

## AGENDA FOR THURSDAY, DECEMBER 17, 2009

Old Charles Town Library Meeting Room  
200 E. Washington Street, Charles Town, WV

Y/ N/ NA

### APPOINTMENTS:

- 1. 9:30 a.m. - Pledge of Allegiance  
Approval of Minutes  
Approval of Purchase Orders  
Approval of Accounts Payable
- 2. 9:40 a.m. - Public Comment
- 3. 9:45 a.m. - Certification of Table Games Election Results
- 4. 9:50 a.m. - Bonding and Activity Report
  - Adoption of Subdivision and Land Development Regulations Amendments Proposed in October 2008
  - Request for Extension to the Bonding Agreement for the Preserve at Barleywood
  - William H. Gordon Associates, Inc. - Draft Amendment to the Bonding Policy - Discussion/Action
- 5. 10:00 a.m. - Ed Dunleavy - Shepherdstown Battlefield Preservation Association, Inc. - Request Approval of a 2010 Transportation Enhancement Grant Application
- 6. 10:15 a.m. - Walter Washington Counsel for Home Hill Corporation - Release of Remaining Balance of Bond for North Hills Subdivision - Discussion/Action
- 7. 10:45 a.m. - Stephanie Grove - Legal Update and Report
- 8. 11:00 a.m. - Jennifer S. Maghan - County Clerk's Report
- 9. 1:30 p.m. - County Commission Workshop

### OLD BUSINESS:

- 10. Legislative Issues

- 11. Kirk Davis, Sr., Capital Projects Manager - Grants Update
  - Approval of RFP's - Discussion/Action
    - HVAC
    - Historic Courthouse
    - Historic Courthouse - Exterior
- 12. Mark Schiavone - Budget Updates
- 13. Jefferson County Compensation and Classification Study - Longevity for Part-Time Employees - Discussion/Action

**NEW BUSINESS:**

- 14. Agenda for Council of Governments Meeting - January 27, 2010 - Discussion/Action
- 15. Debbie Royalty - Request for Use of County Meeting Room for PATH Meetings - Discussion/Action
- 16. Jefferson County Health Department - Request for Christmas Bonuses for Health Department Employees - Discussion/Action
- 17. Establish Policy Guidelines for Agencies that Request Funding from the County Commission During the Budget Hearings for Fiscal Year 2011 and Thereafter - Discussion/Action (PN)
- 18. Commendation for Boy Scout Erik J. (DM)
- 19. County Administrator Reports
- 20. County Commission Reports

**INFORMATION:**

- 21. Reminder that County offices will be closed December 24<sup>th</sup>, December 25<sup>th</sup>, will close at noon on December 31<sup>st</sup> and closed on January 1<sup>st</sup>, 2010.
- 22. Reminder the Commission will not meet on Thursday, December 24<sup>th</sup> and Thursday, December 31<sup>st</sup>.
- 23. Memorandum received from Roger Goodwin concerning bonding for Cambridge Manufactured Home Development

- 24. Memorandum received from the Department of Capital Planning and Management concerning the closure of their office on December 22, 2009, from 12:00 p.m. to 2:00 p.m.
- 25. Animal Control report received for November 2009.
- 26. Copy of correspondence sent to Jeffrey Polczynski from Nikki Painter recognizing the addressing office for their assistance with voter registration records.
- 27. Correspondence received from FEMA concerning the Flood Plain Management Ordinance.
- 28. Correspondence received from the Kanawha County Commission concerning mammograms and cervical cancer testing for women.
- 29. Information received from the County Commissioners' Association concerning the legislative association meeting and education training on January 31, 2010 - February 2, 2010.
- 30. Correspondence received from Comcast concerning rate changes.
- 31. E-911 fees received.
- 32. West Virginia Ethics Reporter received for November 2009.
- 33. Potomac Valley Audubon Society newsletter received.
- 34. Weekly settlement report for the Charles Town Races received from the West Virginia Lottery.
- 35. Copy of a newspaper article concerning tax legislation received from the Association of Counties.
- 36. Miscellaneous

**CORRESPONDENCE:**

- 37. Correspondence received from James A. Walker concerning the mountain water system replacement project.
- 38. Correspondence received from Anthony L. Hose concerning the Water Advisory Committee meeting.
- 39. Correspondence received from Gil N. Garcia concerning the addition of a staff person to the Planning Department.

*At all times the County Commission reserves the right to rearrange agenda times because of time constraints and to accommodate the Commission schedule or the public.*

Please post 2 times.

Rec'd  
12/10/09  
AMW  
# 4

OCTOBER 23, 2008  
OCTOBER 30, 2008

THE COUNTY COMMISSION OF JEFFERSON COUNTY  
PUBLIC HEARING NOTICE

On November 20, 2008, the County Commission of Jefferson County has scheduled a public hearing on amendments to the Subdivision & Land Development Regulations, adopted October 9, 2008, at 1:30 p.m. in the County Meeting Room, Charles Town Library, 200 East Washington Street, side entrance. Oral and written comments may be presented at the hearing.

The following sections will be considered for amendment:

Sec. 24.106	Major Subdivision Concept Plan Completeness Review
Sec. 24.113	Major Subdivision Final Site Development Plan Application - Submission
Sec. 24.502	Maintenance Bond
Sec. 24.503	Amount of Surety
App. A, Sec. 1.4	Recordation of Final Plat
App. B, Sec. 1.2	Surveys

Copies of these amendments can be found at the Department of Planning office located at 104 East Washington Street in Charles Town and on the County's website [www.jeffersoncountywv.org](http://www.jeffersoncountywv.org).

If you have any questions, please give the Department of Planning office a call at (304) 728-3228.

By Order of the County Commission of Jefferson County

Frances Morgan, President

Appointments

**JEFFERSON COUNTY, WEST VIRGINIA**

**Department of Planning**

104 East Washington Street

P.O. Box 338

Charles Town, West Virginia 25414

Phone: (304) 728-3228

Fax: (304) 728-8126

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

Date: October 8, 2008

To: County Commission

From: Tony Redman, Planning Director

RE: Public Comments received at the Public Hearing on the proposed Subdivision & Land  
Development Regulations September 29, 2008

Please find attached the written public comments received from the public hearing.

If you have any questions, please feel free to contact me at x3245.

### **Sec. 24.106 Major Subdivision Concept Plan Completeness Review**

Once the concept plan has been found sufficient, the Department shall have 45 days to place the concept plan on a Planning Commission agenda to hold a public workshop. The applicant shall distribute the concept plan material to all reviewing agencies within seven days after the plan has been found sufficient. Agency comments shall be received by the Department 14 days prior to the scheduled public workshop.

- A. **Department and Agency Reviews.** The Department and appropriate reviewing agencies shall conduct reviews of the proposed concept plan.
- B. **Review Content.** The Department and agency reviews shall address the areas indicated in C through E below and any other areas of concern to the agencies.
- C. **Department.** The Department review shall include the following:
  - 1. Whether the density, use, and plan meet the requirements of Articles 2 and 3 of the Zoning Ordinance and any other zoning issues that can be identified at the concept plan submission. (Landscaping, for instance, is not generally available at this stage). Staff shall identify conditions that would enable the plan to meet the standards. It shall also identify any other zoning issues the developer shall address in a preliminary plan submittal.
  - 2. Staff opinion as to whether the plan meets the site development planning or subdivision criteria of this Ordinance. The Department shall review the concept plan for modifications that would improve the plan.
- D. **WVDOH.** When appropriate, WVDOH shall submit a letter to the Department of Planning indicating issues and data requirements or notice that there are no issues or data requirements. If WVDOH determines that a traffic study needs to include more area than required by this Ordinance or the Zoning Ordinance, it shall specify the expanded area. Any issues regarding sight distances, access location, road configuration, or off-site improvements shall be noted with recommendations or required changes. The purpose is to ensure that, at preliminary plan review, all transportation information is available so the agency does not have to seek additional data for a qualitative review.

**Sec. 24.113 Major Subdivision Final Site Development Plan Application – Submission**

The submission of a final plan application is a required step for all subdivisions and site developments.

- C. **Endorsements on Final Plats.** The following certificates shall be placed on all final plats:
1. **Surveyor.** Certificate of accuracy and mapping by professional licensed surveyor signed and sealed.
  2. **Owners.** Certificate of ownership and dedication signed and notarized, including all individuals, partnerships, and corporations, and lenders with financial security interests.
  3. **County Clerk or Developer's Attorney.** County Clerk's certification or the developer's attorney's certification of ownership for any final plat involving a right-of-way dedication signed and notarized.

**Sec. 24.502 Maintenance Bond**

A maintenance bond shall be provided to repair any damage sustained to improvements listed in Section 24.501, Improvements Requiring Surety, during the subdivision's or development's construction and for two years after acceptance of facilities. The amount of surety or maintenance bond and/or bond for improvements shall be determined as outlined in Section 24.503, *Amount of Surety*. The amount of the maintenance bond shall in no case exceed 50% of the amount of surety provided for the initial costs of improvements, and shall expire one year from the date that the construction bond is released.

**Sec. 24.503 Amount of Surety**

- A. **Cost Estimates.** The developer shall submit cost estimates from the project engineer for the cost of such installation.
- B. **Review and Approval.** The County planning department and engineers shall review the cost estimates and make upward adjustments if they find the cost estimates below those the County is currently experiencing.
- C. **Amount.** The surety shall be in the amount of 115 percent of the approved estimate. This covers inflation, the cost of inspecting, and rebidding if the developer defaults and the County has to take over construction or construction supervision.

## **Appendix A**

### **Sec. 1.4 Recordation of Final Plat**

The applicant shall have ~~120~~ 180 days after approval to file and record the Final Plat in accordance with W.Va. Code §30-1-13. The approval shall be become void if it is not filed within the 120-day period. The following documents shall be submitted to the Department of Planning:

1. Two (2) mylar copies of the Final Plat suitable for recordation and acceptable to the Clerk of Jefferson County;
2. Three (3) paper copies of the Final Plat;
3. One (1) digital copy of the Final Plat compatible with the Jefferson County GIS, as specified by the Jefferson County GIS/Addressing Office requirements; and
4. One (1) digital and two (2) paper copies of any deed restrictions/covenants in aform suitable to the Department.

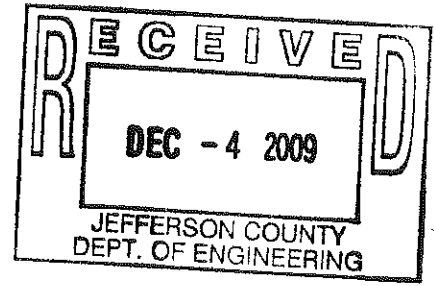
## **Appendix B**

### **Sec. 1.2 Surveys**

- A. The Preliminary Plan and Final Plat for a subdivision shall be prepared and certified as to preparation and accuracy by a West Virginia licensed surveyor or engineer.
- B. Permanent monuments shall be of the type specified by the ~~West Virginia Laws, Rules and Regulations of the State Board of Examiners of Land Surveyors (July 1, 1976)~~ Rules and Regulations of the West Virginia Board of Professional Surveyors: Sections 23-5-7 and 3-1-17 of the West Virginia Code; or a greater standard as specified by the County Engineer/Staff.
- C. All permanent lot corner markers not susceptible to destruction by subdivision improvements shall be in place prior to the conveyance of individual lots. All other lot corners shall be in place prior to the final release of the construction bond. Lot corners will consist of 36" long by 5/8" diameter sections of steel rod suitable for magnetic detection; and/or shall be in accordance with state law. Certification of such shall be provided by a West Virginia licensed land surveyor.
- D. Bearings (or Azimuths) shall be dimensioned to the nearest 0.5 minute, distances to the nearest .01 foot and areas to the nearest .01 acre or 100 square feet.
- E. New sections of any subdivision on record at the time this Ordinance was adopted may use directional references that align with the directional references of the recorded subdivision.

#04-16

cc: RG/NK/CC  
orig: File 04-16



December 4, 2009

RECEIVED

Ms. Becky Burns:  
Jefferson County Planning Commission  
116 east Washington Street  
Chares Town, WV 25414

DEC 04 2009

JEFFERSON COUNTY COMMISSION

RE: Request for Extension to the Bonding Agreement for the Preserve at Barleywood  
(JCPC File No. 04-16)

Dear Ms. Burns,

Dan Ryan Builders would like to Request an extension to the bonding agreement for the Preserve at Barleywood (JCPC File No. 04-16). A check has been enclosed for \$300.00 for the fee required.


I understand this will need to go before the Commission for approval. Do to the market conditions we ask that this be extended to the maximum allowed, but preferably 2 years.

All roads are in, SWM is in good working order and site is stabilized.

The currant Bank of America LOC # 3078760 is in place for \$231,697.00 with an automatic extension renewing.

Please contact me if there are any questions or addition needed for this request.

Thank you,

  
Jim Dorsey  
Land Development Manager  
Dan Ryan Builders, Inc.  
301-696-5513 office  
301-696-5638 fax

RECEIVED

DEC 04 2009

rcvd 3:30P.M

Jefferson County Commission

#5

**Laura Kuhn**

---

**From:** "Sandy McDonald" <sandy@jeffersoncountywv.org>  
**To:** "Laura Kuhn" <laura@jeffersoncountywv.org>  
**Sent:** Tuesday, December 01, 2009 9:10 AM  
**Subject:** Fw: County Commission Meeting Agenda

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

**From:** Edward and Carol Dunleavy  
**To:** sandy@jeffersoncountywv.org  
**Sent:** Tuesday, December 01, 2009 8:53 AM  
**Subject:** County Commission Meeting Agenda

Sandy:  
Can I be placed on the County Commission agenda for Dec. 17, 2009. The subject is filing an application for a 2010 Transportation Enhancement Grant to acquire funds to purchase land on the site of the 1862 Battle of Shepherdstown. In the past, I've filled out the application for the County and the President of the Commission signs the application. As you probably know, the County has received two grants of \$100,000.

Thanks.

Ed Dunleavy  
President  
Shepherdstown Battlefield Preservation Association Inc.

Please visit our website at: [www.battleofshepherdstown.org](http://www.battleofshepherdstown.org)

#6 10:15  
11/17/09

Home Hill Corporation  
100 Cress Creek Drive  
Shepherdstown, WV 25443

December 9, 2009

Jefferson County Commission  
124 East Washington St.  
Charles Town, WV 25414

Re: North Hills Subdivision Bond

Dear Commissioners:

This letter is to request release of the remaining balance of the above-referenced bond for the following reasons:

1. All tasks of the North Hills project have been completed and inspected.
2. The Howard Farm Road was bonded, constructed, inspected, certified and released by county engineer John Laughlin in 2001. As part of the Fernbank Subdivision process, the County Commission approved use of cross-easements over Howard Farm Road and Fernbank Drive, understanding their use would not be the primary egress/ingress for either of the neighboring subdivisions (Fernbank and Howard Farm), but only as an emergency, second way out. This intent has been respected by the residents of both subdivisions and there has been minimal wear and tear on Howard Farm Road as a result. The road is well established and in good condition.
3. In 2005, the current county engineer rescinded the earlier certification of Howard Farm Road in spite of no changes to the condition of the road.
4. The residents of Howard Farm who use Howard Farm road support our request.

For these reasons, Home Hill Corporation requests the Commission (1) to waive the North Hills bond requirement to upgrade Howard Farm Road and release the remaining balance of the bond; and (2) to uphold the approval determination made by the county engineer regarding Howard Farm Road in 2001, when the Fernbank bond was released, which made allowances for geotechnical data and conditions in the field, so that Howard Farm lot owners may exercise their right to subdivide their lots as permitted by the applicable covenants of Howard Farm Subdivision and the county subdivision ordinance.

Jefferson County Commission  
December 9, 2009  
Page 2

Home Hill further requests that this matter be placed on the Commission's agenda for its December 17, 2009 meeting.

Sincerely,



Hank Walter  
Project Manager

cc: Walter Washington  
Bill Howard

#6

<p>Commission Office Use Only</p> <p>Date on Agenda:</p> <p>Appt Time or New Business:</p>
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**AGENDA REQUEST FORM**

Name: Larry Rosenberg

Department or Entity: N/A

Estimation of amount of time needed for appointment: 30 minutes

Date Requested – 1<sup>st</sup> Choice: 12-17-09

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

If a specific date is needed, please provide reason for specific date:  
**The December 17, 2009 date is needed in order to put the draft amendment of the bonding policy out for public comment. This would allow the draft to be considered for approval/implementation on January 7, 2010. In turn, the Colonial Hills Phase 3 and Tollhouse Woods bonds would be able to be altered in January prior to the expiration date of the letters of credit.**

Subject: **Draft Amendment to the bonding policy**

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

**The Final Plats for Colonial Hills Phase 3 and Tollhouse Woods have been recorded and the approved security has been posted for the projects. Due to the severe downturn in the residential housing market, no construction has commenced at either project. The property owner has requested to reduce the amount of surety on the projects until the market conditions improve. This request was presented to Jefferson County staff for review, comment, and suggestions ultimately leading to the proposed amendment to the bonding policy and deed restrictions for the property.**

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

**We move to approve the draft amendment to the bonding policy and advertise it for public comment and to place the item on the January 7, 2010 County Commission Agenda for approval and implementation.**

Attachments:

- Existing Jefferson County Bonding Policy,**
- Proposed Amendment "L" to the bonding policy,**
- Example Addendum "D" to the bonding policy for Colonial Hills Phase 3,**
- Example Addendum "D" to the bonding policy for Tollhouse Woods**

JEFFERSON COUNTY BONDING POLICY  
ADOPTED - MAY 25, 1995  
AMENDED - APRIL 10, 1997  
AMENDED - AUGUST 20, 1998  
AMENDED/EFFECTIVE - DECEMBER 1, 2000

- A. Projects That Require Construction Bonds
  - 1. Approved subdivisions of land requiring infrastructure improvements.
  - 2. Commercial, industrial, multi-family and institutional projects that require a site plan.
  
