeal of issues including the LESA score decision to the Circuit Court, and that appeal was consolidated with the appeal of the CUP decision by Far Away Farm in the Circuit Court's September 18, 2006 Order.

<sup>4</sup> "Because Far Away Farm requested a permit on June 23, 2004, and completed the necessary documentation prior to April 8, 2005, we find that the former Ordinance was applicable" *Id.*

<sup>5</sup> *Dunleavy v. Far Away Farm, LLC*, 129 S. Ct. 573, 172 L.Ed.2d 431 (2008) (Cert. denied) and no appeal was filed.

Further proceeding on the Far Away Farm project was not realistically possible until the legal matters were resolved.

It was only after the Federal case was finally dismissed, and the time for appeal to the United States Court of Appeal for the Fourth Circuit was extinguished, that Far Away Farm could again plan to resume development of the project.

Consequently, the time for development under the Ordinance should be extended because the project was under legal review and should only begin to run from no earlier than June 9, 2010.

**Basis for the Extension of Time:** The Commission should also consider the following regarding the extension of time issue.

First, Far Away Farm's proceedings before the Planning Commission have been delayed, not by Far Away Farm, but by the denial of the CUP and the subsequent challenge of that denial, and then by the Federal lawsuit that was filed by the Jefferson County Planning Commission.

It is improper to penalize Far Away Farm for upholding the project's legal rights. The West Virginia Supreme Court has ordered an extension of time to be granted to an applicant under the Subdivision Ordinance when the applicant's project was delayed due to legal proceedings. For example, the Supreme Court in *Jefferson Utilities, Inc. v. Jefferson County Ed. of Zoning Appeals*, 218 W.Va. 436, 624 S.E.2d 873 (2005) stated "the trial court is hereby directed to enter an order approving the reissuance of the subject permits and adjust, where necessary, any time deadlines established in the Ordinance that may have passed during the pendency of this appeal so that the parties are not penalized for pursuing their statutory rights of appeal."

The time extension in this case should be granted for the same reason the Supreme Court stated in *Jefferson Utilities*. In Far Away Farm's case, the delay was as follows:

2005 - 107 days (Beginning on the date of the original denial of the CUP)  
2006 - 365 days  
2007 - 365 days  
2008 - 366 days  
2009 - 365 days  
2010 - 159 days through June 9, 2010  
Total delay is 1727 days through June 9, 2010

Total extension from the date upon which the project ceased to be under a legal disability is thereby calculated as June 9, 2010 plus 1727 days, resulting in a project deadline of March 2, 2015.

Also, the Far Away Farm project qualifies for an extension of time under West Virginia Code §8A-5-12(f).

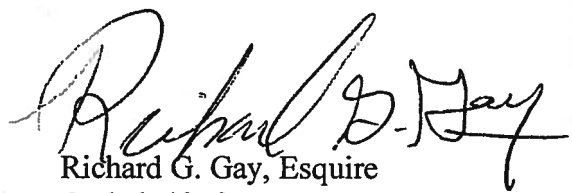
**Responses to Questions in Variance Application:**

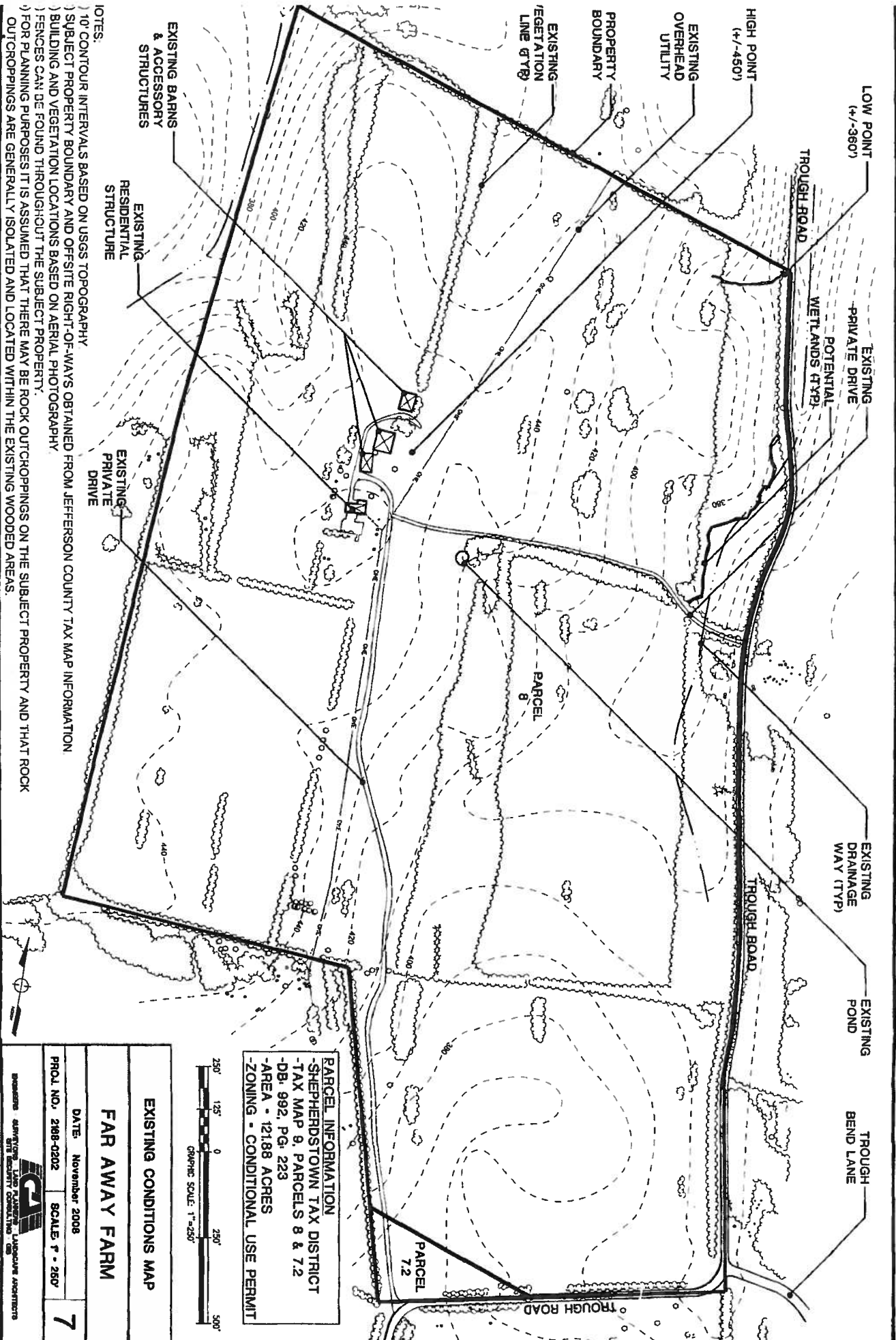
1. Reprocessing the CIS and/or plat requests would take months and numerous hours of staff time. It is in everyone's best interest to allow the project to proceed.
2. The literal enforcement of the Ordinance will result in thousands of dollars of costs to both the County and the developer because of re-engineering and submission of additional documentation for review.
3. The reason for the delay is the litigation that is detailed above, which was not the fault of Far Away Farm. Far Away Farm also submits that the owner of Far Away Farm was diagnosed with cancer and underwent substantial cancer treatment during the same time frame, which could also be viewed as an additional valid basis for an extension.
4. Granting the variance/extension/tolling is the right thing to do considering the circumstances, since Far Away Farm has been legally entitled to proceed but has been delayed by litigation. Further proceeding on the Far Away Farm project was not realistically possible until the legal matters were resolved.

Thank you for your attention to this matter. I trust the Planning Commission will consider this information and will grant Far Away Farm the extensions requested.

Also, it is my understanding that this matter will be placed on the agenda for hearing on December 14, 2010. Please confirm the date and time of the hearing on this matter.

