

SPECIAL SESSION:

State of West Virginia, County of Jefferson, to-wit:

At a Special Session of the County Commission of said County and State continued and held at the County Commission Conference Room at the Hunter House thereof on Tuesday, February 7, 2006, beginning at 3:00 o'clock p.m.

PRESENT: Gregory Corliss, President;
James Surkamp; A.M.S. (Rusty) Morgan, III;
Dale Manuel; Jane M. Tabb; Commissioners

In re: SPECIAL SESSION WITH LEGAL COUNSEL - DAVID HAMMER - CASE NO. 06-C-24

The County Commission met with legal counsel, David Hammer to discuss Case No. 06-C-24 (Huntfield, LC et al vs. the County Commission of Jefferson County).

Motion by Manuel, second by Morgan to enter into Executive Session to discuss litigation with Mr. Hammer. Motion carried.

Motion by Manuel, second by Morgan to return to Regular Session. Motion carried.

Motion by Morgan, second by Manuel to approve the following clarification of the resolution that was passed on January 12, 2006 that supported the Commission's vote of December 22, 2006 concerning the Huntfield Age Restricted Community. Motion carried.

CLARIFICATION OF THE JANUARY 12, 2006 RESOLUTION

WHEREAS, on December 22, 2005 the County Commission voted to deny a request made by Huntfield, L.C., the owner of land located in the City of Charles Town, and K. Hovnanian's Four Seasons at Huntfield, L.L.C., upon information and belief the contract purchaser of property to be developed in the City of Charles Town [hereinafter collectively "citizens"], that they be exempted from the requirements of Ordinance No. 2003-03;

WHEREAS, on January 12, 2006 the Jefferson County Commission voted to pass a Resolution embodying the vote of December 22, 2005;

WHEREAS, the Jefferson County Commission finds that in this instance it is necessary to explain the basis for the vote of December 22, 2005 and the Resolution of January 12, 2006 in order to clarify its reasons for so voting;

It is therefore **RESOLVED** that the Jefferson County Commission hereby states that it declined to grant the exemption requested for, among other reasons, the following:

1. On January 20, 2005 the County Commission approved and adopted an amended Impact Fee Procedures Ordinance. Among other purposes, the Procedures Ordinance is intended to establish uniform procedures for the imposition, calculation, collection, expenditure and administration of impact fees imposed on new development.

2. The Procedures Ordinance defines an "Applicant" as any person "who files an application. . . for property that is located within a municipality which issues building permits "

3. Impact fees are calculated by the County at the time of application for a building permit. Application for a building permit is made by an Applicant after all applicable land use, zoning, planning, platting, subdivision or other related requirements of, in this instance, the City of CharlesTown have been met.

4. That calculation is made by the Impact Fee Coordinator.

5. The decision of the Impact Fee Coordinator may be appealed pursuant to the procedures set forth in Section 4 of the Impact Fee Procedures Ordinance.

6. Those procedures set forth the mechanism by which evidence, including sworn testimony and exhibits, is received. In other words, the hearing procedure set forth in Section 4 provides for the creation of a record upon which the County Commission may rely in rendering a decision upon an Applicant's appeal.

7. Absent a record, the County Commission can do no more than rely on untested representations and speculation as to, among other things, a) the definition of age restricted land use actually to be used; b) how the age restrictions proposed will be enforced; and c) what, if any, penalties will apply for violation of the age restrictions.

8. The County Commission is compelled to comply with the Impact Fee Procedures Ordinance and the Due Process safeguards contained therein for to deviate from those procedures will create a substantial risk of the appearance of bias, favoritism, or prejudice against applicants who either avail themselves of the procedures set forth in the Ordinance or who seek but are denied a request to deviate from those procedures.

9. Adherence to the procedures set forth in the Impact Fee Procedures Ordinance will not cause any delay to a developer because they specifically provide for the issuance of a building permit when an appeal "accompanied by a cash bond, letter of credit or other surety in a form satisfactory to the County Attorney in an amount equal to the impact fee calculated by the Impact Fee Coordinator to be due."

10. Thus, the County Commission is unwilling to deviate from its own

ordinances and render what would amount to an advisory opinion to a citizen in the absence of the development of a full record on appeal upon which it could base its opinion.

11. Notwithstanding public comments to the contrary, the vote taken on December 22, 2005 was not a final vote upon the merits of whether and under what terms an age restricted community might be exempt from the payment of an impact fee for schools. Those issues remain to be resolved if and when there is an appeal of the Impact Fee Coordinator's calculation and a full record on appeal is developed. The vote taken on December 22, 2005 and subsequently embodied in the resolution of January 12, 2006 is, more accurately, a denial of the citizens' request on the basis that the Jefferson County Commission has no basis to deviate from the procedures set forth in the Impact Fee Procedures Ordinance.

Dated: February 7, 2006

/s/ Gregory A. Corliss

President of the Jefferson
County Commission

Upon rising, the Commission recessed until Thursday morning next beginning at 9:30 o'clock a.m.

PRESIDENT