- B. Length of Construction Bonds
  - 1. 2 1/2 years for all improvements.
  
- C. Extensions of Construction Bonds
  - 1. 1 1/2 years provided:
    - a. All dwelling units are served by a road that is totally improved with exception of the top coat of asphalt;
    - b. All erosion and sediment controls are in place and functioning properly;
    - c. Stormwater Management facilities are in place either as temporary silt traps per plan or as permanent SWM protected from silt from undisturbed areas in the project. The SWM facility itself will be stabilized;
    - d. \$300.00 in fees are paid;
    - e. Surety is re-evaluated to determine if amount is still appropriate;
    - f. Additional surety is added if (e) is not adequate;
    - g. Existing infrastructure shall be reconstructed or redesigned if failing or substandard. ((f) then applies); and,
    - h. Elements of the preliminary plat or site plan that have not been constructed shall be reviewed for compliance with current design standards and said plat or plan shall be modified to meet current standards as required.
  
- D. After the erosion and sediment control devices have been inspected and approved all subsequent County Engineer inspections shall be \$50.00. County discretionary inspections shall not be assessed the fee.
  
- E. Approved Sureties are Limited to:
  - 1. Irrevocable Letter of Credit (addendum A) from any bank within 150 miles of Charles Town, West Virginia; or,
  - 2. Cash-in-Escrow (addendum B) at any bank within 150 miles of Charles Town, West Virginia; or,
  - 3. Irrevocable Letter of Commitment (addendum C) from any bank in Jefferson County.

- F. Approved surety shall be formatted as shown on the attached sheets unless otherwise approved by the County Administrator and the Planning Director or the County Commission.
- G. Parties other than the owner may provide the surety as allowed in the subsection F above and execute the construction bond; provided, however, that the third party adds their signature to the statement of acceptance on the associated plat.
- H. Bonding arrangements cannot be made prior to Planning Commission approval of project.

After the County Engineer has approved the construction bond amount and approved surety has been presented to the Planning Commission office, the construction bond shall be prepared. Upon notice from the Planning Commission office to the County Commission office that the surety and bond are in accordance with the Jefferson County Commission bonding policy, the Commission President or County Administrator may affix signature to the bond which will constitute acceptance by the County Commission of Jefferson County. All such action shall be reported to the Jefferson County Commission as an agenda information item at their next meeting.

An appeal of this process will adhere to (I.) below of the Jefferson County Bonding Policy adopted May 25, 1995.

- I. To be approved by the County Commission on a Thursday all surety must be submitted to the Planning Commission Office by 5:00 p.m. on the preceding Monday. If the office is closed on such Monday then the deadline is 12:00 p.m. on Tuesday.
- J. The County shall retain the 15% contingency fee on all components until the final release is approved. Except that if a project's required surety has been greater than \$333,333.00 and goes below that amount because of releases, the contingency amount retained will be \$50,000.00 until final release of all bonded items.
- K. In the event that a previously released component fails before the final release, no monies will be released until said component is corrected and approved.

SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

ADDENDUM A

BANK NAME  
ADDRESS  
TELEPHONE NUMBER

DATE

County Commission of Jefferson  
110 East Washington Street  
P. O. Box 250  
Charles Town, West Virginia 25414

RE: IRREVOCABLE LETTER OF CREDIT # \_\_\_\_\_ AMOUNT \$ \_\_\_\_\_  
NAME OF PROJECT

Sir or Madame:

By this letter, BANK'S NAME hereby establishes an Irrevocable Letter of Credit No. \_\_\_\_\_ and authorizes you to draw on us for the account of PROJECT NAME/BORROWER up to an aggregate amount of \$ \_\_\_\_\_ dollars, subject to the terms and conditions stated herein.

Draws under this Letter of Credit are available by your draft presented to our Bank at its BANK'S LOCATION on or before the January 15 or July 15 of a given year and accompanied by the following documents:

- 1.) A certification executed and signed by a duly authorized member of the County Commission of Jefferson County, West Virginia, that PROJECT NAME/BORROWER has failed to perform its obligation under, and according to, the terms of that certain construction bond agreement, attached hereto and made a part hereof.
- 2.) The Original Letter of Credit.

We hereby agree that drafts under and in compliance with the terms of this Letter of Credit will be duly honored if presented as aforesaid on or before January 15, or July 15 of a given year.

Except as otherwise expressly stated herein, this credit is subject to Uniform Commercial Code and shall be construed under the laws of the State of West Virginia. Any draft upon this Letter of Credit must be marked "Drawn under NAME OF BANK Letter of Credit" for PROJECT NAME/BORROWER dated DATE OF LETTER OF CREDIT.

Very Truly Yours,  
BANK'S NAME

SIGNATURE OF BANK OFFICER  
PRINT BANK'S OFFICER'S NAME  
TITLE  
DATE

ADDENDUM B

ESCROW AGREEMENT

THIS AGREEMENT dated this \_\_\_\_\_ day of \_\_\_\_\_ by and between OWNER/DEVELOPER'S NAME, having its address at OWNER/DEVELOPER'S ADDRESS, party of the first part, and BANK'S NAME, having its address at BANK'S ADDRESS, as Escrow Agent for the County Commission of Jefferson County, party of the second part.

WITNESSETH that the party of the first part has this day deposited with the party of the second part the sum of \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents (\$ \_\_\_\_\_), as security for its undertaking to complete construction of the required erosion and sediment control devices, stormwater management measures, grading, roadways and associated appurtenances to serve PROJECT NAME, as more particularly described in Planning Commission File #\_\_\_\_\_. This construction is to be subject to the supervision and approval of the County Commission of Jefferson County acting by and through the Jefferson County Planning Commission. Construction must be completed by \_\_\_\_\_.

The parties hereto agree that the escrow agent shall hold the respective funds as security for the performance of said undertakings by the party of the first part, and that respective funds may not be released to the party of the first part without the approval in writing of the County Commission of Jefferson County or the Jefferson County Planning Commission.

In case of default, the escrow agent shall be obliged to turn over to the County Commission of Jefferson County the escrowed funds or any part thereof, for the completion of the required installations and improvements.

ATTEST:

OWNER/DEVELOPER  
NAME OF COMPANY OR INDIVIDUAL

\_\_\_\_\_

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

ATTEST:

BANK'S NAME

\_\_\_\_\_

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

Affix Bank Seal

DATE: \_\_\_\_\_

ADDENDUM C

All Letter of Commitments shall contain the following special provisions along with the attached Addendum A.

**Special Provisions:** For infrastructure cost only,  
Loan will be disbursed for the purposes and terms indicated, with restrictions noted in Addendum A.

ADDENDUM A

- 1) Draws, payable to the Borrower, will be made as work progresses.
- 2) Request(s) for draws will be made in writing to the joint attention of  
BANK NAME, and the Director, Jefferson County Planning Commission.
- 3) The Bank's construction inspector or engineer, jointly with concurrence of the Jefferson County Engineer, will inspect the progress of construction. When the requested draw is approved, a joint authorization will be signed by the two representatives and submitted to the Bank to authorize and disburse the requested advance. In the event there is no agreement between the Bank's representative and the County Engineer, the County Engineer's position on the requested draw shall unconditionally prevail.
- 4) Draws up to the cumulative total amount of \$ \_\_\_\_\_, will continue as outlined and jointly approved until the project is completed in accordance with the plans and specifications in the Jefferson County Planning Commission File No. \_\_\_\_\_.
- 5) In the event Borrower fails to perform its obligations under, and according to, the plans and specifications for this project contained in the aforesaid File No. \_\_\_\_\_, the funds remaining from the \$ \_\_\_\_\_, will be withheld from disbursement until the required performance has been fulfilled.
- 6) If the required performance is not fulfilled by the Borrower, the remaining balance of the undisbursed \$ \_\_\_\_\_, amount will be subject to the order of the County Commission of Jefferson County, by draft presented to the Main Office of BANK NAME AND ADDRESS \_\_\_\_\_, accompanied by a certification that BORROWERS NAME \_\_\_\_\_, has failed to perform its obligation in accordance with the terms and specifications set forth in the aforesaid File No. \_\_\_\_\_, as approved by the Jefferson County Planning Commission. These draws will be duly honored if presented as aforesaid on or before JANUARY 15 or JULY 15 OF A GIVEN YEAR.
- 7) This is an irrevocable commitment to fund infrastructure costs in the aforesaid amount for the project. Borrower, Bank and County Commission understand and concur that, even in the event of bankruptcy, subject funds will be earmarked for infrastructure costs for this project and will be set aside for that purpose.

8) If this Commitment is not renewed more than 30 days prior to JANUARY 15 OR JULY 15 OF A GIVEN YEAR, the County Commission may draw down any remaining funds and place the same in escrow to be used only for the purpose of completion of the project.

It is expressly understood and agreed this agreement between the Borrower, the County Commission and BANK NAME, replaces the requirement for an irrevocable Letter of Credit separate from this agreement.

The terms and conditions set forth herein have been reviewed and agreed by the following:

\_\_\_\_\_  
BORROWER'S SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
BORROWER'S SIGNATURE

\_\_\_\_\_  
DATE

BANK'S NAME

\_\_\_\_\_  
BANK OFFICER'S SIGNATURE & TITLE

\_\_\_\_\_  
DATE

COUNTY COMMISSION OF JEFFERSON COUNTY

\_\_\_\_\_  
PRESIDENT'S SIGNATURE

\_\_\_\_\_  
DATE

## **Proposed Amendment to the Jefferson County Bonding Policy**

- L. In the event that all permitted improvements have been approved by the Jefferson County Department of Engineering and the final plat has been approved by the Planning Commission and recorded, and if construction of the approved infrastructure has not commenced, the owner may request that a revised surety amount limited to site stabilization measures be approved by the Jefferson County Engineering Department provided:
1. The owner will be responsible for recording Addendum D of the Jefferson County Bonding Policy which will contain deed restrictions prohibiting any construction of infrastructure, any land disturbance and any sales of subdivided lots unless and until the conditions set forth therein are satisfied.
  2. The owner will be responsible for posting the revised surety amount in the form required by the Jefferson County Bonding Policy.

**AGREEMENT REGARDING BONDING OBLIGATIONS AND DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**THIS AGREEMENT REGARDING BONDING OBLIGATIONS AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** (this "Declaration") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2009, by **MARK-COLONIAL HILLS, L.L.C.**, a West Virginia limited liability company ("Declarant"), and the **COUNTY COMMISSION OF JEFFERSON COUNTY, WEST VIRGINIA** (the "County Commission").

**WHEREAS**, Declarant is the owner of a certain tract of land located in Jefferson County, West Virginia, legally described in **Exhibit A** attached hereto (the "Land"); and

**WHEREAS**, the Land has been legally subdivided (the "Subdivision") into thirty-five (35) single family lots (the "Lots") pursuant to and in accordance with the subdivision ordinance of Jefferson County, West Virginia in effect on \_\_\_\_\_ (the "Subdivision Ordinance"), and as shown on that certain Final Plat – Colonial Hills Phase 3 recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in [*INSERT RECORDING INFO*] (the "Final Plat"); and

**WHEREAS**, Declarant posted a bond with the County Commission, in the form of a letter of credit, in the amount of \$2,207,652.88 (the "Existing Infrastructure Bond") to secure the completion of all infrastructure improvements to be made in connection with the development of the Subdivision (the "Infrastructure Improvements") as itemized on that certain Construction Bond – Estimate, dated August 10, 2006 (the "2006 Bond Estimate"), and approved by the Jefferson County Department of Planning, Zoning & Engineering (the "Department") on October 18, 2006; and

**WHEREAS**, due to the severe downturn in the residential housing market in Jefferson County, West Virginia, the Declarant has decided to delay construction of the Infrastructure Improvements and, accordingly, has requested that the County Commission modify the Declarant's original bonding obligations with respect to the Subdivision (the "Original Bonding Obligations") until such time as the Declarant commences construction of the Infrastructure Improvements; and

**WHEREAS**, the County Commission has determined that it is in the best interests of Jefferson County to modify the Original Bonding Obligations until such time as the Declarant commences construction of the Infrastructure Improvements subject to the condition that Declarant execute and record this Declaration which shall run with the Land and be enforceable by the County Commission.

**NOW, THEREFORE**, in consideration of the premises and the covenants and agreements hereinafter set forth, Declarant declares as follows:

1. **Incorporation of Recitals; Defined Terms.** The foregoing recitals are hereby incorporated into this Declaration by this reference as if fully set forth herein. Capitalized terms used herein and not defined or cross-referenced herein shall have the meanings ascribed to such terms in the Subdivision Ordinance.

2. **Modification of Original Bonding Obligations.**

(a) The County Commission's agreement to modify the Original Bonding Obligations shall be subject to the satisfaction of the following conditions precedent (the "Modification Conditions"):

- (i) The Declarant submits to the Department, and the Department approves, a cost estimate for all erosion control and site stability work (the "Site Stability Work") required by the Department to assure that the Land shall not physically deteriorate prior to the commencement of the construction of the Infrastructure Improvements.
- (ii) Promptly after approval of said cost estimate by the Department, Declarant shall post with the County Commission an approved surety in accordance with the Jefferson County Bonding Policy (the "Bonding Policy") in the amount of 115% of said cost estimate in accordance with the Bonding Policy (the "Site Stability Bond").

(b) Upon satisfaction of the Modification Conditions, the County Commission shall return the Existing Infrastructure Bond to the Declarant and the Original Bonding Obligations shall be deemed modified as follows:

- (i) Unless and until Declarant commences the construction of any Infrastructure Improvements, the Declarant's bonding obligations with respect to Subdivision shall be limited to posting the Site Stability Bond with the County Commission and complying the provisions of the Bonding Policy with respect to the Site Stability Bond; provided, however, that no infrastructure improvements shall be required to be made to the Land as a condition of keeping the Site Stability Bond in place.
- (ii) No Infrastructure Improvements, including without limitation any Site Stability Work, shall occur or be permitted on the Land (other than mowing and other routine maintenance required to preserve the appearance of the Land and the health and safety of the community) unless and until the Declarant submits to the Department, and the Department approves, a new cost estimate for all Infrastructure

Improvements, and the Declarant posts an approved surety with the County Commission in the amount of 115% of said estimate in accordance with the Bonding Policy (the "New Infrastructure Bond"). Upon posting of the New Infrastructure Bond, and provided Declarant is not then in default under this Declaration, the County Commission shall return the Site Stability Bond to the Declarant.

- (iii) Once the New Infrastructure Bond has been posted with the County Commission, the County Commission shall hold the New Infrastructure Bond in accordance with the Bonding Policy and the Declarant shall thereafter comply with all provisions of the Bonding Policy. The County Commission shall be under no obligation to grant further modifications to the Declarant's bonding obligations with respect to the Subdivision. The provisions of this Section 2(b)(iii) shall survive termination of this Declaration.

3. **Covenant Not to Commence Construction.** In consideration of the County Commission's agreement to modify the Original Bonding Obligations, Declarant covenants and agrees that prior to satisfying the conditions set forth in Section 2(b)(ii) above, Declarant shall not commence, or cause any third party to commence, the construction of any Infrastructure Improvements, including without limitation any Site Stability Work.

4. **Covenant Prohibiting Construction of Homes or Sale or Transfer of Lots.** In consideration of the County Commission's agreement to modify the Original Bonding Obligations, Declarant covenants and agrees that prior to satisfying the conditions set forth in Section 2(b)(ii) above, (a) Declarant shall not commence, or cause any third party to commence, the construction of any single family residence or other structure on any portion of the Land, and (b) Declarant shall not sell or transfer any Lot. Notwithstanding the foregoing, Declarant may transfer the entire Subdivision to a single transferee subject to the terms and provisions of this Declaration; provided, that such transferee expressly assumes the obligations of Declarant under this Declaration by a written agreement satisfactory to the County Commission.

5. **Default.**

(a) The failure of Declarant to observe or perform any of the covenants, conditions or obligations of this Declaration shall constitute a default under this Declaration. If Declarant fails to cure any default within thirty (30) days after the issuance of a notice by the County Commission, specifying the nature of the default; the County Commission may exercise any rights and remedies it may have hereunder or applicable law. Notwithstanding the foregoing, Declarant shall not be entitled to any

notice of a violation of the covenant not to sell or transfer any Lot under Section 4(b) of this Declaration.

(b) The County Commission shall have the right to bring any proceedings at law or in equity against the Declarant for violating or attempting to violate or defaulting upon any of the provisions contained in this Declaration, and to recover actual damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by the Declarant or any other person of any of the terms, covenants or conditions of this Declaration, or to obtain a decree to compel performance of any such terms, covenants or conditions. All of the remedies permitted or available to the County Commission under this Declaration or at law or in equity shall be cumulative and not alternative, and the invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy. In any action brought by the County Commission pursuant to these provisions, the County Commission will be entitled to costs (including but not limited to its reasonable attorneys' fees). In addition, the County Commission shall have the right to draw on the Site Stability Bond and apply the proceeds thereof in accordance with the Bonding Policy.