Respectfully submitted,

  
Richard G. Gay, Esquire  
On behalf of Far Away Farm, LLC



- NOTES:
- ) 10' CONTOUR INTERVALS BASED ON USGS TOPOGRAPHY
  - ) SUBJECT PROPERTY BOUNDARY AND OFFSITE RIGHT-OF-WAYS OBTAINED FROM JEFFERSON COUNTY TAX MAP INFORMATION
  - ) BUILDING AND VEGETATION LOCATIONS BASED ON AERIAL PHOTOGRAPHY
  - ) FENCES CAN BE FOUND THROUGHOUT THE SUBJECT PROPERTY
  - ) FOR PLANNING PURPOSES IT IS ASSUMED THAT THERE MAY BE ROCK OUTCROPPINGS ON THE SUBJECT PROPERTY AND THAT ROCK OUTCROPPINGS ARE GENERALLY ISOLATED AND LOCATED WITHIN THE EXISTING WOODED AREAS.

**PARCEL INFORMATION**  
 SHEPHERDSTOWN TAX DISTRICT  
 - TAX MAP 9, PARCELS 8 & 7.2  
 - DB: 992, PG. 223  
 - AREA - 12188 ACRES  
 - ZONING - CONDITIONAL USE PERMIT



**EXISTING CONDITIONS MAP**

**FAR AWAY FARM**

|            |               |
|------------|---------------|
| DATE:      | November 2008 |
| PROJ. NO.: | 2188-0202     |
| SCALE:     | 1" = 250'     |
| <b>7</b>   |               |

# Z04-04  
# DB-28

PCV10-07

JEFFERSON COUNTY PLANNING COMMISSION

**COPY**

VARIANCE REQUEST

Property Owner(s): Far Away Farm, LLC

Address: 305 Copper Oaks Drive, Woodsboro, MD 21798

Phone Number: (301) 318-3311

Location of property: 1901 Trough Road, Shepherdstown, WV 25443

Lot Size: 121.8 acres

Deed Book Reference: Deed Book Number 992, Page Number 223

Tax Map Reference: District Shepherdstown, Map 9, Parcel 7.2, & 8

Zoning District:

Section of Ordinance: All aspects of Subdivision Ordinance, including without limitation, Articles 6, 7, and 8.

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.

Far Away Farm requests an extension of time (tolling) variance to extend the time frames under all aspects of the former Jefferson County Subdivision Ordinance, including without limitation, Subdivision Articles 6, 7, and 8. See prior CIS submitted on April 28, 2009 for detailed description of project.

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.

See attached plat and CIS approved on April 28, 2009

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. See attached.

**RECEIVED**  
 NOV 17 2010  
 JEFFERSON COUNTY  
 PLANNING, ZONING AND ENGINEERING

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

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

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

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

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

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

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

X



John Maxey

President, Jefferson County Planning Commiss...

**JEFFERSON COUNTY PLANNING COMMISSION**

**116 East Washington Street**

**P.O. Box 338**

**Charles Town, West Virginia**

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

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

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**TO: Planning Commission**  
**FROM: John Maxey, Jefferson County Planning Commission**  
**DATE: November 9, 2010**  
**SUBJECT: Policy proposal**

**DRAFT**

**Policy on submission of recommendations for amendments to the Zoning Ordinance**

It is the policy of the Jefferson County Planning Commission that any recommendation by the Planning Commission to the Jefferson County Commission for a zoning ordinance amendment must be submitted as a petition and in compliance with the provisions of WV Code §8A-7-9 and the Jefferson County Zoning Ordinance. No petition will be filed that would require a public hearing by the County Commission during the sixty days following a General Election.

**Julia Quodala**

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**From:** maxey@radlib.com  
**Sent:** Wednesday, December 01, 2010 3:07 PM  
**To:** Jennifer Brockman; Jennifer Brockman  
**Cc:** Seth Revard  
**Subject:** December 14th Planning Commission Agenda

Director Brockman,

During our November 9th Planning Commission meeting I presented a policy proposal that would have established Planning Commission policy toward petitions for rezoning within an established planning study area.

I continue to believe that the Planning Commission should be very hesitant to recommend adoption of any land use change such cases, but I am concerned that adopting an official policy may be misconstrued as a moratorium. In addition, it is impossible to say what future considerations may be involved. There may be some unforeseen circumstance where the best interests of the County as a whole would be served by a zoning category change.

For these reasons, please remove the policy proposal from our agenda

Thank you,

John Maxey

# JEFFERSON COUNTY PLANNING COMMISSION

116 East Washington Street  
P.O. Box 338  
Charles Town, West Virginia 25414

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

Phone: (304) 728-3228

Fax: (304) 728-8126

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## MEMO

**TO:** Planning & Zoning Staff  
**FROM:** John Maxey, Planning Commission President  
**DATE:** December 14, 2010  
**RE:** Planning Commission Policy – Submittal of Applications & Supporting Information

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Any applicant who wishes to submit an application to be considered by the Planning Commission must submit the application and all supporting information to Staff three weeks prior to the Planning Commission meeting. The late submittal of supporting information could result in the discussion of the item being tabled until the next regularly scheduled Planning Commission meeting. Additionally, the basis of the Planning Commission's decision will be upon the testimony heard at the public hearing and the supporting information submitted before the deadline. Should the application submitted be tabled or postponed the applicant shall have three business days to submit any further or requested information.

Approved by vote \_\_\_\_\_ For, \_\_\_\_\_ Against on December 14, 2010.

Effective Date: December 14, 2010

X

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John Maxey  
Planning Commission President

## Steve Barney

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**From:** Jennifer Brockman [jbrockman@jeffersoncountywv.org]  
**Sent:** Thursday, December 09, 2010 5:48 PM  
**To:** maxey@radlib.com; 'THOMAS L. TRUMBLE'; Daniel\_Hayes@URSCorp.com; Daniel Hayes; fberrymorgan@aol.com; Francis Morgan; 'Morgan L. Etters'; Gene Taylor; Arnie Dailey; 'William Kelly Baty'; Eric Smith  
**Cc:** 'Seth Rivard'; 'Steve Barney'; 'Stephen Groh'; 'Julia Quodala'; 'Amy Puetz'  
**Subject:** 12/14 PC meeting agenda - zoning ordinance status

### Commissioners:

At our last meeting, we had discussed the possibility of having a complete draft of the policy neutral amendments to the Zoning Ordinance on the 12/14 agenda for distribution and the setting of a PC Workshop in January. We had agreed that this would not be an item for discussion that night. Additionally, PC members had indicated that you would prefer to have had a review by legal counsel before the draft is distributed to you for your review and input. We also indicated to you that we would let you know in advance if we would not be distributing this ordinance at the meeting. At this point, we have not had an opportunity to meet with legal counsel on this topic and we do not anticipate being able to distribute a copy at the 12/14 meeting. I do plan to leave the item on the agenda for the purpose of discussing a date for a potential work session on this in January. We can discuss the timing of this further at that time.

Have a great weekend.