6. **Waiver.** No waiver by the County Commission of any default under this Declaration shall be effective or binding unless made in writing by the County Commission and no such waiver shall be implied from any failure of the County Commission to take any action with respect to any default or violation.

7. **Binding Effect.** The terms of this Declaration shall constitute covenants running with the land and shall bind the Land described herein and inure to the benefit of and be binding upon the Declarant and all parties having any right, title or interest in the Land (or any part thereof), their heirs, successors, successors-in-title and assigns. This Declaration is not intended to supersede, modify, amend or otherwise change the provisions of any prior instrument affecting the land burdened hereby.

8. **Amendment of Declaration.** This Declaration may not be amended except by a written agreement executed by the Declarant and the County Commission and recorded in the Office of the County Clerk of Jefferson County, West Virginia.

9. **Declaration Shall Continue Notwithstanding Breach.** It is expressly agreed that no breach of this Declaration shall entitle the Declarant to cancel, rescind, or otherwise terminate this Declaration

10 **Term of this Declaration.** This Declaration shall be effective as of the date first above written and shall continue in full force and effect until the Declarant satisfies the conditions set forth in Section 2(b)(ii) above. Upon the termination of this Declaration, all rights and privileges derived from and all duties and obligations created

and imposed by the provisions of this Declaration, except for the provisions of Section 2(b)(iii) above, shall terminate and have no further force or effect.

**AGREEMENT REGARDING BONDING OBLIGATIONS AND DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**THIS AGREEMENT REGARDING BONDING OBLIGATIONS AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** (this "Declaration") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2009, by **TOLLHOUSE WOODS L.L.C.**, a West Virginia limited liability company ("Declarant"), and the **COUNTY COMMISSION OF JEFFERSON COUNTY, WEST VIRGINIA** (the "County Commission").

**WHEREAS**, Declarant is the owner of a certain tract of land located in Jefferson County, West Virginia, legally described in **Exhibit A** attached hereto (the "Land"); and

**WHEREAS**, the Land has been legally subdivided (the "Subdivision") into sixty-nine (69) single family lots (the "Lots") pursuant to and in accordance with the subdivision ordinance of Jefferson County, West Virginia in effect on \_\_\_\_\_ (the "Subdivision Ordinance"), and as shown on that certain Final Plat – Tollhouse Woods recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in [*INSERT RECORDING INFO*] (the "Final Plat"); and

**WHEREAS**, Declarant posted a bond with the County Commission, in the form of a letter of credit, in the amount of \$3,410,199.77 (the "Existing Infrastructure Bond") to secure the completion of all infrastructure improvements to be made in connection with the development of the Subdivision (the "Infrastructure Improvements") as itemized on that certain Construction Bond – Estimate, dated July 31, 2006 (the "2006 Bond Estimate"), and approved by the Jefferson County Department of Planning, Zoning & Engineering (the "Department") on August 1, 2006; and

**WHEREAS**, due to the severe downturn in the residential housing market in Jefferson County, West Virginia, the Declarant has decided to delay construction of the Infrastructure Improvements and, accordingly, has requested that the County Commission modify the Declarant's original bonding obligations with respect to the Subdivision (the "Original Bonding Obligations") until such time as the Declarant commences construction of the Infrastructure Improvements; and

**WHEREAS**, the County Commission has determined that it is in the best interests of Jefferson County to modify the Original Bonding Obligations until such time as the Declarant commences construction of the Infrastructure Improvements subject to the condition that Declarant execute and record this Declaration which shall run with the Land and be enforceable by the County Commission.

**NOW, THEREFORE**, in consideration of the premises and the covenants and agreements hereinafter set forth, Declarant declares as follows:

1. **Incorporation of Recitals; Defined Terms.** The foregoing recitals are hereby incorporated into this Declaration by this reference as if fully set forth herein. Capitalized terms used herein and not defined or cross-referenced herein shall have the meanings ascribed to such terms in the Subdivision Ordinance.

2. **Modification of Original Bonding Obligations.**

(a) The County Commission's agreement to modify the Original Bonding Obligations shall be subject to the satisfaction of the following conditions precedent (the "Modification Conditions"):

(i) The Declarant submits to the Department, and the Department approves, a cost estimate for all erosion control and site stability work (the "Site Stability Work") required by the Department to assure that the Land shall not physically deteriorate prior to the commencement of the construction of the Infrastructure Improvements.

(ii) Promptly after approval of said cost estimate by the Department, Declarant shall post with the County Commission an approved surety in accordance with the Jefferson County Bonding Policy (the "Bonding Policy") in the amount of 115% of said cost estimate in accordance with the Bonding Policy (the "Site Stability Bond").

(b) Upon satisfaction of the Modification Conditions, the County Commission shall return the Existing Infrastructure Bond to the Declarant and the Original Bonding Obligations shall be deemed modified as follows:

(i) Unless and until Declarant commences the construction of any Infrastructure Improvements, the Declarant's bonding obligations with respect to Subdivision shall be limited to posting the Site Stability Bond with the County Commission and complying the provisions of the Bonding Policy with respect to the Site Stability Bond; provided, however, that no infrastructure improvements shall be required to be made to the Land as a condition of keeping the Site Stability Bond in place.

(ii) No Infrastructure Improvements, including without limitation any Site Stability Work, shall occur or be permitted on the Land (other than mowing and other routine maintenance required to preserve the appearance of the Land and the health and safety of the community) unless and until the Declarant submits to the Department, and the Department approves, a new cost estimate for all Infrastructure

Improvements, and the Declarant posts an approved surety with the County Commission in the amount of 115% of said estimate in accordance with the Bonding Policy (the "New Infrastructure Bond"). Upon posting of the New Infrastructure Bond, and provided Declarant is not then in default under this Declaration, the County Commission shall return the Site Stability Bond to the Declarant.

- (iii) Once the New Infrastructure Bond has been posted with the County Commission, the County Commission shall hold the New Infrastructure Bond in accordance with the Bonding Policy and the Declarant shall thereafter comply with all provisions of the Bonding Policy. The County Commission shall be under no obligation to grant further modifications to the Declarant's bonding obligations with respect to the Subdivision. The provisions of this Section 2(b)(iii) shall survive termination of this Declaration.

3. **Covenant Not to Commence Construction.** In consideration of the County Commission's agreement to modify the Original Bonding Obligations, Declarant covenants and agrees that prior to satisfying the conditions set forth in Section 2(b)(ii) above, Declarant shall not commence, or cause any third party to commence, the construction of any Infrastructure Improvements, including without limitation any Site Stability Work.

4. **Covenant Prohibiting Construction of Homes or Sale or Transfer of Lots.** In consideration of the County Commission's agreement to modify the Original Bonding Obligations, Declarant covenants and agrees that prior to satisfying the conditions set forth in Section 2(b)(ii) above, (a) Declarant shall not commence, or cause any third party to commence, the construction of any single family residence or other structure on any portion of the Land, and (b) Declarant shall not sell or transfer any Lot. Notwithstanding the foregoing, Declarant may transfer the entire Subdivision to a single transferee subject to the terms and provisions of this Declaration; provided, that such transferee expressly assumes the obligations of Declarant under this Declaration by a written agreement satisfactory to the County Commission.

5. **Default.**

(a) The failure of Declarant to observe or perform any of the covenants, conditions or obligations of this Declaration shall constitute a default under this Declaration. If Declarant fails to cure any default within thirty (30) days after the issuance of a notice by the County Commission, specifying the nature of the default; the County Commission may exercise any rights and remedies it may have hereunder or applicable law. Notwithstanding the foregoing, Declarant shall not be entitled to any

notice of a violation of the covenant not to sell or transfer any Lot under Section 4(b) of this Declaration.

(b) The County Commission shall have the right to bring any proceedings at law or in equity against the Declarant for violating or attempting to violate or defaulting upon any of the provisions contained in this Declaration, and to recover actual damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by the Declarant or any other person of any of the terms, covenants or conditions of this Declaration, or to obtain a decree to compel performance of any such terms, covenants or conditions. All of the remedies permitted or available to the County Commission under this Declaration or at law or in equity shall be cumulative and not alternative, and the invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy. In any action brought by the County Commission pursuant to these provisions, the County Commission will be entitled to costs (including but not limited to its reasonable attorneys' fees). In addition, the County Commission shall have the right to draw on the Site Stability Bond and apply the proceeds thereof in accordance with the Bonding Policy.

6. **Waiver.** No waiver by the County Commission of any default under this Declaration shall be effective or binding unless made in writing by the County Commission and no such waiver shall be implied from any failure of the County Commission to take any action with respect to any default or violation.

7. **Binding Effect.** The terms of this Declaration shall constitute covenants running with the land and shall bind the Land described herein and inure to the benefit of and be binding upon the Declarant and all parties having any right, title or interest in the Land (or any part thereof), their heirs, successors, successors-in-title and assigns. This Declaration is not intended to supersede, modify, amend or otherwise change the provisions of any prior instrument affecting the land burdened hereby.

8. **Amendment of Declaration.** This Declaration may not be amended except by a written agreement executed by the Declarant and the County Commission and recorded in the Office of the County Clerk of Jefferson County, West Virginia.

9. **Declaration Shall Continue Notwithstanding Breach.** It is expressly agreed that no breach of this Declaration shall entitle the Declarant to cancel, rescind, or otherwise terminate this Declaration

10 **Term of this Declaration.** This Declaration shall be effective as of the date first above written and shall continue in full force and effect until the Declarant satisfies the conditions set forth in Section 2(b)(ii) above. Upon the termination of this Declaration, all rights and privileges derived from and all duties and obligations created

and imposed by the provisions of this Declaration, except for the provisions of Section 2(b)(iii) above, shall terminate and have no further force or effect.

MEMORANDUM

TO: JEFFERSON COUNTY COMMISSION

DATE: DECEMBER 14, 2009

FROM: WALTER WASHINGTON  
COUNSEL FOR HOME HILL CORPORATION

RE: NORTH HILLS BOND

Home Hill Corporation is requesting the Commission (1) to waive the North Hills bond requirement to upgrade Howard Farm Road and (2) to uphold the approval determination made by the county engineer regarding the road in 2001, when the Commission released the bond for the Fernbank Subdivision, which made allowances for geotechnical data and conditions in the field, so that Howard Farm lot owners may exercise their right to subdivide their lots as permitted by the applicable covenants of Howard Farm Subdivision and the county subdivision ordinance.

Factual Background

Cress Creek and Howard Farm are two contiguous residential developments north of Shepherdstown on Shepherd Grade Road. A map is attached. The developer of Cress Creek, which also includes a golf course and country club, is Home Hill Corporation (hereinafter "Home Hill"). Cress Creek has been developed in four successive sections beginning in 1988: Meadow Ridge, South Hills, Fernbank and North Hills. The owners/developers of Howard Farm are William and Elizabeth Howard (hereinafter "Howards"). Howard Farm as originally platted in 1992, consisted of 7 lots ranging in size from 3.50 to 8.40 acres and a 93.05 acre residue parcel; the Howards currently retain a 57.79 acre residue parcel. When first developed, Howard Farm subdivision included a gravel road, originally called Turner Lane, built to County standards for a subdivision of its size as platted. The road has been re-named Howard Farm Road.

In order to develop the Fernbank section of Home Hill in the mid-1990s, the Planning Commission required Home Hill to provide either a monumented roadway for Fernbank or a secondary means of egress to Shepherd Grade Road because of density. The planned final build-out for Fernbank Subdivision was 118 lots. To meet this requirement Home Hill and the Howards entered into an agreement in 1996 (hereinafter "the 1996 Agreement") to allow Howard Farm Road to serve as this route. The agreement called for the upgrade of the road bed to a paved surface and spelled out the responsibilities of each party for the construction and maintenance of Howard Farm Road and a "connector road" to be built connecting it to the Fernbank Subdivision roads. At that time, the Planning Commission was encouraging the use of joint agreements by developers for road projects. It is believed this reciprocal right of way agreement was the first such agreement to be approved by the Commission.

Under the terms of the agreement, the Howards were responsible for the cost of upgrading Howard Farm Road (still called Turner Lane in the agreement) “[i]n accordance with all rules, regulations, or requirements of the Jefferson County Subdivision Ordinance.” Home Hill was responsible for construction of the connector road to the Fernbank subdivision roads, also in accordance with the ordinance. Home Hill was to pay for “all excavation, grading, drainage, stone base and one-half of the cost of the asphalt paving” for both Howard Farm Road and the connector road; Howards were to pay the remaining one-half cost of the asphalt paving for both. (The cost of improving an existing storm water management pond on Howard Farm was to be shared equally by the parties up to \$15,000).

As previously noted, Howard Farm was originally approved as a 7 lot subdivision when it was platted in 1992. The original covenants contained a restriction against further subdivision of the lots. However, with the improvements to Howard Farm Road contemplated by the 1996 Agreement the original Howard Farm covenants were modified in 1997 to remove the restriction against further subdivision of the lots. Under the modified covenants, existing lots could be further subdivided as particularly specified.

The construction bond approved by the Planning Commission for the Fernbank Subdivision of Cress Creek incorporated the requirements of the 1996 Agreement. The Howards engaged Cogar Excavating to widen and dress the Howard Farm roadbed. PCI Engineering was engaged to install the paving. Triad Engineering oversaw the project. County Engineer John Laughland inspected the work for the Planning Commission. William Howard was present on site for each of Mr. Laughland’s visits. Mr. Laughland was present on site for the augering of the roadbed by Triad. Mr. Laughland made allowances in the field for several site features, including storm water management, preservation of existing walnut trees and an existing three-board horse fence on the property of one of the Howard Farm lot owners which fronts approximately 1,800 feet along the road.

In a Project Inspection Report dated December 1, 1999, Mr. Laughland included the following “findings”:

The road in Howard Farm has been paved (20' plus). Depth varies from 4" to 6".  
Need copies of geotech reports on subgrade or base coarse and assessment of existing road bed. Need letter from utility as to water & sewer lines. All roads are to grade. Need geotech data. (See attached Exhibit 1)

A Project Inspection Report dated June 29, 2000 by Mr. Laughland showed that he had inspected the road paving and included the following finding.

The top coat paving has been completed. Remaining work consists of signing & ditch corrections along the road and related to the sink hole (?). (See attached Exhibit 2)

On March 6, 2001, Mr. Laughland issued a final inspection report with the finding “OK.” At

the bottom of the report he checked the box "Approved as Constructed." Based on this final report, the County released the construction bond for the Fernbank Subdivision. (See attached Exhibit 3)

In October, 2003, Douglas Kinnet and his wife, the owners of one of the lots in the Howard Farm Subdivision, submitted a minor subdivision application to the Planning Commission to allow them to subdivide their lot as permitted under the revised Howard Farm covenants. Roger Goodwin, who had replaced John Laughland as County Engineer, requested as-built road specifications for Howard Farm Road. This was the first indication to either the Howards or Home Hill that any issues might exist with regard to Howard Farm Road. The Kinnets did not pursue their application at that time.

In 2005, another Howard Farm lot owner, Phillip Musslewhite and his wife, applied to the Planning Commission for a variance to allow them to further subdivide their property. Anticipating that Howard Farm Road would become an issue again, on Oct. 26, 2005, the Howards submitted to the County Engineer an as built certification prepared by Alpha Engineering along with additional Geotech data provided by Triad Engineering.

On October 28, 2005, Roger Goodwin submitted a memo to Paul Raco, then Director of Planning, that Howard Farm Road as built did not meet current county design standards. Mr. Raco notified the Howards of this by memo dated October 31, 2005. The findings of Mr. Goodwin's letter were: (1) the width of the existing right of way meets County standards; (2) approximately 1600 ft. of the 2700 ft. roadway "has a vertical alignment that is less than the minimum allowable grade;" (3) there is "no information with regard to the ditchlines;" and (4) the pavement section of the roadway does not meet County standards and recommends "placing a 1" depth of asphalt wearing course on the existing roadway."

At this time, Home Hill was developing its plans for the final phase of Cress Creek, the North Hills subdivision, consisting of 20 lots adjacent to the Fernbank subdivision. Access to North Hills would be through the Fernbank subdivision roads and would also rely on Howard Farm Road as an alternative exit. The Planning Commission approved the North Hills Community Impact Statement on July 26, 2005. During the planning review process, the issues outlined in Mr. Goodwin's October 28, 2005 memo relating to Howard Farm Road were raised. (In order to avoid complicating Home Hill's application process, Howards asked the Musslewhites to withdraw their variance application, which they did in January, 2007.)

Home Hill reached agreement with the Planning Commission Staff to include the improvements necessary to bring Howard Farm Road into compliance with county standards in the bond requirements for the North Hills Subdivision. The North Hills final plat was approved in July, 2007, conditioned on a construction bond which included roughly \$55,000 for work necessary to bring Howard Farm Road (designated in the bond estimate as "Turner Lane") into compliance with county requirements as per Mr. Goodwin's October 28, 2005 letter. In August, 2008, Home Hill contracted with Dewberry & Davis, LLC, to prepare "red line" drawings of the improvements which would be required.

All other requirements of Home Hill's bond for the North Hills Subdivision have now been met. The only requirement remaining is the work necessary to bring Howard Farm Road into county requirements as outlined in the October 28, 2005 letter from Roger Goodwin and as shown on the "red line" drawings. The approximate cost of this work is \$55,000.

#### POLICY ARGUMENT – "If It Ain't Broke Don't Fix It"

Attached are photographs showing the existing road. The existing Howard Farm Road is a well established road that is in good condition. There is no deterioration in the road surface. There is no problem with drainage or flooding. The recommended upgrading would diminish the rural character of the road. In particular, it would require the removal of a number of roadside walnut trees and other landscape features. These were features that former County Engineer John Laughland specifically worked with the Howards to preserve when the road was improved during the 1999-2001 construction.

The people who use the road every day – the owners of Howard Farm Subdivision lots – oppose the upgrading. They do not want to see the rustic character of the road altered. They do not want the inconvenience that the construction would cause. The owners of one of the lots in Howard Farm, G.T. and Susie Schramm, would be especially inconvenienced. They raise horses on their 8 acre lot and the construction would require the temporary removal and replacement of an 1800 foot long three-board wooden horse fence that runs the length of their frontage on Howard Road. The estimated \$20,000 cost of replacing this fence is not included in the \$55,000 bond. It would also cause a significant disruption to their horse operation.

#### LEGAL ARGUMENT – Equitable Estoppel

The legal doctrine of equitable estoppel, in a nutshell, means that when you rely on the representations of another person in taking some action, that person cannot come back against you for that action. While the general rule is that equitable estoppel does not apply against the state, there are exceptions to that rule. The West Virginia Supreme Court has recognized those exceptions in the recent case of *Hudkins v. Public Retirement Board*, 647 S.E. 2d 711 (2007). In that case, the Court upheld the decision of the Circuit Court of Kanawha County which applied the doctrine of equitable estoppel against the West Virginia Consolidated Public Retirement Board. The Retirement Board had denied a state employee's right to convert her unused sick leave to retirement service credit when calculating her pension benefits. The employee, who had worked for the Department of Health and Human Resources for 27 years, had been given verbal assurance by the Board and written assurance by the Department that she could use her accumulated sick leave to extend her service credit in determining her pension benefits. Based on that assurance, the employee resigned from her employment. She was not then eligible to receive pension benefits. Two years later, and before her retirement eligibility, she was informed that only employees who begin to draw their pension at the time of their retirement could convert their unused sick leave to service credit. She appealed the Board's refusal to use her accumulated sick leave to extend her service credit.

The Court found that the Board had made the representation to the employee that she was eligible to receive the credit; that the Board clearly had all the facts necessary to correctly advise the employee as to her eligibility; that the representations of the Board were made with the intention that the employee would rely on them; that in fact she did so in deciding to terminate her employment; that but for the Board's representations she would not have terminated her employment; and that she relied on those representations and those of the Department to her detriment. The Court held that given these facts, the doctrine of equitable estoppel applied against the state.

In reaching its decision, the Court relied, in part, on 28 Am.Jur.2d Estoppel and Waiver Sec. 140:

Sec. 140. What must be shown to estop government.

In recognition of the heavy burden borne by one seeking to estop the government, courts have held that the doctrine of estoppel may be raised against the government only if, in addition to the traditional elements of estoppel, the party raising the estoppel proves affirmative misconduct or wrongful conduct by the government or a government agent. Likewise, courts have held an estoppel against the government may be raised only when –

- the injury to the public interest if the government is estopped is outweighed by the injury to the plaintiff's personal interest or the injustice that would arise if the government is not estopped.
- raising the estoppel prevent [sic] manifest or grave injustice.
- raising the estoppel will not defeat a strong public interest or the operation of public policy.
- the exercise of government functions is not impaired or interfered with.
- circumstances make it highly inequitable or oppressive not to estop the government.
- the government's conduct works a serious injury and the public's interest will not be harmed by the imposition of estoppel.

647. S.E.2d at 716. See also *Crum v. Stalnaker*, 936 P.2d 1254 (Alaska, 1997).

In this case, Howards relied on the representations of County Engineer John Laughland that the improvements to Howard Farm Road made during 1999-2001 were in accordance with county standards. Mr. Laughland inspected the work in progress for the Planning Commission. He was on site when the augering of the roadbed was done by Triad Engineering. In consultation with Bill Howard, he made allowances in the field for several site features, including storm water

management, the preservation of existing walnut trees and an existing three board horse fence that fronts along the road for some 1,800 feet. On the March 6, 2001, final inspection report, Mr. Laughland checked the box marked "Approved as Constructed." As a result of this final inspection report, Home Hill's construction bond for the Fernbank Subdivision was released.

Both Howards and Home Hill relied on the actions by the Planning Commission in 1999-2001, through its agent Mr. Laughland, for the construction of Howard Farm Road pursuant to the 1996 Agreement between them. The County is now estopped from requiring that further improvements be made to Howard Farm Road as a condition for release of Home Hill's bond for the North Hills Subdivision or further subdivision of Howard Farm subdivision lots.

Each of the elements of 28 Am.Jur.2d Estoppel and Waiver Sec. 140 which were relied upon by the Court in *Hudkins* are met here:

1. Any "injury to the public interest" is minimal. The road surface is in good repair. The existing road configuration enhances the scenic values of the subdivision. The expense of making the improvements and the inconvenience to the existing lot owners outweighs any benefit to the public interest that would be accomplished.
2. Raising the estoppel prevents manifest injustice. The Howards were assured by an agent of the Planning Commission that the roadway as built in 1999-2001 met County standards. Had they been told otherwise, they would have adjusted the construction plans as required then. Now they and Home Hill are being told an additional \$55,000 must be spent to bring the road up to county standards. For these reasons, circumstances make it highly inequitable not to estop the County.
3. The exercise of government functions is not impaired or interfered with. The County is not being asked to approve a sub-standard road. The County engineer previously approved the road as constructed.
4. For the reasons stated above, the County's conduct works a serious injury and the public's interest will not be harmed by imposition of estoppel.

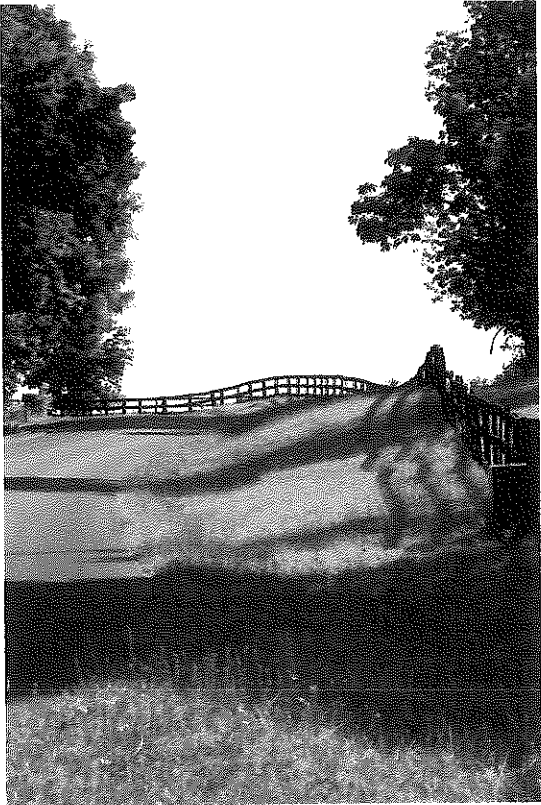
For these reasons, Home Hill requests that the Commission grant its request.





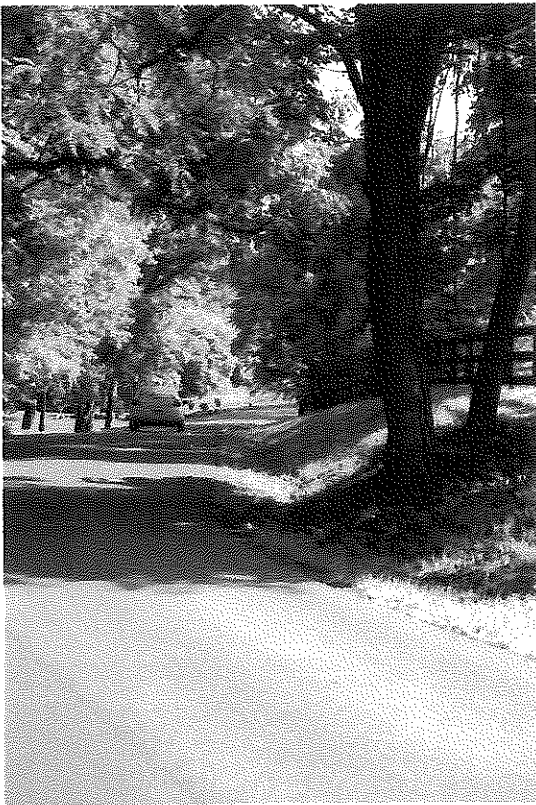
Howard Farm Road from Shepherd Grade entrance,  
7/12/09 9:30 PM

Back toward Shepherd Grade, 7/12/09 9:28 PM

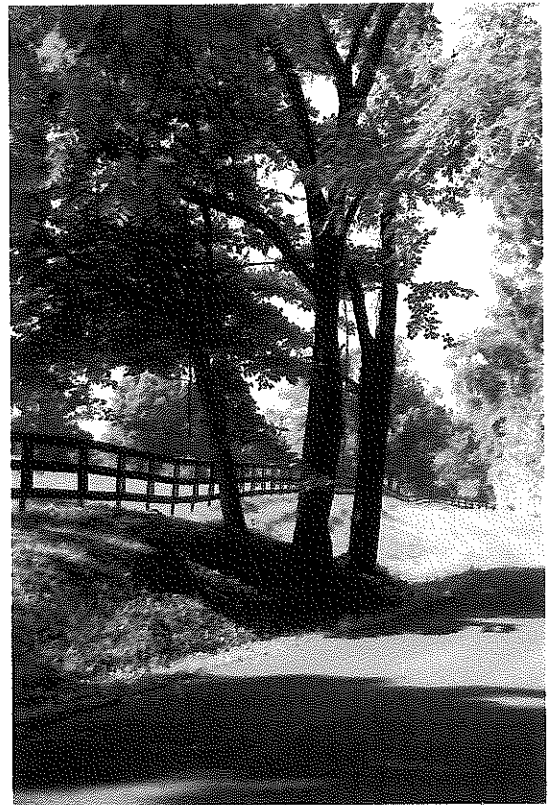


Fence line from pond, 7/12/09 9:35 PM

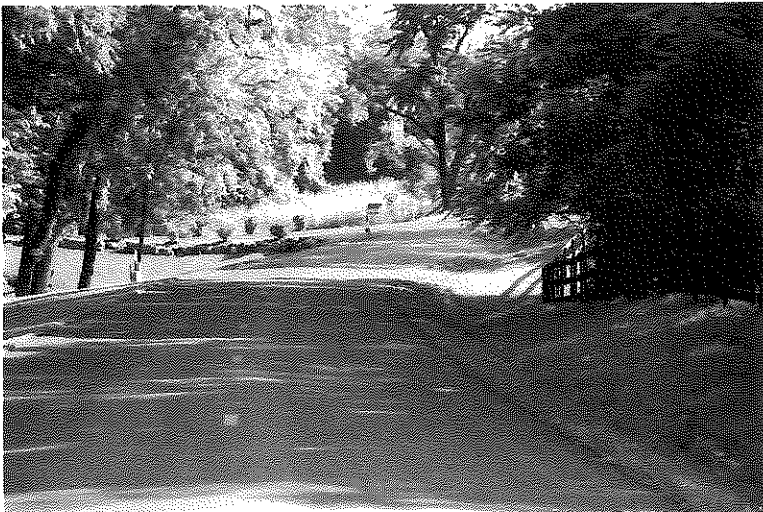
Fence line continued, 7/12/09 9:19 PM



Walnut trees at culvert, 7/12/09 9:15 PM



Walnut trees - alternate view, 7/12/09 9:17 PM



Established entrance, 7/12/09 9:18 PM



General road condition, 7/12/09 9:37 PM



**THE COUNTY COMMISSION OF JEFFERSON COUNTY**  
**Office of the County Engineer**

P.O. Box 338  
Charles Town, WV 25414

Phone: 304/728-3228

**PROJECT INSPECTION REPORT**

Date Received 11/30/99 Requested By: Hank Walter Appointment Set For \_\_\_\_\_  
Project Name FED BANK at CRESS CREEK Lots 6-11 Building Permit # \_\_\_\_\_  
Inspected By John C. Laughland Date Inspected December 1, 1999  
Accompanied By \_\_\_\_\_

Component(s) Inspected: General

Activities Underway during inspection: Laydown of base stone in cut-de-sac end of Juniper Drive

Findings: The road in Howard Farm has been paved (20' plus). Depth varies from 4" to 6"  
Need <sup>copies of</sup> geotech ~~test~~ reports on subgrade or base course and assessment of existing road bed  
Need letter from utility re to acceptability for water & sewer lines  
All roads are to grade. Need geotech data.

Other Comments or Recommendations:

Action Needed:  Immediate  Condition For Approval  For Bond Release

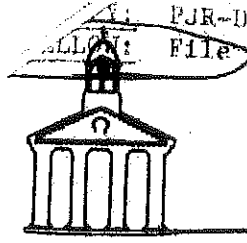
See above

Approved As Constructed  Approved With Conditions  Action Required For Approval  Approval Not Needed

Inspectors Signature

Title

Date



# THE COUNTY COMMISSION OF JEFFERSON COUNTY

## Office of the County Engineer

99-347  
File #

P.O. Box 338  
Charles Town, WV 25414

Phone: 304/728-3228

### PROJECT INSPECTION REPORT

Date Received 6/23/00 Requested By: HANK WALTER Appointment Set For \_\_\_\_\_  
Project Name FERNBANK @ CRESS CREEK Building Permit # \_\_\_\_\_  
Inspected By JOHN C. LAUGHLAND Date Inspected JUNE 29, 2000  
Accompanied By \_\_\_\_\_

Component(s) Inspected:  
Paving

Activities Underway during Inspection:  
House construction

Findings:  
The top coat paving has been completed. Remaining work consists of signing & ditch corrections along for road and relative to sink holes.

Other Comments or Recommendations:

Action Needed:  Immediate  Condition For Approval  For Bond Release

Approved As Constructed  Approved With Conditions  Action Required For Approval  Approval Not Needed

Inspectors Signature \_\_\_\_\_ Title County Engineer Date 6/29/00



# THE COUNTY COMMISSION OF JEFFERSON COUNTY

## Office of the County Engineer

99-34  
File #

P.O. Box 338  
Charles Town, WV 25414

Phone: 304/728-3228

### PROJECT INSPECTION REPORT

Date Received \_\_\_\_\_ Requested By: Hank Walters Appointment Set For \_\_\_\_\_  
Project Name CRESS CREEK Building Permit # \_\_\_\_\_  
Inspected By John C. Laughland Date Inspected 3/6/01  
Accompanied By \_\_\_\_\_

Component(s) Inspected:

FINAL

Activities Underway during Inspection:

Findings:

OK

Other Comments or Recommendations:

Action Needed:  Immediate  Condition For Approval  For Bond Release

Approved As Constructed  Approved With Conditions  Action Required For Approval  Approval Not Needed

Inspectors Signature

*[Handwritten Signature]*

County Engineer  
Title

3/6/01  
Date

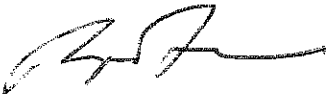
December 12, 2009

Jefferson County Commission  
124 East Washington St.  
Charles Town, WV 25414

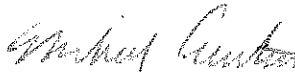
Dear Commissioners:

We are the owners of lots in the Howard Farm Subdivision, and owners of an adjacent lot, who use Howard Farm Road for access to our property. We oppose the proposed upgrading of Howard Farm Road. First, the road is well established and in good condition and does not need upgrading. Second, the proposed upgrading will destroy the rustic character of the road, including the destruction of several picturesque walnut trees. Third, the proposed upgrading will greatly inconvenience those of us whose property will be impacted by the construction.

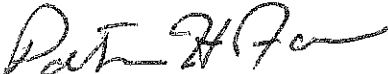
For these reasons, we support the request of Home Hill Corporation and of Bill and Libby Howard (1) to waive the North Hills bond requirement to upgrade Howard Farm Road and (2) to uphold the approval determination made by the county engineer regarding the road in 2001 releasing the Fernbank bond, which made allowances for geotechnical data and conditions in the field, so that Howard Farm lot owners may exercise their right to subdivide their lots as permitted by the applicable covenants of Howard Farm Subdivision and the county subdivision ordinance.



BRIAN FOSS



MICHAEL AUSTIN



PATTY FOSS



BONNIE AUSTIN

DOUG KINNETT



WILLIAM HOWARD

KAREN KINNETT



ELIZABETH HOWARD



G. J. SCHRAMM

SUSIE SCHRAMM

#11

**REQUESTS FOR PROPOSALS**  
**County Commission of Jefferson County, West Virginia**  
**Request for General Contractor and HVAC Services**  
**For Jefferson County existing Office buildings**

The County Commission of Jefferson County, West Virginia, will be accepting qualified bids for the HVAC systems designed for two buildings and the patching, repair and interior trades required to bring the buildings up to current county specifications. The project is not expected to exceed \$250,000. Procurement of services will be in accordance with West Virginia Code 5G-1-1, et seq. Interested firms must submit ten copies of all requested information to:

Jefferson County Commission  
124 East Washington Street  
P.O. Box 250  
Charles Town, WV 25414

All Bids are to be submitted by, January 25<sup>th</sup>, 2010 at 2 pm at the 124 E. Washington St. Charles Town, Wv. Please mark on the outside of your submittal package " Jefferson County HVAC Proposal."