Jennie

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

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

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

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

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**Director's Report**  
**December 14, 2010**  
**Planning Commission meeting**

- 1) Activity Report (attached)
- 2) Report back on Scott noise agreement and noise regulations
  - a) Attached are the only relevant minutes that we could find regarding this topic. They do not appear to have the same affect that the public remembers. Any input from PC members on this topic would be appreciated.
- 3) Meeting Dates in 2011
- 4) Follow up on use topographic data from the County GIS office

Jennifer Brockman, Steve Barney, Roger Goodwin and Todd Fagan met to discuss the 2-foot contour maps produced by the Jefferson County GIS staff and to determine the Engineering Department's level of comfort in utilizing these maps for various uses. A decision was made that staff is comfortable using this data for planning purposes, such as Conditional Use Permits (CUPs), Concept Plans, and Sketch Plans. It was further determined that, on a trial basis, these maps could be utilized for limited site plans (such as the Feldman request) provided that there have been not substantial grading changes to the property involved since 2005. This trial basis would allow the Planning and Engineering staffs an opportunity to determine if there are any issues with the maps that would cause this decision to be changed. Staff is working on a policy to this effect.
- 5) Report on 12/7/10 Joint CC/PC meeting regarding the Blue Ridge Mountain Communities Watershed Plan
- 6) Upcoming CC agenda items:
  - a) Urban Growth Boundary Approval Process (12/16/10)
  - b) Request to Schedule Evening Meetings in 2011 (January 2011)
  - c) Zoning Map Update and Zoning Map Policy (pending PC recommendation)
  - d) Wireless Telecommunications Ordinance Amendment Public Hearing (1/20/11, 7 pm)

7) Upcoming PC meetings:

a) 12/21/10

One agenda item

b) 1/11/11 – 1<sup>st</sup> meeting of new year

Election of Officers

c) Special Called Workshop for Policy Neutral Zoning Ordinance Amendments: TBD

## Christine Chalmers

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To: PLANNING COMMISSION  
Subject: FW: WEEKLY CALENDAR

### MONDAY, NOVEMBER 15, 2010

NOON JENNIE & CHRISTINE – “ONE-ON-ONE” MEETING  
7:00 pm JENNIE & TOM TRUMBLE – URBAN GROWTH BOUNDARY MEETING (UGB)  
LOCATION: SHEPHERDSTOWN W/ HARVEY HEYSER

### TUESDAY, NOVEMBER 16, 2010

NOON – 2:00 pm STAFF MEETING  
3:00 pm – 4:30 pm JENNIE & ROGER / MEETINGS WITH DALE MANUEL  
RE: PARKS & REC and FIRE TRAINING

### WEDNESDAY, NOVEMBER 17, 2010

10:00 am JENNIE – MEETING WITH BOB GORDON  
10:00 am – 11:00 am SETH, STEVE & JONATHAN – SITE PLAN PPC / HARVEST POINT COMMUNITY CHURCH  
11:00 am STEVE – MEETING WITH PAUL RACO / RE: RIVER RIDERS  
1:00 pm - 2:15 pm JENNIE & SETH – WEEKLY PLANNING MEETING  
2:30 am – 4:00 pm JENNIE & STEVE – WEEKLY ZONING MEETING

### THURSDAY, NOVEMBER 18, 2010

TBD JENNIE – MEETING WITH STEPHEN GROH  
10:30 am COUNTY COMMISSION MEETING  
11:00 am JENNIE & JENNIFER MAGHAN – POWHATTEN PRESENTATION CEREMONY /  
RE: RANSON - MIXED USE PROPOSAL  
2:00 pm -3:15 pm SETH – RANSON FORM BASED CODE MEETING  
3:00 pm BOARD OF ZONING APPEALS MEETING

### FRIDAY, NOVEMBER 19, 2010

9:00 am JENNIE, STEVE & JULIE - MEETING  
10:30 am STEVE & MASON – SITE VISIT TO LOWES PRODUCTS MULCHING BUSINESS  
11:30 am JENNIE, SETH, JULIE & SARAH KLECKNER – MEETING WITH DOUGLAS GRIFFITH /  
RE: UTC GRANT INTERN  
2:00 pm SETH – TELEPHONE CONFERENCE / SARAH WITH DOWNSTREAM STRATEGIES

**Christine Chalmers**

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

**MONDAY, NOVEMBER 22, 2010**

**TUESDAY, NOVEMBER 23, 2010**

10:00 am – 11:15 pm STAFF MEETING  
1:00 pm – 2:30 pm JENNIE, STEVE & JENNILEE / WEEKLY ZONING MEETING  
2:45 pm – 4:00 pm JENNIE & SETH / WEEKLY PLANNING MEETING

**WEDNESDAY, NOVEMBER 24, 2010**

10:00 am STEVE, SETH & JONATHAN – MINOR SUBDIVISION PPC / PETER WEINBRECHT  
RE: LAKELAND PROPERTIES

**THURSDAY, NOVEMBER 25, 2010**

**THANKSGIVING HOLIDAY – OFFICE CLOSED**

**FRIDAY, NOVEMBER 26, 2010**

**THANKSGIVING HOLIDAY – OFFICE CLOSED**

## **Christine Chalmers**

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

### **MONDAY, NOVEMBER 29, 2010**

10:00 am – 11:15 am STAFF MEETING  
1:00 pm – 2:30 pm JENNIE, SETH / WEEKLY PLANNING MEETING  
1:30 pm STEVE & MIKE KANEHL – SITE VISIT / RE: LOWE'S PRODUCTS  
2:45 pm – 4:00 pm JENNIE & STEVE / WEEKLY ZONING MEETING

### **TUESDAY, NOVEMBER 30, 2010**

11:15 am – 11:45 am SETH & STEVE – MEETING WITH JASON GERHART (WHGA)  
NOON JENNIE & SETH – WHAG TV INTERVIEW / RE: BLUE RIDGE COMM. WATERSHED  
1:00 pm – 2:30 pm JENNIE, SETH, STEVE & JULIE - UTC MEETING / RE: DOUGLAS GRIFFITH  
3:15 pm JENNIE & SETH – MEETING WITH PETER FRICKA  
4:30 pm JENNIE, SETH & JULIE – MEETING WITH JOHN MAXEY

### **WEDNESDAY, DECEMBER 01, 2010**

8:00 am – 9:30 am JENNIE – MONTHLY DEPARTMENT HEAD MEETING  
10:00 am STEVE, SETH & JONATHAN – MINOR SITE PLAN PPC / LINDA LOSEY  
10:30 am JENNIE – MPO-TAC IN MARTINSBURG  
1:00 pm – 4:30 pm SETH – ROUTE 9 TRAIL EXTENSION PROJECT & ASSOC. HEALTH IMPACTS  
3:30 pm JENNIE, ROGER & TODD – MEETING / RE: TOPO

### **THURSDAY, DECEMBER 02, 2010**

9:00 am COUNTY COMMISSION MEETING

### **FRIDAY, DECEMBER 03, 2010**

10:00 am JENNIE & STEVE – SITE VISIT / MATT KNOTT

## Christine Chalmers

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To: PLANNING COMMISSION  
Subject: RE: REVISED WEEKLY CALENDAR

### MONDAY, DECEMBER 06, 2010

10:00 pm JENNIE – “TRANSPORTATION” MEETING IN RANSON  
1:30 pm STEVE & JENNILEE – MEETING WITH BECKY / RE: SOUTHERN STATES  
2:15 pm STEVE & JENNILEE – SITE VISITS TO SOUTHERN STATES & OLD COUNTRY STORE w/TONY  
2:30 pm JENNIE, JULIE, MIKE MONAGHAN, TODD – MEETING WITH CHARLOTTE  
RE: DOCUMENT MANAGEMENT SYSTEM WEBEX AT GIS OFFICE

### TUESDAY, DECEMBER 07, 2010

10:00 am - JENNIE – MS4 STORMWATER MEETING (LIBRARY)  
12:30 pm – 2:00 pm STAFF MEETING  
7:00 pm JENNIE, SETH, STEVE & JULIE – SPECIAL JOINT CC / PC MEETING  
RE: BLUE RIDGE COMMUNITY WATERSHED @ BLUE RIDGE ELEMENTARY

### WEDNESDAY, DECEMBER 08, 2010

9:30 am – 12:30 pm JENNIE – REGION 9 STORMWATER STEERING COMMITTEE MEETING  
LOCATION: MOUNTAIN STATE UNIVERSITY, ROOM 212 – MARTINSBURG  
2:00 pm STEVE, SETH & JONATHAN – MINOR SUBDIVISION PPC / GINA BILLER  
3:00 pm JENNIE & ROGER – MEETING WITH DALE MANUEL / RE: VOLUNTEER FIREMEN’S ASSOC.