A mandatory meeting for prospective consulting firms will be held on Wednesday, January 6<sup>th</sup>, 2010, at the Offices of the County Commission of Jefferson County, 124 East Washington Street, Charles Town, West Virginia at 3:30 p.m.

Attention is directed to the fact that the proposed project will be undertaken with public funding and all work will be performed in accordance with regulations of all public agencies including Jefferson County, West Virginia, the State of West Virginia, and the federal government.

The County Commission of Jefferson County will afford full opportunity to women-owned and minority business enterprises to submit a show of interest in response to this request and will not discriminate against any interested firm or individual on the grounds of race, creed, color, sex, age, handicap, or national origin in the award of this contract.

For additional information, please contact Kirk Davis or Bill Polk at 304.728.3355.

*06/25/10*

**REQUESTS FOR PROPOSALS**  
**County Commission of Jefferson County, West Virginia**  
**Request for Professional Architectural/Engineering Services**  
**Jefferson County Historic Courthouse**

The County Commission of Jefferson County, West Virginia, is accepting Statements of Qualification from qualified professional architectural consulting firms detailing the firm's qualifications, technical expertise, management and staffing capabilities, references and related prior experience for the purpose of selecting a registered architect or engineer for the Jefferson County Historic Courthouse (Renovation of the John Brown courtroom), evaluation of existing buildings for possible renovation. The Building is to be occupied by various judicial offices and other county government offices. The total cost of the project is anticipated to be greater than \$250,000. Procurement of services will be in accordance with West Virginia Code 5G-1-1, et seq. Interested firms must submit ten copies of all requested information to: Jefferson County Commission

124 East Washington Street  
P.O. Box 250  
Charles Town, WV 25414

All requested information is to be submitted by Tuesday January 26<sup>th</sup>, 2010 at 2:00 pm. Please mark on the outside of your submittal package, "Historic Courthouse Proposal."

A mandatory meeting for prospective consulting firms will be held on Wednesday, January 6<sup>th</sup>, 2010 at the Offices of the County Commission of Jefferson County, 124 East Washington Street, Charles Town, West Virginia at 10:00 a.m.

Attention is directed to the fact that the proposed project will be undertaken with public funding and all work will be performed in accordance with regulations of all public agencies including Jefferson County, West Virginia, the State of West Virginia, and the federal government.

The County Commission of Jefferson County shall evaluate the statements of qualifications and performance data and other material submitted by the interested firms and select a minimum of three firms which, in their opinion, are best qualified to perform the desired services. Interviews with each firm selected shall be conducted, which may include discussions regarding anticipated concepts and proposed methods of approach. The County Commission of Jefferson County shall rank, in order of preference, these three professional firms deemed to be the most highly qualified to provide the services required, and shall commence scope of services and price negotiations with the highest qualified professional firm for architectural/engineering services.

Should the County Commission of Jefferson County be unable to negotiate a satisfactory contract with the professional firm considered to be the most qualified, at a fee determined to be fair and reasonable, price negotiations with the firm of second choice shall commence. Failing accord with the second most qualified professional firm, the committee shall undertake price negotiations with the third most qualified professional firm. Should the County Commission of Jefferson County be unable to negotiate a satisfactory contract with any of the selected professional firms, it shall select additional professional firms in order of their competence and qualifications and it shall continue negotiations in accordance with these procedures until an agreement is reached.

The County Commission of Jefferson County will afford full opportunity to women-owned and minority business enterprises to submit a show of interest in response to this request and will not discriminate against any interested firm or individual on the grounds of race, creed, color, sex, age, handicap, or national origin in the award of this contract. For additional information, please contact Kirk Davis, Capitals Project Manager at 304.728.3331.

**REQUESTS FOR PROPOSALS**  
**County Commission of Jefferson County, West Virginia**  
**Request for Construction Renovation and Contract Services for the**  
**Historic Jefferson County Courthouse Exterior**

The County Commission of Jefferson County , West Virginia, is accepting Contract pricing from qualified professional General Contractor's for the exterior renovation and repairs for the Historic courthouse. The scope of work will include but not limited to the following trades; Stone and brick masonry, Metal roof repair, painting entire exterior such as windows cornice and doors, window repair, cornice and window structural repairs, interior patching and repairs and new storm windows. The total cost of the project is anticipated to be greater than \$250,000. Procurement of services will be in accordance with West Virginia Code 5G-1-1, et seq. Interested firms must submit ten copies of all requested information to:

Jefferson County Commission  
124 East Washington Street  
P.O. Box 250  
Charles Town, WV 25414

All bids to be submitted by Wednesday January 27<sup>th</sup>, 2010 at 3 pm. Please mark on the outside of your submittal package, "Historic Courthouse Proposal."

A mandatory meeting for prospective firms will be held on Wednesday, January 6, 2010, at the Offices of the County Commission of Jefferson County, 124 East Washington Street, Charles Town, West Virginia at 2:00 p.m.

Attention is directed to the fact that the proposed project will be undertaken with public funding and all work will be performed in accordance with regulations of all public agencies including Jefferson County, West Virginia, the State of West Virginia, and the federal government.

The County Commission of Jefferson County shall evaluate the bids submitted by the interested firms and select in their opinion, the best qualified low bidder to perform the desired services.

Should the County Commission of Jefferson County be unable to negotiate a satisfactory contract with the apparent low Bidder. The commission will proceed to the second most qualified professional firm. The County Commission of Jefferson County will afford full opportunity to women-owned and minority business enterprises to submit a qualified bid and will not discriminate against any interested firm or individual on the grounds of race, creed, color, sex, age, handicap, or national origin in the award of this contract. For additional information, please contact Kirk Davis, Sr. and or Bill Polk at 304.728.3355.

#14

Commission Office Use Only

Date on Agenda:

Appt Time or New Business:

**AGENDA REQUEST FORM**

Name: Sandy McDonald

Department or Entity: County Commission

Estimation of amount of time needed for appointment: 5 minutes

Date Requested – 1<sup>st</sup> Choice: December 17, 2009

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

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

Subject: **New Business**

Please provide the County Commission with a description of your request or presentation, including any background information: **Agenda for Council of Governments Meeting - January 27, 2010**

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

Attachments:

*New Business*

#15

**Laura Kuhn**

---

**From:** "Sandy McDonald" <sandy@jeffersoncountywv.org>  
**To:** "Laura Kuhn" <laura@jeffersoncountywv.org>  
**Sent:** Thursday, December 10, 2009 9:01 AM  
**Subject:** Fw: Requests for use of County Commission room

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

From: <twoofakindfarm@frontiernet.net>  
To: "sandy" <sandy@jeffersoncountywv.org>  
Sent: Wednesday, December 09, 2009 5:23 PM  
Subject: Fwd: Requests for use of County Commission room

> Good evening Ms. McDonald,  
> After a conversation with Christine from Zoning, I am requesting a change  
> in my request for County Commission meeting room usage.  
> I now request usage for the First Tuesday and Third Monday of every month  
> during the year 2010 excluding Tuesday January 5 and Tuesday April 6.

>  
> Thank you for your consideration and patience,  
> Debbie Royalty  
> 304-728-0191

>  
>  
> ----- Forwarded Message -----

> From: twoofakindfarm@frontiernet.net  
> To: sandy@jeffersoncountywv.org  
> Sent: Wednesday, December 9, 2009 9:00:09 AM GMT -05:00 US/Canada Eastern  
> Subject: Requests for use of County Commission room

>  
> Good morning Ms. McDonald,  
> I am emailing to request use of the County Commission meeting room in the  
> basement of the Charles Town Library for Tuesday January 19, 2010 from 6  
> pm until 9:30 pm for a PATH intervenor meeting.

>  
> Also, I would like to turn in my request for same meeting room for the  
> date of December 21, 2009

>  
> Thank you,  
> Debbie Royalty

> --  
> Debbie Royalty

#16

# Jefferson County Health Department

ROBERT E. JONES, M.D.  
HEALTH OFFICER



1948 WILTSHIRE ROAD, SUITE 1  
KEARNEYSVILLE, WV 25430  
ENVIRONMENTAL: (304) 728-8415  
FAX: (304) 728-3314  
MEDICAL: (304) 728-8416  
FAX: (304) 728-3319

I am requesting to be placed on the County Commission agenda for December the 10<sup>th</sup> please. This is concerning a Christmas bonus from the County Commission to include the employees of the Jefferson County Health Dept.  
Thank you.

*Amy B. Jones MSN*  
Amy B. Jones, MSN  
Administrator  
Jefferson County Health Department

## RECEIVED

DEC 03 2009

Jefferson County Commission

#17

<p>Commission Office Use Only</p> <p>Date on Agenda:</p> <p>Appt Time or New Business:</p>
--

**AGENDA REQUEST FORM**

Name: Patsy Noland

Department or Entity: County Commission

Estimation of amount of time needed for appointment: 15 minutes

Date Requested – 1<sup>st</sup> Choice: December 17, 2009

Date Requested – 2<sup>nd</sup> Choice: January 6, 2010

If a specific date is needed, please provide reason for specific date: **To enable outside agencies that request funding from the Jefferson County Commission enough notice to prepare a complete accounting of all funds and accounts to submit to the county commission with their budget requests.**

**Subject: Establish policy guidelines for agencies that request funding from the county commission during the budget hearings for fiscal year 2011 and thereafter.**

Please provide the County Commission with a description of your request or presentation, including any background information: **Require all agencies that request funding from the county commission to provide a complete accounting of all funds and accounts for the preceding fiscal year to the county commission showing income from all sources as well as all expenditures. In addition a plan explaining how any funds provided by the county commission will be spent.**

RECEIVED #48

NOV 12 2009

Dear County Officials,

Jefferson County Commission

This letter is about what I think about what I think about the table games. I am for and against it. I am for it because I think it will help Jefferson County. The reason I am against it is because I don't like people gambling their money away. I hope read this letter.

From Boy Scout Erik J.

Correspondence

#31

<p>Commission Office Use Only</p> <p>Date on Agenda:</p> <p>Appt Time or New Business:</p>
--

**AGENDA REQUEST FORM**

Name: Sandy McDonald

Department or Entity: County Commission

Estimation of amount of time needed for appointment: \_\_\_\_\_

Date Requested – 1<sup>st</sup> Choice: \_\_\_\_\_

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

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

Subject: **Information**

Please provide the County Commission with a description of your request or presentation, including any background information: **Reminder that the Courthouse will be closed on the following dates: Thursday, December 24th, December 25th and 1/2 day on Thursday, December 31st and closed on Friday, January 1, 2010**

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

Attachments:

*Information*

AJG

Commission Office Use Only

Date on Agenda:

Appt Time or New Business:

**AGENDA REQUEST FORM**

Name: Sandy McDonald

Department or Entity: County Commission

Estimation of amount of time needed for appointment: \_\_\_\_\_

Date Requested – 1<sup>st</sup> Choice: \_\_\_\_\_

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

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

Subject: **Information**

Please provide the County Commission with a description of your request or presentation, including any background information: **Reminder the Commission will not be meeting on Thursday, December 24th and Thursday December 31st. Next regular meeting scheduled January 7, 2010**

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

Attachments:

# **NOTICE JEFFERSON COUNTY COMMISSION MEETING CANCELLATION**

The regular meetings scheduled on Thursday, December 24<sup>th</sup> and December 31<sup>st</sup>, 2009 has been cancelled. The Commission will resume its regular session on Thursday, January 7<sup>th</sup>, 2010, at 9:30 a.m.

Anyone wishing to place an item on the January 7<sup>th</sup>, 2010 Agenda must have all necessary documents emailed, delivered or mailed to the County Commission office on or before noon, Wednesday, December 30<sup>th</sup>, 2009.

# 33

RECEIVED JEFFERSON COUNTY, WEST VIRGINIA

Engineering Department

116 East Washington Street

P.O. Box 716

Charles Town, West Virginia 25414

DEC 09 2009

JEFFERSON COUNTY COMMISSION

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

Phone: 304-728-3257

Fax: 304-728-3953

MEMORANDUM

TO: SANDY SLUSHER McDONALD, ACTING COUNTY ADMINISTRATOR  
JEFFERSON COUNTY COMMISSION

FROM: ROGER L. GOODWIN, CHIEF COUNTY ENGINEER *Roger L. Goodwin/rfb*  
ENGINEERING DEPARTMENT

DATE: DECEMBER 9, 2009

SUBJECT: CAMBRIDGE MANUFACTURED HOME DEVELOPMENT, SECTION 4  
PHASE 3, LOT D124 & RESIDUE  
FILE #07-24

Please find enclosed the construction bond(s) and security for the following project:

Cambridge Manufactured Home Development, Section 4, Phase 3, Lot D124 & Residue, which is secured by Letter of Credit #S140282 with The Columbia Bank, located in Columbia, Maryland in the amount of \$48,860.00.

The bond(s) is in compliance with the County Bonding Policy. If you have any questions, please give me a call.

RLG:rfb

#34

**JEFFERSON COUNTY, WEST VIRGINIA**  
**Department of Capital Planning and Management**  
114 East Washington Street  
Charles Town, West Virginia 25414

**F. Mark Schiavone**  
Director  
Impact Fee Coordinator

Phone: (304) 728-3331  
Fax: (304) 724-2178  
[mschiavone@jeffersoncountywv.org](mailto:mschiavone@jeffersoncountywv.org)

**MEMORANDUM**

TO: Sandy McDonald and Roger Goodwin  
FROM: Michelle Mason  
DATE: Tuesday, December 01, 2009  
SUBJECT: Seasonal Lunch

The Department of Capital Planning & Management will be closed from 12:00 p.m. to 2:00 p.m. on 22 December 2009 for our seasonal luncheon.

If you should have any questions, please contact our office.

RECEIVED

DEC 04 2009

JEFFERSON COUNTY COMMISSION



**Jefferson County Animal Control**  
 161 Poor House Farm Road Kearneysville, WV 25430  
 Phone: (304) 728-3289 Fax: (304) 728-4889



**November 2009 Activity Report**

<b>Dogs Picked Up</b>	
County	32
Charles Town	1
Shepherdstown	0
Ranson	3
Harpers Ferry/Bolivar	0
Dogs Brought In	4
Misc	9
<b>TOTAL</b>	<b>49</b>

<b>Animal Bites Investigated</b>	
County	6
Charles Town	0
Shepherdstown	0
Ranson	0
Harpers Ferry/Bolivar	0
Cat Bites	4
Miscellaneous	0
<b>TOTAL ANIMAL BITES</b>	<b>10</b>

<b>Complaints Answered</b>	
County	55
Charles Town	3
Shepherdstown	0
Ranson	2
Harpers Ferry/Bolivar	1
<b>TOTAL</b>	<b>61</b>

<b>Check Welfare Complaints Answered</b>	
County	10
Charles Town	1
Shepherdstown	0
Ranson	1
Harpers Ferry/Bolivar	0
<b>TOTAL</b>	<b>12</b>

<b>Wildlife Complaints Investigated</b>	
County	10
Charles town	0
Shepherdstown	1
Ranson	1
Harpers Ferry/ Bolivar	0
Rabies Test Positive	1
Rabies Test Negative	3
<b>TOTAL WILDLIFE COMPLAINTS</b>	<b>12</b>

<b>Aggressive Dog Complaints</b>	
County	3
Charles Town	1
Shepherdstown	0
Ranson	0
Harpers Ferry/Bolivar	0
<b>TOTAL</b>	<b>4</b>

<b>Disposition Report</b>	
Return To Owner	19
Adopted	0
Euthanized	12
Rescued	5
Foster Care	0
Still Here	12
Dec	3
<b>TOTAL</b>	<b>49</b>
Citations/Summons/Warrants Issued	3
Warning Citations Issued	3

<b>Money Collection Report</b>	
Impound/R.T.O /with Boarding	770
Adoptions	20
Owner Surrender	150
Donations	20
Report Fees	0
Reimbursement of vet bill	0
<b>Misc</b>	<b>0</b>
<b>TOTAL</b>	<b>960</b>

<b>ACO COMPLAINT RESPONSE</b>			
Unit #	Responses	O/C Respon	Total Respons
AC-1	28	2	30
AC-2	5	0	5
AC-3	38	3	41
AC-4	22	1	23

2008-Total Complaints Answered: 1380  
 2009-Total Calls For month: 99  
 2009-Total Calls For year: 1367

**Jefferson County Animal Control**  
 161 Poor Farm Road Kearneysville, WV 25430  
 Phone: (304) 728-3289 Fax: (304) 728-4889