### GRANT INTERN: DOUGLAS GRIFFITH – AVAILABLE FULL DAY / WORK

### THURSDAY, DECEMBER 09, 2010

9:00 am COUNTY COMMISSION MEETING  
1:00 pm – 2:30 pm JENNIE, SETH / WEEKLY PLANNING MEETING  
1:00 pm STEVE – MEETING WITH PAUL RACO & MARK ZWILISKY  
2:45 pm – 4:00 pm JENNIE & STEVE / WEEKLY ZONING MEETING

### GRANT INTERN: DOUGLAS GRIFFITH – AVAILABLE 9:00 am - NOON / WORK

### FRIDAY, DECEMBER 10, 2010

## Christine Chalmers

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To: PLANNING COMMISSION  
Subject: RE: WEEKLY CALENDAR

### MONDAY, DECEMBER 13, 2010

10:00 am JENNIE, STEVE & SETH – NRCS MEETING IN RANSON (w/ BOB SSCHNABLY)  
3:30 pm SETH – MEETING WITH DIRK STANSBERRY  
7:00 pm FARM & PRESERVATION BOARD MEETING

### TUESDAY, DECEMBER 14, 2010

10:30 am - JENNIE & ROGER – MEETING WITH WALT PELLISH  
2:00 pm JENNIE – MEETING WITH TROY TRUAX  
7:00 pm JENNIE, SETH, STEVE & JULIE – PLANNING COMMISSION MEETING

### GRANT INTERN: DOUGLAS GRIFFITH – AVAILABLE 9:00 am – 2:00 pm / WORK

### WEDNESDAY, DECEMBER 15, 2010

9:30 pm – 11:00 am STAFF MEETING  
NOON – 2:00 pm JEFFERSON COUNTY HOLIDAY PARTY AT LIBRARY  
1:30 pm – 2:45 pm JENNIE & SETH – WEEKLY PLANNING MEETING  
3:00 pm – 4:30 pm JENNIE & STEVE – WEEKLY ZONING MEETING

### GRANT INTERN: DOUGLAS GRIFFITH – AVAILABLE FULL DAY / WORK

### THURSDAY, DECEMBER 16, 2010

9:00 am COUNTY COMMISSION MEETING  
2:00 pm – 3:30 pm SETH - SMARTCODE MEETING IN RANSON  
3:00 pm JENNIE, STEVE & JENNILEE – BOARD OF ZONING APPEALS MEETING

### GRANT INTERN: DOUGLAS GRIFFITH – AVAILABLE FULL DAY / WORK

### FRIDAY, DECEMBER 17, 2010

10:00 am STEVE, JENNILEE & MASON – SITE VISIT TO JOY BRIDY POTTERY  
12:15 pm JENNIE, STEVE & SETH – PLANNERS PLOYPHONE IN RANSON

therefore recommended approval. Mr. Goodwin concurred. There was no public comment. Kristin Ringstaff with W.H. Gordon Associates was present to answer Planning Commissioner's questions. Mr. Surkamp moved to approve the site plan and issuance for the improvement location permit. Ms. Deming seconded the motion, which carried unanimously.

8. Site plan approval and issuance for the Improvement Location Permit for the Summit Point Tactical Training Facility. Ms. Kelly stated the site plan met the technical requirements of the ordinance and therefore recommended approval. Mr. Goodwin concurred. There was no verbal public comment. The letter from Linda Case regarding noise was discussed but no action was taken. Kristin Ringstaff with W.H. Gordon Associates was present to answer Planning Commissioner's questions. Mr. Kane moved to approve the site plan and issue the improvement location permit. Ms. Deming seconded the motion, which carried unanimously.

9. Chief Planner's report on office activities and questions. Discussion regarding the subdivision variances, fees and public notice took place. Mr. Redman provided a handout to the Planning Commission as requested at the previous meeting. Mr. Reynolds stated he could not open the email regarding rewrite timelines sent by Mr. Redman. Mr. Casimiro was questioned about the changing of the ordinances versus making policy changes. Further discussion will take place on the August 14, 2007 Planning Commission meeting.

10. Streamlining commercial permitting and approval process. Discussed under Item #9.

11. Zoning and Subdivision Rewrites. Discussed under Item #9.

12. Report from Legal Counsel. Mr. Casimiro stated he had nothing to discuss in open session.

Mr. Kane moved to go into executive session 9:34 p.m. regarding the Planning Commission vs. Gibson. Mr. Reynolds seconded the motion, which carried unanimously.

At this point staff left the room and did not return allowing the Planning Commission to adjourn at will.

Ms. Deming, Secretary, provided the following information for the minutes:

Ms. Deming moved to come out of executive session at 9:53 p.m. Mr. Reynolds seconded the motion, which carried unanimously.

The meeting adjourned at 9:53 p.m. on July 24, 2007. A detailed transcript of this meeting can be found on CD # 77 & 78. These minutes were prepared by Jennilee Hartman.

MINUTES  
JEFFERSON COUNTY PLANNING COMMISSION  
AUGUST 28, 2007

The Jefferson County Planning Commission met on Tuesday, August 28, 2007 with John Sidor, President, as Chair. Arnie Dailey, Lynne Deming, Robert Reynolds, Jim Surkamp, Edward Dunleavy, Todd Baldau and Ellen May were present.

Tom Kane was absent with notification.

Staff members present were:

Sherry Kelly, Deputy Director of Planning and of Zoning  
Roger Goodwin, Director of Engineering  
Damien Davis, County Engineer  
James Casimiro, Assistant Prosecuting Attorney  
Jennilee Hartman, Clerical Support.

Mr. Sidor called the meeting to order at 7:00 p.m.

1. Minutes.

Mr. Baldau moved to approve the minutes of the August 14, 2007 meeting with the following changes:

- 1) Page 1, last paragraph, second sentence; add the phrase, "*and has hired one of their daughters as a babysitter*" at the end of the sentence.
- 2) Page 4, fifth paragraph, tenth sentence; add the word, "unanimously" and remove the phrase, "*6 for a 2 recusals (Mr. Reynolds and Mr. Dunleavy).*"

Mr. Dunleavy seconded the motion. The motion passed unanimously.

2. Postponements. None.

3. Community Impact Statement (CIS) for SPARC Training Campus Subdivision. Ms. Kelly recommended approval of the CIS. Mr. Goodwin & Associates was present to answer Planning Commissioner's questions and also presented exhibits (see PC File #07-14). Ms. Deming stated she had not received a CIS for review and therefore recused herself and left the room. Information regarding storm water management, campus-like facility and lot dedication to the fire department were discussed. Barbara and Bill Scott were present and spoke to the Planning Commission regarding future occupants of the proposed lots, bus shuttles between the proposed campus and the racetrack, the estimated number of students on campus, dormitory rooms and the possibility of installing right-hand turn lanes. Mr. Sidor opened for public comment. Alisa Ellis provided a proposal to the Planning Commission regarding noise mitigation and possible studies. Ryan Sonders had questions regarding the proposed entrances to the facility. Michael Dick and Jane Peters with the Jefferson County Development Authority spoke in favor of the project. It was mentioned that in the covenants proposed for the facility that noise was to be kept at a

reasonable level and that any and all firearm noise was to be kept inside soundproof buildings. Mr. Baldau moved to approve the Community Impact Statement (CIS) for SPARC Training Campus Subdivision. Mr. Reynolds seconded the motion, which carried unanimously. Ms. Deming returned to the meeting room.

4. Continued from the August 14, 2007 Planning Commission meeting. Request by J. Michael Cassell, Esq. on behalf of Philip and Gaye Snyder (Shenandoah School) for a variance from the requirement for a Community Impact Statement. Ms. Kelly read the following from her staff report:

“CONCLUSION: Staff has determined that a CIS is needed in order to establish a commercial use in a subdivision, especially where a single-family restriction has been established. The applicant is requesting a waiver of the CIS requirement due to the nature of operations of the school. A limited or full site plan will be needed to address parking requirements, highway entrance and health department permits updates, etc. It is staff’s recommendation to deny the variance request and require the CIS. However, if the PC should choose to grant the variance, Staff recommends three conditions: to require submission of a site plan within 60 days, otherwise an automatic violation will be declared; updated health department and highway entrance permits to address the change in use from a single-family residence to a school; restriction of the number of students to no more than 30; adequate parking as determined by staff for employees and parents dropping off students.”

Mr. Goodwin read a lengthy report (see PC file), which concluded follows:

“In the case of the Shenandoah School, it appears that a limited site plan may be applicable. The limited site plan shall include but is not limited to upgrading the access drive and parking to county standards, providing storm water management for the additional impervious area, providing handicapped accessibility, and compliance with the requirements of the Zoning Ordinance.”

Mr. Surkamp confirmed that Ms. Kelly meant 30 children per daily enrollment since the school was in operation during various times of the day. Mr. and Ms. Snyder were present to represent themselves. Discussion regarding health department approval, age of the existing residence, use of the existing residence and any applicable state licensing approval having been obtained.

The CD was changed at 8:16 p.m. and the meeting resumed at 8:19 p.m.

Mr. Baldau asked if the Snyder’s would be agreeable to only having 30 children per daily enrollment. Mr. Snyder stated there were state laws that mandated the size of the house (per square foot) to the number of children and that they would limit the size of the school to 30 children daily enrollment. Mr. Snyder stated he had spoken with an engineering firm that could prepare a limited site plan per the County’s requirements.

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
SUMMIT POINT TRAINING CENTER**

RECEIVED

MAR 04 2008

JEFFERSON COUNTY  
PLANNING ZONING AND ENGINEERING

**THIS DECLARATION**, made on the date hereinafter set forth by SPARC, LLC, a West Virginia Limited Liability Company, hereinafter referred to as "Declarant",

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of certain property in the County of Jefferson, State of West Virginia, which is more particularly described on the legal description attached hereto and made a part hereof as Exhibit "A".

**NOW, THEREFORE**, Declarant hereby declares that all of the Property described on Exhibit "A" hereto shall be held, sold, leased, used and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the Property described on Exhibit "A" hereto, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

**ARTICLE I**  
**DEFINITIONS**

Section 1. "Owner" shall mean and refer to the record owner, whether an owner or building contractor, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 2: "Property" shall mean and refer to that certain real property described on Exhibit "A" hereto and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all real property owned or to be owned by the Declarant for the common use and enjoyment of the Owners, including private streets, roadways and stormwater management facilities.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision plat of the Property with the exception of the Common Area.

Section 5. "Declarant" shall mean and refer to SPARC, LLC, a West Virginia Limited Liability Company, its successors and assigns, if such successors or assigns are either: (1) a Property Owners' Association if the Declarant should, at its discretion, ever create one; or (2) an entity that acquires more than one undeveloped Lot from the Declarant for the purpose of development, but only to the extent that any of the rights, reservations, easements, interests, exemptions, privileges and powers of the Declarant are specifically assigned or transferred to such successors or assigns.

Section 6. "Mortgagee" shall mean the holder of any recorded mortgage or the party secured or beneficiary of any recorded deed of trust, encumbering one or more of the Lots, "Mortgage", as used herein, shall include deeds of trust. "First Mortgage", as used herein, shall mean a mortgage with priority over other mortgages. As used in this Declaration, the term "Mortgagee" shall mean any mortgagee and shall not be limited to institutional mortgagees. As used in this Declaration, the term "institutional mortgagee" or "institutional holder" shall include banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings

banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), all corporations and any agency or department of the United States Government or of any state or municipal government. As used in this Declaration, the term "holder" or "mortgagee" shall include the parties secured by any deed of trust or any beneficiary thereof.

## **ARTICLE II** **PROPERTY RIGHTS**

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, including an easement for the use and enjoyment of the private streets, roadways and parking lots and walkways within the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- a) The right of the Declarant to suspend the voting rights of an Owner for any period during which an assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days from an infraction of its published rules and regulations;
- b) The right of the Declarant to dedicate or transfer all or any part of the common areas or community facilities to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration;
- c) The right of the Declarant to establish uniform rules and regulations pertaining to the use of the Common Area and the facilities thereon;
- d) The right of the Declarant to charge reasonable fees for the repair, maintenance, snow removal and use of any of the Common Area;
- e) The right of the Declarant to regulate parking on the Common Area through the granting of easements or promulgation of rules and regulations;
- f) The right of the Declarant to grant licenses, rights of way and easements for access or for the construction, reconstruction, maintenance and repair of any utility lines or appurtenances, whether public or private, to any municipal agency, public utility, the Declarant or any other person; provided, however, that no such licenses, rights of way or easements shall be unreasonably and permanently inconsistent with the rights of the members to the use and enjoyment of the common areas and community facilities; and

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to his tenants or contract purchasers of the Property.

## **ARTICLE III** **MEMBERSHIP AND VOTING RIGHTS**

If a Property Owners Association is ever created by the Declarant and assigned the rights of the Declarant under this Declaration, the following shall apply:

- a) Membership. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.
- b) Voting Rights. The Association shall have two (2) classes of voting membership.

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be case with respect to any Lot.

Class B. The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to a Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) When the total votes outstanding in Class A membership equal the total votes outstanding in the Class B membership; or

(ii) December 31, 2020.

Notwithstanding the foregoing, in the event of annexation of additional properties of SPARC, LLC, membership shall be revived with respect to all lots owned by the Declarant on the Property, which Class B membership shall cease and be converted to Class A membership, on the happening of either of the following events, whichever occurs first:

(i) When the total votes outstanding in the Class A memberships in the annexed property equal the total votes outstanding in the Class B membership in such annexed property, or

(ii) Twenty (20) years from the date of recordation of the amendment of these Covenants, Conditions and Restrictions annexing the additional territory.

#### **ARTICLE IV**

#### **COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Declarant: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the Lot (including all improvements thereon), and shall be a continuing lien upon the Property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Declarant shall be used exclusively to promote the recreation, convenience, health, safety, and welfare of the owners and users of the Property and for the improvement and maintenance of the Common Area.

Section 3. Basis and Maximum of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the

maximum annual assessment shall be Two Hundred Fifty Dollars (\$250.00) per acre for Class A members. The Class B member covenants and agrees to maintain the Common Area without cost to the Association and to fund any budget deficits until the Class B member (Declarant) has conveyed 50% of said Lots to Owners other than Declarant.

a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by the Declarant, without a vote of the Class A membership, by an amount equal to ten percent (10%) of the maximum annual assessment for the preceding year plus the amount by which any ad valorem real estate taxes and insurance premiums payable by the Declarant have increased over amounts payable for the same or similar items for the previous year.

b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased ten percent (10%) by vote of at least two-thirds (2/3) of each class of members who are voting, in person or by proxy, at a meeting duly called for this purpose.

c) The Declarant may from time to time fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of at least a majority of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article IV shall be sent to all members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than fifty (50) days following the preceding month.

Section 6. Uniform Rate of Assessment. Except as otherwise provided in Section 3 of this Article IV, both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected in advance on a monthly or annual basis, at the option of the Owner.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the first conveyance of a Lot to a Class A member. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Declarant shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Declarant. The Declarant shall, upon demand, and for a reasonable charge, furnish a certificate signed by the Declarant setting forth whether the assessments of a specified lot have been paid. A properly executed certificate of the

Declarant with the status of assessments of the Lots shall be binding on the Declarant on the date of its issuance.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. No amendment to this Section shall affect the rights of the holder of any first mortgage on any Lot (or the indebtedness secured thereby); recorded prior to recordation of such amendment unless the holder thereof (or the indebtedness secured thereby) shall join in the execution of such amendment.