**In Ticket Log**

DATE	COMPLT. #	IN TICKET	AREA	LOCATION	Parvo Vaccine #	BREED	COLOR	GENDER	RUN	RTO	Adoption	Rescue	Euth	ACO #
11/2/2009	09-1282	47475	County	1144 Hidden Hollow Dr.	09-0311	Beagle	Tri-Colored	Male-N	A-1	RTO				AC-4
11/3/2009	09-1283	47476	County	3812 Ergle Molers Rd.	09-0312	Terrier Mix	Blk/Tan	Female	B-2	S/H				AC-3
11/4/2009	09-1288	47477	Ranson	Ranson Elem	09-0313	Siebian Husky	White	Female	B-5	RTO				AC-3
11/6/2009	09-1294	47478	County	Aubrey Ct.	09-0314	Boxer Mix	Tan/White	Female	B-3	RTO				AC-4
11/6/2009	09-1294	47479	County	Aubrey Ct.	09-0315	Pug Mix	Blk/Tan	Male	B-3	RTO				AC-4
11/6/2009	09-1256	47481	County	48 Bell Rd.		Lab Mix	Chocolate	Male	B-5				Euth	AC-1
11/7/2009	09-1297	47480	County	Harry Shirley Rd.	09-0316	Pit Bull	Brindle	Female	B-3				Euth	AC-4
11/7/2009	09-1300	47482	County	48 Apex Court	N/A	Raccoon	Blk/Brn	Unknown	Fzr				Euth	AC-4
11/7/2009	09-1302	47483	Ranson	113 Park Avenue	N/A	Fox	Red/Brn	Unknown	Fzr				Euth	AC-4
11/8/2009	09-1303	47484	County	Old Leetown Pike	09-0317	Sheltie Mix	Blk/Brn	Female	B-6	SH				AC-4
11/9/2009	09-1307	47485	County	332 Walling Dr.	09-0318	Pit Bull	White/Brn	Female	B-9	SH				AC-3
11/10/2009	09-1309	47487	County	53 Laurel Hill Rd.	09-0319	Pit Bull	Brindle/Wht	Male-N	B-8	RTO				AC-3
11/11/2009	09-1311	47488	County	1474 Chestnut Hill Rd.	N/A	DSH Cat	Gray	Female	Frdg				Euth	AC-4
11/12/2009	09-1314	47489	County	Old Cave/Kabletown Rd.	09-0320	Lab Mix	Brown	Male	B-8	RTO				AC-1
11/12/2009	09-1314	47490	County	Old Cave/Kabletown Rd.	09-0321	Pit Bull	Chocolate	Male	B-10	RTO				AC-1
11/13/2009	09-1315	47491	Charles Town	860 W. Washington St.	09-0322	Lab Mix	Black	Female	A-4				Euth	AC-3
11/13/2009	09-1316	47494	County	918 Darke Lane	N/A	Fox	Red/Wht	Unknown	Fzr				Dec	AC-2
11/13/2009	09-1317	47492	County	Mission Road	09-0323	Lab	Yellow	Male-N	A-1	RTO				AC-4
11/13/2009	09-1317	47493	County	Mission Road	09-0324	Lab	Black	Female	A-2	RTO				AC-4
11/13/2009	09-1319	47495	County	Warm Springs Road	09-0325	Pit Bull Mixed	Brindle	Male	B-8	S/H				AC-1
11/13/2009	09-1319	47496	County	Warm Springs Road	09-0326	Lab Mixed	Yellow	Female	B-8	S/H				AC-1
11/15/2009	09-1324	47497	County	760 Summit Point Road		Lab	Black	Female	B-10	RTO				AC-1
11/15/2009	09-1327	47498	County	48 Redbird Court		Poodle Mixed	White	Female	PR	RTO				AC-1

11/16/2009	09-1328	47499	County	237 Veronica Lane	09-0327	Rottweiler	Black/Tan	Male	A-1	RTO				AC-3
11/17/2009	09-1332	47500	County	82 Posting Way		Rabbit	Grey/White						Euth	AC-3
11/17/2009	09-1333	47501	Ranson	86 Lemon Rd		DSH Cat	Black/Wht						Euth	AC-3
11/17/2009	09-1334	47502	County	Blue Ridge Fire Dept	09-0328	Basset Hound	Red/Wht	Male	B-10	RTO				AC-3
11/17/2009	09-1334	47503	County	Blue Ridge Fire Dept	09-0329	Pit Mix	Brindle	Female	B-10	RTO				AC-3
11/18/2009	09-1336	47504	Ranson	210 W 3rd Ave	09-0330	JRT	Brown/Wht	Male	B-10	RTO				AC-3
11/19/2009	09-1337	47505	County	975 Brucestown Road	09-0331	Beagle	Tri	Male	F-care		Rescue			AC-3
11/19/2009	09-1338	47506	County	975 Brucestown Road	09-0332	Beagle	Tri	Female	F-care		Rescue			AC-3
11/19/2009	09-1339	47507	Ranson	288 Turnberry Dr	09-0333	Lab	Black	Male	B-10	RTO				AC-1
11/20/2009	09-1316	47508	County	918 Darke Lane	N/A	Border Collie	Tri	Female	C-1				Euth	AC-2
11/20/2009	09-1316	47509	County	918 Darke Lane	N/A	DSH Cat	Blk/Wht	Unknown	Barn				Euth	AC-2
11/20/2009	09-1343	47510	County	Drop-Off	09-0334	Pitbull	Gray/White	Female	B-5	S/H				AC-2
11/20/2009	09-1344	47511	County	Drop-Off	09-0335	Pug	Brown/Blk	Male	B-6	RTO				AC-2
11/20/2009	09-1316	47512	County	918 Darke Lane	N/A	DSH Cat	Blk/Wht	Unknown	Barn				Euth	AC-2
11/20/2009	09-1316	47513	County	918 Darke Lane	N/A	DSH Cat	Gray/White	Unknown	Barn				Euth	AC-2
11/21/2009	09-1353	47514	County	John Brown Farm Rd	09-0336	Lab	Chocolate	Female	B-10	S/H				AC-3
11/23/2009	09-1358	47515	County	Drop-Off	N/A	Chow Mix	Brown	Male	C-1	S/H				AC-3
11/23/2009	09-1362	47516	County	19 Big Spring Drive	N/A	Terrier Mix	Tan/White	Female	PR				Dec	AC-4
11/24/2009	09-1365	47518	County	Beech Dr.	09-0337	Lab Mix	Yellow	Male	B-6	S/H				AC-4
11/25/2009	09-1367	47519	County	Leetown Rd @ Bypass	N/A	Boxer	Bro/White	Female	B-7	RTO				AC-1
11/25/2009	09-1367	47520	County	Leetown Rd @ Bypass	N/A	Boxer	White		Fre				Dec	AC-1
11/28/2009	09-1368	47521	County	225 Elk Branch Drive	09-0338	Poodle	White	Male-N	PR	S/H				AC-4
11/28/2009	09-1369	47522	Ranson	400 S Fairfax Blvd.	09-0339	Collie Mix	Blk/Tan	Male	B-7	RTO				AC-4
11/29/2009	09-1370	47517	County	Windy Valley Lane	N/A	Lab Mixed	Black		B-6	S/H				AC-4
11/29/2009	09-1370	47523	County	Windy Valley Lane	N/A	Lab Mixed	Black		B-6	S/H				AC-4
11/30/2009	09-1371	47524	Brought In	128 Highview Road	N/A	DSH	Calico	Female			Rescue			AC-3





# Jefferson County Health Department

ROBERT E. JONES, M.D.  
HEALTH OFFICER



1948 WILTSHIRE ROAD, SUITE 1  
KEARNEYSVILLE, WV 25430  
ENVIRONMENTAL: (304) 728-8415  
FAX: (304) 728-3314  
MEDICAL: (304) 728-8416  
FAX: (304) 728-3319

Animal Encounters  
November /2009

7 Dogs	Quarantined	
1 Fox	Positive	Tested
3 Cats	Negative	Tested
4 Cats	Quarantined	
1 BAT		
<hr/> 15 Total		



Jennifer S. Maghian  
County Clerk

# Jefferson County Clerk's Office

## Voter & Elections

#36

**RECEIVED**

December 8, 2009

DEC 09 2009

Jeff Polczynski  
Director, 911 Communications  
28 Industrial Blvd  
Kearneysville, WV 25430

Jefferson County Commission

Dear Jeff,

We would like to recognize the 911 addressing office for the tremendous help they have been to the voter and elections office, especially the past year and a half. Prior to Todd's arrival in the department, the availability of county addressing information in detail was not possible. As a reflection, our voter registration records were imprecise and undefined. Over the past year and a half we have been able to drastically refine the critical information we use on a daily basis, and this is thanks to the detailed maps and lists the addressing office now provides regularly.

Thousands of voter records have been updated to match the county's current accurate street records. Previously, many voter records had contained rural route numbers, outdated street names and numbers, and PO boxes as physical addresses. Our office audited every street in the county through our database (and every voter on streets with revisions) in comparison to the addressing street list, which took our records to a new level of accuracy. This information has been the key to getting our department data where it has needed to be all along.

Aside from the street list, the maps have also given us a whole new level of visual reference in regards to boundary lines and precinct layout, right down to specific address points. These maps are not only helpful but visually appealing and easy to read. Previous maps available to the voter office were very difficult to use and had much more room for error than the current maps. Again, without correct information, county voter records would still reflect thousands of outdated details. Not only is it a service to our office but to the people of this county, and the integrity and accuracy of their information on file.

In addition to having top-notch information, the entire addressing team is always helpful and friendly. They are a group of people with whom we truly enjoy working on a regular basis. The work they do is vital to many different areas for the purpose of accuracy in our county, and absolutely necessary in these times of technological advancement. We give our commendation and thanks to Todd and to his fellow staff for a wonderfully professional job.

Sincerely,

*Nikki Painter*     *Wendy Evangelisti*  
Jefferson County Voter & Elections Office

cc: Jefferson County Commission

**Nikki Painter, Chief Deputy Clerk:** 304.728.3246 or [npainter@jeffersoncountywv.org](mailto:npainter@jeffersoncountywv.org)  
**Wendy Evangelisti, Deputy Clerk:** 304.728.3386 or [wevangelisti@jeffersoncountywv.org](mailto:wevangelisti@jeffersoncountywv.org)  
**Address:** 100 East Washington Street, PO Box 208, Charles Town WV 25414  
**Fax:** 304.728.1957 **Web Site:** [www.jeffersoncountyclerkwv.com](http://www.jeffersoncountyclerkwv.com)

**RECEIVED**

DEC 04 2009

**Jefferson County Commission**

NOV 30 2009

#37

**U.S. Department of Homeland Security**  
Region III  
One Independence Mall, Sixth Floor  
615 Chestnut Street  
Philadelphia, PA 19106-4404



**FEMA**

Dale Manuel  
President, County Commission  
PO Box 250  
124 E Washington Street  
Charles Town, WV 25414

RE: Jefferson County, WV

CID # 540065

Dear Mr. Manuel:

I am pleased to inform you that the revisions to Jefferson County's Flood Plain Management Ordinance, as amended on November 5, 2009 brought the Ordinance into compliance with the National Flood Insurance Program (NFIP) as revised on October 1, 1989. Your efforts toward reducing future flood losses in Jefferson County are commendable. The higher standards adopted in your latest floodplain ordinance demonstrate Jefferson County continues to be a leader in the State in floodplain management.

Feel free to contact me by calling 215-931-5625 if you have any questions regarding ordinance enforcement or any other aspect of the program.

Sincerely,

A handwritten signature in black ink that reads "Nicole P.G. Lick".

Nicole P.G. Lick, CFM  
Mitigation Planning Specialist  
Mitigation Division

cc: Robert Perry, WV NFIP Coordinator  
D. Mason Carter, Floodplain Manager

#38

# KANAWHA COUNTY COMMISSION

Post Office Box 3627  
Charleston, West Virginia 25336



Telephone (304) 357-0101  
Fax (304) 357-0788  
www.kanawha.us

Henry C. Shores  
Commissioner

W. Kent Carper  
Commissioner  
December 4, 2009

David J. "Dave" Hardy  
Commissioner

Re: Mammograms and Cervical Cancer Testing for Women

The Kanawha County Commission voted unanimously at the December 3, 2009 Commission Meeting to reject the recommendation of the U.S. Preventative Services Task Force that most women begin biennial mammograms at age 50, rather than the annual screening beginning at age 40 and continue to cover the cost of mammograms starting at age 40 for those receiving health insurance through the County. Also during the December 3, 2009 Commission Meeting, the Commission further voted to reject the recommendation of the American College of Obstetricians and Gynecologists which calls for the routine pap smears to begin at age 21 and that women 30 and older should wait three years between pap smears once they've had three consecutive clear tests and that women 65 to 70 should stop having pap smears entirely if they do not have abnormal test results in the last 10 years.

The County's Health Director, Director of the Susan G. Komen Foundation and the Representative from the American Cancer Society all supported the Commission in their rejection of these recommendations and encouraged the Commission to continue to allow yearly exams. We encourage you to adopt similar orders and make this a coordinated effort throughout the State of West Virginia.

Dave Hardy  
Commissioner

Sincerely,

W. Kent Carper  
President

Henry C. Shores  
Commissioner

**RECEIVED**

DEC 07 2009

Jefferson County Commission



At a Regular Session of the County Commission of Kanawha County, West Virginia, held at the Courthouse thereof, on the 3rd day of December, 2009, the following Order was made and entered:

**SUBJECT: Order rejecting the recommendation of the American College of Obstetricians and Gynecologists which calls for the routine pap smears to begin at age 21 and that women 30 and older should wait three years between pap smears once they've had three consecutive clear tests and that women 65 to 70 should stop having pap smears entirely if they do not have abnormal test results in the last 10 years; Kanawha County rejects these new guidelines and will continue to cover the cost of pap smears for those insured through the Kanawha County Commission with Mountain State Blue Cross Blue Shield**

The following Motion was offered by W. Kent Carper, Commissioner.

The County Commission of Kanawha County, West Virginia hereby rejects the recommendation of the American College of Obstetricians and Gynecologists which calls for the routine pap smears to begin at age 21 and that women 30 and older should wait three years between pap smears once they've had three consecutive clear tests and that women 65 to 70 should stop having pap smears entirely if they do not have abnormal test results in the last 10 years; Kanawha County rejects these new guidelines and will continue to cover the cost of pap smears for those insured through the Kanawha County Commission with Mountain State Blue Cross Blue Shield.

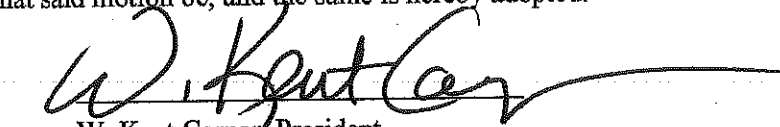
The adoption of the foregoing Motion having been moved by:

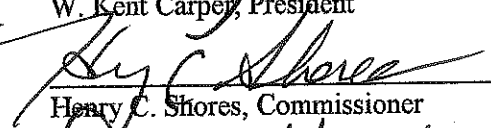
W. Kent Carper, Commissioner, and duly seconded by:


Dave Hardy, Commissioner, the vote thereon was as follows:

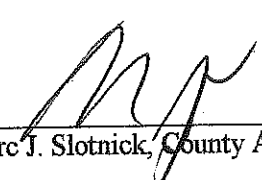
W. Kent Carper, President	<u>Aye</u>
Henry C. Shores, Commissioner	<u>Aye</u>
Dave Hardy, Commissioner	<u>Aye</u>

WHEREUPON, W. Kent Carper, President declared said Motion duly adopted; and it is therefore **ADJUDGED** and **ORDERED** that said motion be, and the same is hereby adopted.

  
 W. Kent Carper, President

  
 Henry C. Shores, Commissioner

  
 Dave Hardy, Commissioner

Approved by:   
 Marc J. Slotnick, County Attorney

At a Regular Session of the County Commission of Kanawha County, West Virginia, held at the Courthouse thereof, on the 3rd day of December, 2009, the following Order was made and entered:

**SUBJECT: Order rejecting the recommendation of the U.S. Preventative Services Task Force that most women begin biennial mammograms at age 50, rather than the annual screening beginning at age 40; Kanawha County will continue with the annual screening beginning at age 40 for employees who are insured through the Mountain State Blue Cross Blue Shield Program through the Kanawha County Commission based on recommendations of the County's Health Director, the Susan G. Komen Foundation and the American Cancer Society**

The following Motion was offered by Dave Hardy, Commissioner.

The County Commission of Kanawha County, West Virginia hereby rejects the recommendation of the U.S. Preventative Services Task Force that most women begin biennial mammograms at age 50, rather than the annual screening beginning at age 40; Kanawha County will continue with the annual screening beginning at age 40 for employees who are insured through the Mountain State Blue Cross Blue Shield Program through the Kanawha County Commission based on recommendations of the County's Health Director, the Susan G. Komen Foundation and the American Cancer Society.

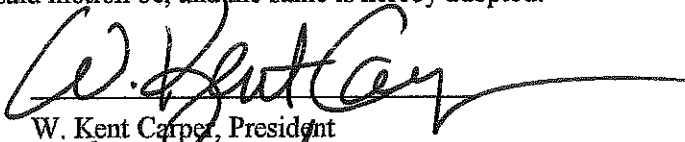
The adoption of the foregoing Motion having been moved by:

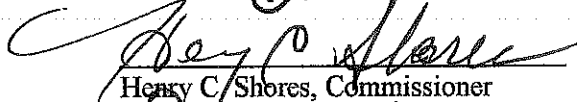
Dave Hardy, Commissioner, and duly seconded by:

Henry C. Shores, Commissioner, the vote thereon was as follows:


W. Kent Carper, President	<u>Aye</u>
Henry C. Shores, Commissioner	<u>Aye</u>
Dave Hardy, Commissioner	<u>Aye</u>

WHEREUPON, W. Kent Carper, President declared said Motion duly adopted; and it is therefore **ADJUDGED** and **ORDERED** that said motion be, and the same is hereby adopted.

  
W. Kent Carper, President

  
Henry C. Shores, Commissioner

  
Dave Hardy, Commissioner

Approved by:   
Marc J. Slotnick, County Attorney

# KANAWHA COUNTY COMMISSION



Post Office Box 3627  
Charleston, West Virginia 25336

Telephone (304) 357-0101  
Fax (304) 357-0788  
www.kanawha.us

Henry C. Shores  
Commissioner

W. Kent Carper  
Commissioner

David J. "Dave" Hardy  
Commissioner

December 4, 2009

American College of Obstetricians and Gynecologists  
PO Box 96920  
Washington, D.C. 20090-6920

American College of Obstetricians and Gynecologists:

The County Commission of Kanawha County, West Virginia at a regular session of the County Commission on December 3, 2009 entered an order rejecting the recommendation of the American College of Obstetricians and Gynecologists which calls for the routine pap smears to begin at age 21 and that women 30 and older should wait three years between pap smears once they've had three consecutive clear tests and that women 65 to 70 should stop having pap smear entirely if they do not have abnormal test results in the last 10 years.

Kanawha County rejects these new guidelines and will continue to cover the cost of pap smears for those insured through the Kanawha County Commission with Mountain State Blue Cross Blue Shield based on prior testing recommendations. Kanawha County will continue with the annual screenings beginning at age 21 for employees who are insured through the Mountain State Blue Cross Blue Shield Program through the Kanawha County Commission based on recommendations of the County's Health Director, the Susan G. Komen Foundation and the American Cancer Society. We are encouraging all 55 counties in the state of West Virginia in addition to all counties throughout America to join us in support of preventive health of their employees.

Sincerely,

Handwritten signature of Dave Hardy in cursive.

Dave Hardy  
Commissioner

Handwritten signature of W. Kent Carper in cursive.

W. Kent Carper  
President

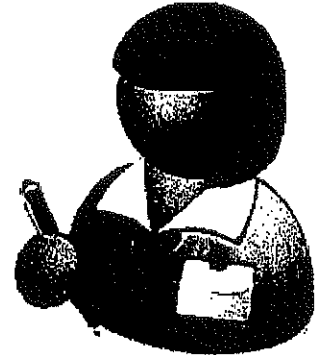
Handwritten signature of Henry C. Shores in cursive.

Henry C. Shores  
Commissioner

#39

# CCAWV Legislative Association Meeting & Educational Training Series

## Registration Form



Name	County

I plan to attend the Legislative Association Meeting & Education Training Series Program January 31, 2010 - February 2, 2010.

\_\_\_\_\_ Please bill my company for the \$195.00 registration fee  
(due and payable within 30 days of billing)

\_\_\_\_\_ My registration fee of \$195.00 is enclosed  
(payable to County Commissioners Assoc WV)

Please return by mail or fax (304-346-3512) no later than January 22, 2010 to CCAWV.

*Cancellation Policy: There will be no penalty for cancellations received in writing on or before January 22, 2010. January 23, 2010 and thereafter, all no-shows will be charged the full registration amount. We apologize for the need to adopt this policy, but on this date, the costs for room rentals, refreshments, etc. are incurred on your behalf even when you cancel and the Association is stuck with covering the cost. Thanks for your cooperation in this matter.*

# RECEIVED

DEC 7 2009

Jefferson County Commission



## County Commissioners' Association of West Virginia

2309 Washington Street, East

Charleston, West Virginia 25311

E-mail [info@ccawv.org](mailto:info@ccawv.org) (304) 345-4639 Fax (304) 346-3512

December 3, 2009

Attention: All County Commissioners' and Staff:

The County Commissioner' Association of West Virginia invites and encourages you to attend the CCAWV Legislative Association Meeting & Educational Training Series. The meeting is scheduled for January 31, 2010 thru February 2, 2010 at the **Marriott Hotel, Charleston, WV**.

### **The tentative schedule is as follows:**

#### **Sunday, January 31, 2010**

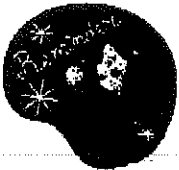
- 2:00 pm – 5:00 pm CCAWV Board of Directors Meeting
- 5:00 pm – 7:00 pm Registration.
- 7:00 pm – Opening Session & Welcome Dinner/Governor to be invited

#### **Monday, February 1, 2010**

- 9:00 am – 1:00 pm Commissioners' Day at the Legislature (go to Capital & visit with Legislators / get introduced during 11:00 am floor session)
- 1:30 pm – 5:30 pm CCAWV Legislative Briefing at the Marriott
- 6:00 pm – 8:30 pm CCAWV hosted Legislative Reception at the Marriott (remember to invite your legislators/we'll also give you invitations to take to them Monday morning when you visit)

#### **Tuesday, February 2, 2010**

- 8:30 am – 12:00 pm CCAWV Educational Training Series  
Topics TBA



A registration fee of \$195 per county attendee is assessed to cover meeting costs and should be made payable to the County Commissioners' Association of WV. A block of rooms are available at \$119.00 per night by calling the Marriott @ 1-800-228-9290. **The cut-off date for the room rate is January 15, 2010.**

*Please call if you have questions (304) 345-4639. We look forward to seeing you there!*

# RECEIVED

DEC 07 2009

Jefferson County Commission

#30

RECEIVED

DEC 04 2009



Comcast Cable  
Office of Government Affairs  
400 Westfield Road  
Charlottesville, VA 22901

**Jefferson County Commission**

November 30, 2009

Ms. Leslie Smith  
Jefferson County Administrator  
124 East Washington Street  
Charlestown, WV 25414

Dear Ms. Smith,

At Comcast, our goal is to continue to provide our customers with great products, service and value. We are proud to offer customers in Jefferson County the leading Video On Demand library, the most High-Definition choices and a faster high-speed Internet.

As a result of today's challenging economic environment, Comcast will be adjusting its rates effective January 1, 2010. While the cost of our High-Speed internet is not increasing at this time and many other charges are decreasing, the monthly price for Standard Service will rise. The attached price list provides more information about the scheduled adjustment. Please know that customers who enjoy a promotional offer will not be receiving an increase in their service charges during the promotional period.

These changes to the cost of our cable service are the result of increased business and operational costs. As way of example, Comcast spends about \$6 billion a year on programming alone to provide our customers the best content and the most video choices. While we have been aggressive at controlling these costs, we expect continued increases in the costs we pay for programming.

Comcast leads the broadband revolution as America's largest residential broadband provider. Over the past several years we have increased the speed of our Internet service without increasing the cost of the service to our customers, and by the end of next year we plan to offer download speeds up to 50 Mbps.

Through innovation and technology Comcast has brought to its customers the fastest residential broadband speeds available from any provider. Our customers also receive additional valuable benefits at no extra charge, including Comcast's McAfee Security Suite (a \$120 value), Plaxo Premium (a \$59.95 value) and expanded content on Comcast.net (such as ESPN360, even more entertainment, multiple email accounts, shopping and security features). And coming soon, Comcast will provide customers at

no cost 2 GB worth of online safe and secure personal file protection with continuous backup, plus the ability to share and access files remotely from any Internet connection.

Despite the increased cost of doing business, Comcast has continued to add value to our services. In the past year, we have:

- Added more sports content including the NFL, NBA, NHL and ESPNU to our Digital Preferred service tier, giving customers access to top sports league programming.
- Added up to 10 digital channels, increasing the lineup on Digital Starter service with networks such as Bloomberg, LMN, CSPAN 3, Sprout, G4 and History International.
- Continually enhanced the customer experience through initiatives like our new Comcast Customer Guarantee, Customer Best Program, Care Monitoring Program as well as our newly redesigned and easy to understand bills.

If you have any questions or need more information about these changes please feel free to call me directly at (540) 974-5123.

Sincerely,



Paul Comes  
Director of Government and Community Affairs







000004R79K

FEIN: #31  
Reporting Period: 09/01/2009 to 09/30/2009  
Amount: 426.30

Granite Telecommunications, LLC (200906) (Z)

c/o Tax Partners, L.L.C.  
3100 Cumberland Boulevard, Suite 900  
Atlanta, GA 30339

RECEIVED

DEC 07 2009

Jefferson County Commission



0000000000

Drawer: Returns  
Company: Granite Telecommunications, LLC (200906) (Z)  
Entity ID: 016715  
Entity Name: Granite Telecommunications, LLC (200906) (Z)  
Return Code: WV\_JEFF\_E9  
Return Description: West Virginia, Jefferson County E911  
Due Date: 20  
Year: 2009  
Month: 09  
Sequence Number: 1  
Indexed Time: 11/16/2009 12:59:00 PM  
Printed By: LANSEL  
Printed Time: 11/16/2009 2:41:19 PM

0002143417

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

Granite Telecommunications, LLC (200906) (Z)

C/O TAX PARTNERS, L.L.C.

3100 Cumberland Boulevard, Suite 900  
Atlanta, GA 30339  
(877) 829-4141

WACHOVIA, NA  
64-022/610

0002143417

VOID AFTER 120 DAYS FROM DATE 11/16/2009

PAY Four Hundred Twenty Six and 30/100\*\*\*\*\*

426.30

TO JEFFERSON COUNTY COMMISSION  
P.O. Box 250  
Charlestown, WV 25414

*Sandra Mutherboyle*  
TWO SIGNATURES REQUIRED IF \$250,000 OR OVER

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ORIGINAL WATERMARK - HOLD AT AN ANGLE TO VIEW

0002143417 061000227 200016945827



THOMSON REUTERS

November 10, 2009

West Virginia, Jefferson County E911  
Jefferson County Commission  
P.O. Box 250  
Charlestown, WV 25414

RE: Taxpayer: GRANITE TELECOMMUNICATIONS, LLC  
FEIN: 04-3643290  
Tax Type: Telecommunication Taxes or Surcharges

Dear Sir or Madam:

On behalf of our client, Granite Telecommunications, LLC (hereafter "Taxpayer" or "Client"), please find enclosed a schedule and check representing telecommunication taxes or surcharges due to your jurisdiction. The Taxpayer, a telecommunications service provider of landline services, has engaged Thomson Reuters to assist with reporting this liability and remitting payment.

The enclosed schedule includes the following information:

1. The tax period as referenced in the second column entitled "Data Period."
2. A description of the tax being reported as referenced in the column entitled "Tax Type."
3. The taxable revenue and tax amount as referenced in the columns entitled "Taxable Revenue or Units" and "Gross Tax," respectively.

We are hopeful the information contained within will be sufficient to process the reporting and payment of this liability.

Please feel to contact me should you have any questions or require additional information at (770) 956-7525 (extension 1221) or email me at [danang.wilson@thomsonreuters.com](mailto:danang.wilson@thomsonreuters.com). Thank you so much for your assistance.

Sincerely,

*DaNang Wilson*

DaNang Wilson  
Senior Consultant, Consulting Services

Jurisdiction	Data Period	Tax Type	Tax Rate	Taxable Revenue or	
				Units	Gross Tax
West Virginia, Jefferson County E911	200805	E911 SURCHARGES - General	290	5.00	14.50
	200806	E911 SURCHARGES - General	290	6.00	17.40
	200807	E911 SURCHARGES - General	290	6.00	17.40
	200808	E911 SURCHARGES - General	290	6.00	17.40
	200809	E911 SURCHARGES - General	290	6.00	17.40
	200810	E911 SURCHARGES - General	290	8.00	23.20
	200811	E911 SURCHARGES - General	290	7.00	20.30
	200812	E911 SURCHARGES - General	290	7.00	20.30
	200901	E911 SURCHARGES - General	290	7.00	20.30
	200902	E911 SURCHARGES - General	290	7.00	20.30
	200903	E911 SURCHARGES - General	290	7.00	20.30
	200904	E911 SURCHARGES - General	290	7.07	20.51
	200905	E911 SURCHARGES - General	290	9.00	26.10
	200906	E911 SURCHARGES - General	290	16.00	46.40
	200907	E911 SURCHARGES - General	290	20.00	58.00
	200908	E911 SURCHARGES - General	290	16.93	49.09
	200909	E911 SURCHARGES - General	290		
<b>West Virginia, Jefferson County E911 Total</b>				<b>147.00</b>	<b>426.30</b>





THOMSON REUTERS

November 10, 2009

West Virginia, Jefferson County E911  
Jefferson County Commission  
P.O. Box 250  
Charlestown, WV 25414

---

RE: Taxpayer: GRANITE TELECOMMUNICATIONS, LLC  
FEIN: 04-3643290  
Tax Type: Telecommunication Taxes or Surcharges

Dear Sir or Madam:

On behalf of our client, Granite Telecommunications, LLC (hereafter "Taxpayer" or "Client"), please find enclosed a schedule and check representing telecommunication taxes or surcharges due to your jurisdiction. The Taxpayer, a telecommunications service provider of landline services, has engaged Thomson Reuters to assist with reporting this liability and remitting payment.

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3. The taxable revenue and tax amount as referenced in the columns entitled "Taxable Revenue or Units" and "Gross Tax," respectively.

We are hopeful the information contained within will be sufficient to process the reporting and payment of this liability.

Please feel to contact me should you have any questions or require additional information at (770) 956-7525 (extension 1221) or email me at [danang.wilson@thomsonreuters.com](mailto:danang.wilson@thomsonreuters.com). Thank you so much for your assistance.

Sincerely,

*DaNang Wilson*

DaNang Wilson  
Senior Consultant, Consulting Services

Granite Telecommunications, LLC  
 FEIN: 04-3643290

Jurisdiction	Data Period	Tax Type	Tax Rate	Taxable Revenue or		Gross Tax
				Units		
West Virginia, Jefferson County E911	200805	E911 SURCHARGES - General	290	5.00	14.50	
	200806	E911 SURCHARGES - General	290	6.00	17.40	
	200807	E911 SURCHARGES - General	290	6.00	17.40	
	200808	E911 SURCHARGES - General	290	6.00	17.40	
	200809	E911 SURCHARGES - General	290	6.00	17.40	
	200810	E911 SURCHARGES - General	290	8.00	23.20	
	200811	E911 SURCHARGES - General	290	7.00	20.30	
	200812	E911 SURCHARGES - General	290	7.00	20.30	
	200901	E911 SURCHARGES - General	290	7.00	20.30	
	200902	E911 SURCHARGES - General	290	7.00	20.30	
	200903	E911 SURCHARGES - General	290	7.00	20.30	
	200904			7.07	20.51	
	200905	E911 SURCHARGES - General	290	9.00	26.10	
	200906	E911 SURCHARGES - General	290	16.00	46.40	
	200907	E911 SURCHARGES - General	290	20.00	58.00	
	200908	E911 SURCHARGES - General	290	16.93	49.09	
	200909	E911 SURCHARGES - General	290			
<b>West Virginia, Jefferson County E911 Total</b>				<b>147.00</b>	<b>426.30</b>	

**Ethics Reporter**

West Virginia State Ethics Commission

**Since the Last Reporter**

Since the October edition of the **REPORTER**, the West Virginia Ethics Commission has published one Advisory Opinion interpreting provisions of the West Virginia Governmental Ethics Act.

At its November 5 meeting, the West Virginia Ethics Commission approved an opinion relating to the permissibility of a state employee receiving compensation from another state entity that is supervised by the employee's agency.

**ADVISORY OPINION REPORT**

**Advisory Opinion 2009-10** concerned the permissibility of a state employee receiving compensation from

another state entity that is supervised by the employee's agency.

The employee requesting the opinion has no direct responsibilities in the regulatory realm concerning institutions of higher education. However, the requester does have significant administrative responsibilities in connection with the regulatory process.

The employee is seeking a doctoral degree from a public institution during his non-working time and, as part of that doctoral program, is teaching a class. Compensation is earned for these teaching assignments and is the issue for the Commission to consider in this case.

In its review of the request, the Ethics Commission examined the provisions of 6B-2-5(b) prohibiting a public employee from using their position to produce a private gain for

themselves, as well as the language of 6B-2-5(h) which prohibits a full-time employee of the state generally from being employed in a position that would be in conflict with their official duties. This section also allows the Ethics Commission to consider exemptions from the proscriptions.

In its opinion, the Ethics Commission ruled that the proposed employment of a state employee in the capacity as a teacher at a public institution of higher education that is regulated by his state employer would be permissible. The Commission determined that the prohibitions against employment outlined in 6B-2-5(h) do not apply to other governmental bodies and, further, that the receipt of compensation for teaching would also be permissible since these duties are not being performed for the state agency he is employed by.

**November, 2009**  
**Page Two**

The Ethics Commission did caution the requester to properly disclose his teaching arrangement with the state agency and his supervisors so any potential conflict issues could be avoided during the performance of his normal duties for the state.