Section 9. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein:

- a) All properties dedicated to and accepted by a local public authority; and
- b) All Common Areas

Section 10. Reserves for Replacements. The Declarant may establish and maintain a reserve fund for replacements of the Common Area by the allocation and payment monthly to such reserve fund of an amount to be designated from time to time by the Declarant. Such fund shall be conclusively deemed to be a common expense of the Summit Point Training Center and may be deposited in any banking institution, the accounts of which are insured by any State or by any agency of the United States of America or may, in the discretion of the Declarant, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. The reserve for replacements of the Common Areas and community facilities may be expended only for the purpose of effecting the replacement of the Common Areas, major repairs to any equipment replacement, and for start-up expenses and operating contingencies of a non-recurring nature relating to the Common Areas and community facilities. The Declarant may establish such other reserves for such other purposes as the Declarant may from time to time consider to be necessary or appropriate. The proportional interest of any member in such reserves shall be considered an appurtenance of his Lot and shall not be separately withdrawn, assigned to transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

## **ARTICLE V**

### **ARCHITECTURAL CONTROL**

No structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made (including change in color) until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted in writing and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant. In the event the Declarant fails to approve or disapprove such design and location in writing within thirty (30) days after said plans and specifications have been submitted to it in writing, approval will not be required and this Article V will be deemed to have been fully complied with. Notwithstanding any provision of this Declaration to the contrary, the provisions of this Article V shall not be applicable to the Declarant or any part of the Property owned by the Declarant, its successors or assigns.

## **ARTICLE VI**

## USE RESTRICTIONS

In addition to all other covenants contained herein, the use of the Property and each Lot therein is subject to the following:

Section 1. Each Lot shall be used for specialized or accredited educational and training facilities for adults, including classroom buildings, dormitories, cafeterias, gymnasiums (whose use is limited to the students, participants and instructors at said school or training facility), and administrative buildings.

Section 2. No lot shall be split, divided, or subdivided by sale, resale, gift devise, transfer or otherwise. The Lots shall not be used for residential purposes, except for dormitories hereinabove provided, and no building shall be erected, altered, placed or permitted to remain on any such Lot, except as herein expressly authorized.

Section 3. No sign or billboard of any kind shall be displayed to the public view on any portion of the Property or any Lot, except one (1) sign for each building site giving the building address and the name of the business located thereon.

Section 4. No noxious or offensive activity shall be carried on upon any Lot or any part of the Property, nor shall anything be done thereupon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in anyway unreasonably interfere with the quiet enjoyment of each of the Owners of his respective Lot.

Section 5. No junk vehicle or other vehicle, whether motorized or self-propelled, on which current registration plates are not displayed, shall be kept within any Lot or on any part of the Common Area, nor shall the same be ridden upon any streets, roadways, alleys or sidewalks within the Property, nor upon any lot, open area or trail within the Summit Point Training Center. The Declarant shall have the right to tow any vehicle(s), the keeping or parking of which in the Common Areas violates this Declaration, upon forty-eight (48) hours notice. The repair or extraordinary maintenance of automobiles or other vehicles shall not be carried out on any of the Lots or Common Areas.

Section 6. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot.

Section 7. All rubbish, trash and garbage shall be regularly removed from the Property, and shall not be allowed to accumulate thereon. No burning of refuse and no open fires shall be permitted. All refuse containers, storage areas and machinery and equipment shall be prohibited upon any Lot unless obscured from view of adjoining Lots and streets by an appropriate screen approved by the Declarant. Nothing herein shall be deemed to apply to the storage on the Property by Declarant of building materials during, and for use in, the construction of the improvements on the Property.

Section 8. All Owners or occupants shall abide by the By-Laws and any rules and regulations adopted by the Association.

Section 9. Any lease agreement between a Lot Owner and a lessee shall provide that the terms of the lease are subject in all respects to the provisions of this Declaration, and the Articles of Incorporation and By-Laws of the Association, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All such leases shall be in writing and shall be for a term of not less than six (6) months.

Section 10. All storage tanks for use in connection with the property, including tanks for the storage of propane gas or other fuels must be buried. The Declarant may have storage tanks for use in connection with the property that are not buried as it develops the property. These unburied tanks are meant to be temporary and Declarant intends to have all unburied tanks removed upon completion of the development of the property. Until that time, this section is not applicable to tanks owned by or leased by the Declarant.

Section 11. None of the foregoing restrictions shall be applicable to the activities of Declarant, its officers, employees, agents or assigns, in their development, marketing and sale of Lots or other parcels within the Property or other properties owned by or controlled by the Declarant.

Section 12. During reasonable hours the Declarant, or its representative, shall have the right to enter upon and inspect any Lot for the purpose of ascertaining whether or not the provisions of these restrictions have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

## **ARTICLE VII** **EXTERIOR MAINTENANCE**

Each Owner shall keep each Lot owned by him, and all improvements therein or thereon, in good order and repair and free from debris, including, but not limited to, the maintenance of lawns and the painting (or other appropriate external care) of all structures all in a manner and with such frequency as is consistent with good property management. In the event an Owner of any Lot in the Property shall fail to maintain the Lot and the improvements situated thereon, the Declarant or its agents shall have the right to enter upon said Lot to correct drainage and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. All costs related to such correction, repair or restoration shall become a lien upon such Lots and such lien may be enforced in the same manner as an annual assessment levied in accordance with Article IV hereof. Any such lien shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot shall not affect such lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. No amendment to this Article VII shall affect the rights of the holder of any first mortgage on any Lot (of the indebtedness secured thereby) recorded prior to the recordation of such amendment unless the holder thereof (or the indebtedness secured thereby) shall join in the execution of such amendment.

## **ARTICLE VIII** **GENERAL PROVISIONS**

### Section 1. Nonpayment of Assessments.

(a) Notice of Default; Remedies. Any Assessment installment not paid within thirty (30) days after the due date shall be delinquent. Thereupon, the Declarant shall provide Notice of such delinquency and may, at its option, (i) declare the entire balance of such Annual or Special Assessment due and payable in full; (ii) charge interest from the due date at a percent rate no greater than is permissible by law, such rate to be set by the Declarant for each assessment period; (iii) charge a late charge in an amount equal to five percent (5%) of the delinquent installment or such other amount as may be set by the Declarant; (iv) give Notice to the Owner that in the event payment with accrued interest and penalties is not paid within thirty (30) days from the date of such Notice, then the expressed contractual lien provided for herein shall be filed or foreclosed, or both; and (v) upon Registered Notice to the Owner of the Lot, suspend the right of such owner to vote until the assessment, accrued interest, penalties and costs of collection are paid in

full. Once perfected, the lien for assessments provided for herein shall be prior to all other subsequent liens and encumbrances except (i) real estate tax liens on the Lot, (ii) liens and encumbrances recorded prior to the recordation of this Declaration, and (iii) sums paid on and owing under any mortgage or deed of trust recorded prior to the perfection of said lien. The lien evidenced hereby shall bind the Lot(s) herein described in the hands of the then Owner thereof, his heirs, devisees, personal representatives, and the personal obligation of the Owner to pay such assessment shall, in addition, remain his personal obligation for the statutory period.

(b) Remedies Cumulative. No remedy reserved to the Declarant herein is intended to be exclusive of any other remedy or remedies, and each and every remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity or by statute.

(c) Collection Costs. If default is made in the payment of any assessment payable hereunder, then the Owner who is so delinquent shall pay to the Declarant, upon demand, all costs of collection, including the Declarant's attorney's fees, whether suit is brought or not.

(d) Prepayment. Any member may prepay one or more installments of any Annual Assessments levied by the Declarant, without penalty or interest.

Section 2. Enforcement. The Declarant, or any Owner, or any mortgagee of any Lot shall have the right to enforce, by any proceeding at law and/or in equity, all restrictions, conditions, covenants, reservations, liens, charges or other obligations or terms now or hereafter imposed by the provisions of this Declaration, or the Articles of Incorporation or By-Laws of any Property Owners Association created. Failure by the Declarant or by any Owner or by any mortgagee of any Lot to enforce any covenant or restriction herein contained or any provision of the By-Laws or Articles of Incorporation of the Association shall in no event be deemed a waiver of the right to do so thereafter. There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or attempted violation or breach of any of the within covenants or restrictions or any provision of the By-Laws or Articles of Incorporation of the Association cannot be adequately remedied by action at law or exclusively by recovery of damages.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 4. Duration. Except where permanent easements or other permanent rights or interest are herein created, the covenants and restrictions and any duly appointed amendments thereto of the Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each unless terminated by a vote of a majority of the members of the Association or by the Declarant.

Section 5. Amendment. Subject to the other limitations set forth in this Declaration, this Declaration may be amended during the first twenty (20) year period after it is recorded only by an instrument executed and acknowledged by not less than ninety percent (90%) of Owners. After the first twenty (20) years, this Declaration may be amended by an instrument executed and acknowledged by not less than seventy-five percent (75%) of the Owners. The amendment instrument shall be recorded among the Land Records for the jurisdiction in which this Declaration is recorded. Unless a later date is specified in any such instrument, any amendment to this Declaration shall become effective on the date of recording; provided, however, that no amendment shall be effective unless it is executed by at least one Class A Member, should there be any Class

A members. Notwithstanding the foregoing, the Declarant may amend this Declaration without a vote of the Owners upon notice of such amendment to the Owners and recording said amendment in the land records of Jefferson County, West Virginia.

Section 6. Captions and Gender. The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in anyway to limit or enlarge the terms and provisions of this Declaration. Whenever the context so requires, the male shall include all genders and the singular shall include the plural.

## **ARTICLE IX** **COMMUNITY FACILITIES (OPTIONAL PROVISION)**

Section 1. Availability of Facilities. Community Facilities may be provided upon completion of the later phases of the Declarant's property. All Owners shall have the right to utilize such Community Facilities.

Section 2. Assessments. All Owners shall, as an incident of ownership, be obligated to pay a part of the total assessment for the Community Facilities, as said assessments become due and payable. That portion of the annual assessment attributable to certain costs and expenses associated with the Community Facilities shall be due and payable by all Owners regardless of whether or not the Owner utilizes the Community Facilities; provided, however, the assessment related to the use of the Community Facilities will not be levied until the completion of such facilities.

Section 3. Operation and Management of Community Facilities. The Declarant, or its duly appointed agent, shall promulgate rules applicable to the operation and management of the Community Facilities.

Section 4. Lessees of Owners. Owners may permit lessees of their Lots to use the Community Facilities upon notification in writing to the Declarant (or its duly appointed agent).

Section 5. Liability. Owners (and lessees of Owners) are liable for property damaged by them, their family and their guests.

## **ARTICLE X** **EASEMENTS, ETC.**

Section 1. General Easement. The Declarant reserves the right and easement to the use of any Lot or any portion thereof, as may be needed for repair, maintenance or construction on such Lot or any Lot or on any Common Area.

Section 2. Crossover Easement. If the Owner (including the Declarant) of any Lot must, in order to make responsible repairs or improvements to a building on his Lot, enter or cross any Lot of another Owner, such Owner shall have an easement to do so, provided that said Owner shall use the most direct, feasible route in entering and crossing over such an area and shall restore the surface so entered or crossed to its original condition, at the expense of the said Owner, and further provided that such easement shall not exist on the land of any other Lot Owner if the purpose for the entrance or crossing is one requiring, by virtue of Article V of this Declaration, approval of the Declarant, unless such approval has been given.

Section 3. Blanket Easement. An easement is hereby retained in favor of Declarant and any Property Owners Association created over the Lots and any area owned or to be owned by the Association for the construction of a common cable television system, a common sprinkler, or any other utilities or items for the common

enjoyment and/or benefit of the Owners, including, but not limited to, stormwater management pipelines, channels and facilities. An easement is further granted for the purpose of the repair and maintenance of any item so constructed. Any entry upon any Lot or any area owned or to be owned by the Association to effectuate the foregoing purposes shall not be deemed trespass. Each Owner covenants not to damage or destroy any portion of an item so constructed and shall hold the Association and/or Declarant harmless from the cost of repairing or replacing any portion damaged or destroyed by such Owner, his family, his guests or invitees.

Section 4. Utility Easements. Easements over the Property for the installation and maintenance of electric, telephone, cable television, water, gas, roof drains connected directly to storm sewer, drainage and sanitary sewer lines and facilities and the like are hereby reserved by Declarant, together with the right to enter onto the Common Area for the purpose of completing such improvements thereon, and on the Lots, and for the further purpose of correcting any defects in workmanship or materials on the Property or the improvements thereon.

The rights and duties with respect to sanitary sewer and water, cable television, electricity, gas and telephone lines and facilities in favor of the Association shall be governed by the following:

a) Whenever water, sanitary sewer, roof drains connected directly to storm sewer, electricity, gas, cable television or telephone connections, lines, cables or any portion thereof, are or have been installed within the Property, the Owner of any Lot, or the Declarant shall have the right, and are hereby granted an easement to the extent necessary thereof, to enter upon or have a utility company enter upon any portion of the Property in which said installations lie, to repair, replace and generally maintain said installations.

b) The right granted in Subparagraph (a) above shall be only to the extent necessary to entitle the Owner or Declarant serviced by said installation to its full and reasonable use and enjoyment and provided further that anyone exercising said right shall be responsible for restoring the surface of the easement area so used to its condition prior to such use.

c) In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with respect to sharing of the cost thereof, upon written request of one of such Owners addressed to the Declarant, who shall decide the dispute and the decision of the Declarant shall be final and conclusive on the parties.

Section 5. Drainage Easement. Each Owner covenants to provide such easements for drainage and water flow as the contours of the Property and the arrangement of buildings by Declarant thereon requires. Declarant reserves an easement over all Lots and Common Area for the purpose of correcting any drainage deficiencies.

Section 6. Encroachment Easement. Each lot within the Property is hereby declared to have an easement, not exceeding one foot (1') in width, over all adjoining Lots for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the buildings, roof overhangs, gutters, architectural or other appendages, draining of rain water from roofs, or any other similar cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure on any Lot is partially or totally destroyed and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall

be permitted and that there shall be valid easements for the maintenance of said encroachments as long as they shall exist.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this instrument on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

SPARC, LLC

BY: \_\_\_\_\_ (SEAL)  
William H. Scott, Member

STATE OF WEST VIRGINIA  
COUNTY OF JEFFERSON, to wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by WILLIAM H. SCOTT, Member, of SPARC, LLC, a West Virginia Limited Liability Company.

My commission expires:

\_\_\_\_\_  
(Affix Notary Seal)

\_\_\_\_\_  
Notary Public

THIS INSTRUMENT PREPARED BY: Peter L. Chakmakian, Attorney at Law, P.O. Box 547, Charles Town, WV 25414

## Planning Commission Meetings 2011

| Planning Commission Meetings | County Commission Approved Holidays |  |
|------------------------------|-------------------------------------|--|
| January 11 <sup>th</sup>     | New Year's Day                      | Friday, January 1 <sup>st</sup>                                    |
| January 25 <sup>th</sup>     | Martin Luther King Day              | Monday, January 17 <sup>th</sup>                                   |
| February 8 <sup>th</sup>     |                                     |  |
| February 22 <sup>nd</sup>    | President's Day                     | Monday, February 21 <sup>st</sup>                                  |
| March 8 <sup>th</sup>        |                                     |  |
| March 22 <sup>nd</sup>       |                                     |  |
| April 12 <sup>th</sup>       |                                     |  |
| April 26 <sup>th</sup>       |                                     |  |
| May 10 <sup>th</sup>         |                                     |  |
| May 24 <sup>th</sup>         | Memorial Day                        | Monday, May 30 <sup>th</sup>                                       |
| June 14 <sup>th</sup>        |                                     |  |
| June 28 <sup>th</sup>        | West Virginia Day                   | Monday, June 20 <sup>th</sup>                                      |
| July 12 <sup>th</sup>        | Independence Day                    | Monday, July 4 <sup>th</sup>                                       |
| July 26 <sup>th</sup>        |                                     |  |
| August 9 <sup>th</sup>       |                                     |  |
| August 23 <sup>rd</sup>      |                                     |  |
| September 13 <sup>th</sup>   | Labor Day                           | Monday, September 5 <sup>th</sup>                                  |
| September 27 <sup>th</sup>   |                                     |  |
| October 11 <sup>th</sup>     | Columbus Day                        | Monday, October 10 <sup>th</sup>                                   |
| October 25 <sup>th</sup>     |                                     |  |
| November 8 <sup>th</sup>     | Veteran's Day                       | Friday, November 11 <sup>th</sup>                                  |
| November 22 <sup>nd</sup> *  | Thanksgiving                        | Thursday & Friday,<br>November 24 <sup>th</sup> & 25 <sup>th</sup> |
| December 13 <sup>th</sup>    |                                     |  |
| December 27 <sup>th</sup> *  | Christmas                           | Monday, December 26 <sup>th</sup>                                  |

\* Recommend canceling

# Friends of the Blue Ridge Mountains

November 5, 2010

The Honorable Ms Lyn Widmyer  
President, Jefferson County Commission  
POB 250  
Charles Town, WV 25414

RECEIVED

NOV 12 2010

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

Dear Ms Widmyer:

***Re: Selection of the Jefferson County Planning Commission for our Friend of the Mountain Award***

The Friends of the Blue Ridge Mountains has selected the Jefferson County Planning Commission for our 2010 Friend of the Mountain Award. We made this selection in recognition of their initiating the Blue Ridge Communities Plan and for the progress on preserving the ordinances designed to protect the Blue Ridge Mountains in West Virginia.

This award is given annually to that individual or organization which we believe made a significant contribution to achieving our Mission Statement "to preserve, enhance and celebrate the Blue Ridge Mountains as a valuable resource and treasured space for present and future generations."

Last year this award was given to the Town of Purcellville for creating a conservation easement on 1300 acres of their land on the mountains.

The Friends of the Blue Ridge Mountains is a non-partisan, 501(c)(3) organization with members from the four counties of Loudoun, Clarke, and Fauquier in Virginia and Jefferson County in West Virginia. Our area of interest is the Blue Ridge Mountains from Route 66 to the Potomac River. I've enclosed our brochure which provides a description of our activities.

We have conducted field visits to the Blue Ridge Mountains in West Virginia so we appreciate the importance of the work underway by the Jefferson County Planning Commission. We believe their efforts are commendable and worthy of support.

We look forward to coming to a meeting of the Jefferson County Commission to make the presentation at a time you select. You can respond to me at the above address or by email.

Sincerely

Alfred P. Van Huyck  
President, Friends of the Blue Ridge Mountains  
email: [avanhuyck@aol.com](mailto:avanhuyck@aol.com)  
cc: Tim Boyd, County Administrator; John Maxey, President, County Planning Commission; and Ms Jennifer Brockman, Director, Department of Planning

## MEMO

**To** : The Jefferson County Planning Commission  
**From:** John Maxey  
**Date** : November 15, 2010  
**RE** : Water Advisory Committee Meeting

The Jefferson County Water Advisory Committee met at 3:00 on Monday November 15, 2010. Items on the agenda and discussed were:

1. **Well Water Contamination** - WAC member Dick Latterell discussed a contaminated well near Trough and Engel Moler Roads outside of Shepherdstown. A resident reported health problems due to giardia and e coli bacteria contamination of their well water. The Jefferson County Health Department has been notified and has conducted tests. Member Sue Lawton stated that well contamination is common in areas of Jefferson County including Summit Point, Middle Way, Hidden River, and parts of Shepherdstown. WAC members discussed the need for a requirement to notify surrounding property owners when well water contamination is reported. Member Mark Shields will discuss the idea with the Board of Health.
2. **Watershed Group Development** – Member Dan Riss reported on a recent WV DEP meeting on the benefits of Watershed Associations. Mr. Shields suggested that these presentations should be conducted regularly at different locations around the County. The WAC will take steps to encourage development of Watershed groups.
3. **Septic System Pumping requirement** – The Board of Health has been considering a requirement for regular septic system pumping. There is concern that State law may not allow such a requirement. The BOH has asked the Jefferson County Prosecuting Attorney’s office for an opinion on this.
4. **Drug Depository** - The Water Advisory Committee is concerned about the impact on water quality of pharmaceutical disposal. Area health care providers lack specific policies for disposal and often dispose of excess or expired pharmaceuticals by flushing them down the drain.
5. **EPA TDML vs. Local Monitoring** – WAC member Mark Shields is concerned about flaws in the model proposed by EPA for the Chesapeake Bay TDML. WAC feels it is important that funding for stream monitoring be continued as a way of compiling baseline data that may help protect Jefferson County from future compliance actions. WAC will try to set up a meeting with EPA and Dr. Villa from Shepherd University in an effort to convince EPA to make use of real monitoring data instead of model projections.
6. **Watershed signs for Parks** - The Water Advisory Committee has obtained funding for two “Watershed” signs for placement along streams in areas of high visibility. Preferred locations are at the Elks Run at Sam Michaels Park and at Evitts Run Park in Charles Town.

## Julia Quodala

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**From:** Jennifer Brockman [jbrockman@jeffersoncountywv.org]  
**Sent:** Tuesday, December 07, 2010 9:33 AM  
**To:** 'Julia Quodala'  
**Subject:** FW: Notes From 12/6 PSD Meeting

For the PC packets under PC Exchange

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

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**From:** [Daniel\\_Hayes@URSCorp.com](mailto:Daniel_Hayes@URSCorp.com) [mailto:[Daniel\\_Hayes@URSCorp.com](mailto:Daniel_Hayes@URSCorp.com)]  
**Sent:** Tuesday, December 07, 2010 9:19 AM  
**To:** [jbrockman@jeffersoncountywv.org](mailto:jbrockman@jeffersoncountywv.org)  
**Subject:** Notes From 12/6 PSD Meeting

Jennie

The following was discussed at yesterdays PSD meeting:

### Flowing Springs WWTP

PSC is expected to rule within the next month on rate increases to pay for the WWTP in consideration of intervenor comments

NPDES permit is approved; the appeal period is still open

The PSD approved a waiver of "offsite use restrictions to allow a 1 EDU drawdown:" for a proposed Year Round Farmers Market at the corner of Old Rt 9 and Wilshire Rd (Bardane) as requested by the JCDA. The EDU is apportioned to JCDA. The waiver will be rescinded if this specific project does not go forward; this is not a blanket waiver. It is also not a waiver of fees. Planning Commission will still need to review land use for any potential project at this location

PSD has submitted revisions to Sen. Snyder's draft legislation to provide funding to meet Bay requirements.

Sen. Snyder must have this legislation out of committee by 12/13. The PSD is concerned that the legislation as currently written will require customers to bear much of the cost of the WWTP. Also, the JCPSD facility will not currently be financially covered retroactively. The PSD will take under consideration next month lobbying expenses for this legislation.

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

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