**TOPICAL INDEX  
UPDATE  
WEST VIRGINIA  
ETHICS  
COMMISSION  
ADVISORY  
OPINIONS**

(Only includes opinions published since the October edition of THE REPORTER)

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**STATE GOVERNMENT**

**2009-10:**

Permissibility of a state employee receiving compensation from another state entity that is supervised by the employee's agency

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**WEST VIRGINIA ETHICS COMMISSION  
ADVISORY OPINIONS  
2009 TOPICAL INDEX  
(Covering actions through November 5)**

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**BOARDS AND COMMISSIONS**

**2008-10:**

Permissibility of a county authority maintaining a business contract with a company controlled by an elected county commissioner (See also COUNTY GOVERNMENT)

**BOARDS OF EDUCATION**

**2009-04:**

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**COUNTY GOVERNMENT**

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**2009-01:**

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Permissibility of a county commission reimbursing county officials or employees for government related calls made on personal cellular phones

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NONE PUBLISHED

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**STATE GOVERNMENT**

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Permissibility of state agency board members reviewing matters in which the members may have a financial interest

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**2009-10:**

Permissibility of a state employee receiving compensation from another state entity that is supervised by the employee's agency

**TRADE ASSOCIATIONS AND LOBBYISTS**

NONE PUBLISHED

**MISCELLANEOUS**

NONE PUBLISHED

FILED

ADVISORY OPINION NO. 2009-10

2009 NOV 18 AM 10: 24

Issued On November 5, 2009 By The

WEST VIRGINIA ETHICS COMMISSION

OFFICE OF THE  
SECRETARY OF STATE

OPINION SOUGHT

A State employee whose employer has oversight of institutions of higher education asks whether he may be compensated for teaching a course at a public university.

FACTS RELIED UPON BY THE COMMISSION

The Requester is employed by a State Agency that has oversight responsibilities in regard to accrediting educator preparation programs offered at institutions of higher education, both public and private. These programs are offered for the benefit of students who want to become certified teachers or to pursue other career opportunities in education.

Public institutions of higher education must receive a recommendation for the accreditation of their educator preparation programs from one of two national organizations.<sup>1</sup> These organizations make on-site visits and take other steps to ascertain whether an institution's educator preparation program satisfies the qualifying criteria for accreditation.

These organizations then make a recommendation to a Review Board established by the State Agency. The State Agency appoints the Review Board members. The Requester is **not** a member of the Review Board; further, he has no voting rights. The Review Board is responsible for reviewing the national organization's recommendation and then independently determining whether it agrees or disagrees with the recommendation. The Review Board then communicates its recommendation on accreditation to the State Agency's governing body. The State Agency's governing body has the ultimate authority to rule whether a program should or should not receive accreditation. The Requester is **not** a member of the State Agency's governing body.

The Requester's job duties include coordinating site visits between the national organizations and the public institutions of higher education. He works with the public universities to ensure that they meet the timelines for submitting documentation and that any reports the universities submit comply with the applicable reporting guidelines. The Requester also assists the national organizations in reviewing documents submitted by

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<sup>1</sup> Private colleges may either receive their accreditation through review by one of these two national organizations or through the State Agency. Since the Requester seeks compensation from a public university rather than a private college, the difference in the accreditation process is not relevant to the issue before the Commission.

the institutions of higher education and serves as a point of contact for the State Agency's Review Board. Further, he does not review the reports submitted by the national organization nor make any recommendations to the Review Board on whether he agrees with the findings in any such report. Although he is physically present at Review Board Meetings, normally his advice is not sought. Instead, he insures that the Review Board has all the material it needs to make a decision.

In addition to his public employment, the Requester is pursuing a doctoral degree at a public university. The Requester pays his own tuition and related expenses. He does the course work on his own time. As part of his doctoral program, the Requester teaches a class at the same public university where he is enrolled. The State Agency does not require him to be enrolled in a doctoral program. Further, teaching this course or any course is not part of his public job responsibilities.

The Requester teaches a course in his area of expertise, *i.e.* foreign languages. The public university compensates all students enrolled in this doctoral program for teaching a class. At present, the Requester has declined compensation until and unless the Ethics Commission rules that it is permissible for him to accept the compensation.

The Requester states that he performs all the work related to the class he teaches on his own time and does not use any public resources. The Requester states that due to limited staff availability at the State Agency, it would be impractical to completely remove himself from his job responsibilities related to the public university where he teaches. The Requester further states, however, that his supervisor already reviews all of his work, as a matter of protocol, and that the State Agency's governing body makes the final decision on accreditation.

The Requester has asked his agency's human resources division whether he may be compensated for teaching the course. According to the Requester, the human resources division states that there is nothing in the agency's rules or regulations which prohibit him from being compensated for teaching the course.

#### **CODE PROVISIONS RELIED UPON BY THE COMMISSION**

W. Va. Code § 6B-2-5(b) reads in relevant part:

A public official or employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain.

W. Va. Code § 6B-2-5(h) reads in relevant part:

(1) No full-time ... public employee may...be employed by...any person who:

(A) Has a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or,

(B) Has a matter before the agency on which he or she is working or a subordinate is known by him or her to be working.

...

(3) A full-time public official or employee who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the prohibitions...

(6) A full-time public official or full-time public employee may not receive private compensation for providing information or services that he or she is required to provide in carrying out his or her public job responsibilities.

W. Va. Code § 6B-1-3(h) reads:

“Person” means an individual, corporation, business entity, labor union, association, firm, partnership, limited partnership, committee, club or other organization or group of persons, irrespective of the denomination given such organization or group.”

### **ADVISORY OPINION**

The Ethics Act generally prohibits public employees from using their public office (including public resources), for their own private financial gain. This prohibition is generally considered to serve as the cornerstone for the more specific restrictions that follow in the Act. See W. Va. Code § 6B-2-5(b).

In consideration of the question raised, the Ethics Commission must first consider whether W. Va. Code § 6B-2-5(b) prohibits the Requester from receiving compensation. Since the Requester states that he is not using public resources or time in furtherance of his outside employment activities, then the acceptance of compensation does not violate this provision.

Next, the Ethics Act imposes limitations on secondary employment of public servants by regulated entities and vendors over whom the public servants or their subordinates exercise regulatory control. These same limitations apply to the employment of public servants by a vendor over whom the public servants or their subordinates exercise control. See W. Va. Code § 6B-2-5(h)(1).

Since the Requester's agency has regulatory responsibilities relating to the accreditation of educator preparation programs offered by institutions of higher education, including the public university where the Requester is teaching a course, the Commission must determine whether the limitations in W. Va. Code § 6B-2-5(h)(1) apply to the situation presented. This section of the Ethics Act generally permits secondary employment with a regulated person or vendor if the public employee's

supervisor approves such employment and the public employee seeks and receives an employment exemption from the Ethics Commission. As part of this process, the employee and agency must demonstrate that the employee's secondary employment will not impede him from impartially and effectively fulfilling his public job responsibilities.

In this case, the Requester has secondary employment with a **public** university. Thus, the Commission finds, consistent with its past opinions, that the limitations in W. Va. Code § 6B-2-5(h)(1) do not apply. This code section specifically references limitations upon employment with "persons." The Ethics Act defines "person" as an "individual, corporation, business entity, labor union, association, firm, partnership, limited partnership, committee, club or other organization or group of persons, irrespective of the denomination given such organization or group." Nowhere in this definition is there reference to a public agency or state, county or municipal office. As a result, consistent with its earlier advisory opinions, the Commission finds that the foregoing limitations do not apply to seeking employment or having secondary employment with a government agency. See A.O. 92-49 wherein the Commission sets forth this administrative interpretation and cites past opinions where it reached the same conclusion. Hence, this limitation in the Ethics Act does not prohibit him from teaching the course for compensation at a **public**, not private, university.<sup>2</sup>

Finally, the Ethics Commission must consider whether other provisions in the Ethics Act prohibit the Requester from being compensated for teaching a course. W. Va. Code § 6B-2-5(h)(6), states "A full-time public official or full-time public employee may not receive private compensation for providing information or services that he or she is required to provide in carrying out his or her public job responsibilities." The Requester states that teaching courses is not part of his job responsibilities. Moreover, it is not the responsibility of his agency to provide courses at institutions of higher education. Finally, as earlier noted, the Requester prepares for and teaches the course on his own time. As a result, this limitation does not restrict him from being compensated for teaching the course.

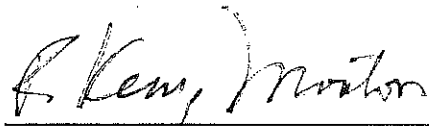
Although the Ethics Act does not prohibit the Requester from being compensated for teaching the course, certain limitations apply. To avoid the appearance of impropriety, the Requester should take the following action. **First**, he should disclose to his supervisor and the Review Board that he is enrolled in the doctoral program at the public university and that he teaches a course there for compensation. **Second**, although the Requester has indicated that due to staffing shortages it is impossible to remove himself completely from involvement in the accreditation of this public university, he should arrange for his supervisor to review accreditation recommendations, if any, he makes regarding the program at the public university

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<sup>2</sup> As this section does not limit the Requester's employment with another public agency/institution, it is not necessary to determine whether the Requester in fact exercises regulatory authority.

where he teaches. It appears that the Requester has already met this requirement since the Requester states that his supervisor already reviews his work.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et seq.*, and does not purport to interpret other laws or rules. In accordance with W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended or revoked, or the law is changed.



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R. Kemp Morton, Chair

#33

RECEIVED

Potomac Valley Audubon Society

# VALLEY VIEWS

DEC 01 2009

Jefferson County Commission

Volume 28, Issue 4 December 2009

## Watch for PVAS Annual Appeal Mailing

PVAS will launch its annual fundraising appeal on December 1.

We know this isn't an easy time to be asking for funds. The overall health of the economy is still a great concern.

But the fact remains that we really depend on your contributions.

So it's our job to make the best case we can for your support, and that's what we've tried to do in our appeal letter and in the annual report that will accompany it.

Please keep an eye out for this mailing and take time to read it if you can.

And please remember that no matter how much you give to PVAS or how you give it, your contribution is greatly appreciated.

We couldn't provide all the services we provide without the help we receive from members and friends like you!

Thanks in advance for whatever support you can provide to PVAS this year!

## PVAS Gets Grant to Develop New Second Grade Program

The Two Rivers Giving Circle has awarded PVAS a \$1,500 grant to help PVAS develop a new second grade school program that will not require field trips but instead rely on each school's grounds for outdoor nature study and exploration.

Currently, all of PVAS's school programs involve field trips, mostly to our Yankauer Nature Preserve in Berkeley County.

While we feel that trips to sites like the Yankauer Preserve will always be more instructive for children, we now need to offer optional programs that are entirely school-based because more and more schools are sharply restricting field trips to cut costs.

Based on feedback we've received from teachers, we believe this optional programming will be very popular.

We are currently seeking grant help to develop such programming

for other K-6 grades.

The Two Rivers Giving Circle, which was established in 2008, comprises a group of donors who are focused on gifting funds to worthy conservation and preservation non-profits in eastern West Virginia.

It is hosted by the Eastern West Virginia Community Foundation.

Last year, the Circle supported the development of our popular new "Wee Naturalists" program.

## PVAS Leads School Trips to New Park

Fourth and fifth grade classes from Ranson Elementary School took field trips to Ranson's new Flowing Springs Park on October 21 and 22 respectively.

They were the first school groups to visit the new park, which is still under development.

The trips were part of the students' participation in PVAS's Watershed Education Initiative program, which is being offered at the school this fall thanks to a grant from the City of Ranson.

The program is aimed at educating area youngsters about the importance of protecting water resources.

During the field trips, school staff, PVAS staff, and volunteers guided students through a variety of outdoor learning activities. Also participating was Sara Wuertenberg, of the Berkeley County Conservation District, who helped with a stream table demonstration.



The West Virginia Division of Forestry's Project CommuniTree provided t-shirts for all the fourth graders who participated.

The students caught and examined aquatic animals including

See School Trip, Page 5

Potomac Valley Audubon Society is people dedicated to preserving, restoring, and enjoying the natural world through education and action.

# President's Perch



Hello, everyone:

As is noted elsewhere in this newsletter, two of PVAS's most respected longtime members passed away within days of each other during October.

As a relative newcomer to the organization, I never had the opportunity to know Bill Hartgroves.

But fortunately I was able to work closely with Bill Belton on Eidolon Nature Preserve matters, starting early in 2006.

That was when we first began discussions in earnest with The Nature Conservancy about managing the Eidolon property; in fact, the first of those discussions was held in Bill's living room.

Here's what I wrote about Bill Belton in this column in November of 2006, after our management role at Eidolon had been finalized and announced:

*Remember that PVAS's involvement in this exciting new venture is due almost entirely to the tireless efforts of longtime PVAS member and Board member emeritus Bill Belton. Bill, who has lived near the Eidolon property for decades, knew [Marguerite Zapoléon, the donor of the Eidolon property], and was aware of her intention to bequeath the property to The Nature Conservancy. He long ago recognized the opportunities for PVAS from that situation, and over the years he has worked assiduously to make sure that those opportunities were realized—in no small part by constantly prodding an often distracted and sometimes reluctant PVAS Board to keep focused on the project.*

Bill's Eidolon efforts didn't end there. He remained interested and active in the development of the preserve—and yes, kept on prodding—until just before his death.

I miss him. He was a great inspiration to me personally and to PVAS generally.

I'm told that Bill Hartgroves was also a great inspiration and also made many significant contributions to PVAS, particularly during its early years.

So individuals can and do make a difference.

—Peter Smith

## Birdseed Sale Thank You —

Our sale went very this year with a total of about 24,000 pounds of birdseed sold. Many thanks to John & Nancy Ostrowski for organizing and computerizing all the orders and payments: Many thanks to Marvin & Judy Gower, John Bir, and all the staff at Gower's in Williamsport & Ranson ... it's a pleasure to work with all of you and the birdseed is great! Many thanks to Hunter Hardware in Berkeley Springs for letting us deliver seed from their warehouse, and thanks also to the Shepherd U. students who came to observe and help in Ranson: Rachel Holmes, Jeff Birdsall & Taylor. And many thanks

to our delivery day helpers: Kathryn Henry & Al Davis (Williamsport), Bruni Haydl & Marilee Cunningham (Ranson), and Susan Jones & Barbara Herrman (Berkeley Springs). If you run into any snags with your order, call me: Diana Mullis at 304-267-3482 or email [dianamullis@aol.com](mailto:dianamullis@aol.com).

## Green Home Reception a Success

On October 24, Martinsburg architects Matthew Grove and Lisa Dall'Olio hosted a Reception and Green Home Tour at their new home in Broomgrass—an

organic farm community they've developed in Berkeley County near Gerrardstown. In addition to tours of the home, the event included organic wines and delicious hors d'oeuvres and sweets provided by talented and generous volunteers. A popular raffle was held—a feed trough containing



straw, a scarecrow, bird seed, bird feeder, rake, pumpkins, mums and gourds. Nearly 60 people attended and others contributed to the cause, raising about \$4000 for PVAS' educational programs.

A heart-felt thank you goes to Matthew Grove and Lisa Dall'Olio for opening their home for the event, and for giving several tours through the day. Thanks also go to Alice Barkus, Diana Mullis, and Jane Vanderhook for helping to plan the event. The event's food and wine was provided by volunteers Alice Barkus, Mina Goodrich, Wanda Miller, Diana Mullis, and Vicki Smith. We also appreciate the support of Grapes and Grains Gourmet and The Press Room.

## Remember United Way/CFC Fund Drives

Here's a final reminder that the annual fundraising campaigns of the United Way of the Eastern Panhandle and the Combined Federal Campaign (CFC) will continue through December 15.

PVAS encourages its members to support these organizations.

Because PVAS is an IRS-qualified non-profit agency, individuals who contribute to either United Way or CFC can designate all or part of those contributions to PVAS, if they wish.

To designate United Way contributions to PVAS, look for the section of the United Way contribution form that says "Tell us how you would like United Way to invest your donation," enter the dollar amount you wish to designate to PVAS in the space next to the phrase "Restricted contribution," and write "Potomac Valley Audubon Society" in the line below that.

To designate CFC contributions to PVAS, enter PVAS's CFC number (29061) on the CFC form that you file with your employing agency.

United Way and CFC deduct a percentage from all designated contributions to cover their own administrative costs.

## REMEMBERING BILL HART-GROVES—AN APPRECIATION

By Jean Neely

After the initial sadness of the news about Bill, I started to get a stream of memories flooding into my brain—a 'déjà vu moment'—all about those days back in the early '80s when we got this chapter started.

Bill was PVAS's "outing chair" on that first board back in 1982. And what outings he led! No sissy bird walks! We hiked, climbed and canoed our way to various hot spots he declared "unmissable". He was relentless, and we kidded him about his tattered shoes, his ancient car, and "mountain goat" tendencies, the latter keeping us breathless. Moreover, his wonderful and extensive knowledge of *Lepidoptera* was the way we all learned about butterflies on all trips.

Later, Bill became vice-president and then president. In things National Audubon, he was active in the then Audubon Council (there were 5 chapters at one point in WV), and in regional Mid-Atlantic conferences. He attended the National Audubon Convention in Bellingham, Washington in 1987.

In 1984, his enthusiasm for canoeing the Okefenokee Swamp was what drove him to organize and lead nine of us down there for a fairly difficult trip—in south Georgia. (I remember him promising we'd all see Pogo!) 'Gators, snakes, birds and lots and lots of dark water overhung with moss-draped trees, and imagined, if not real, water moccasins. The final touch was our 'glorious leader' getting lost—the high water had covered the takeout sign and some of us blithely paddled on a mile past it before realizing our mistake. (As I recall, it was Dotty and Lou Dittmar who found the right landing spot.)

He and wife Jean loved hosting the annual PVAS picnic, which generally began with a canoe trip on the Shenandoah River. We'd put in upstream a few miles and take out at his house. I still have some old photos of those trips, and I remember well Bill (in MY canoe) going thru some rapids BACKWARDS! We all feasted on potluck and favorite beverages for the rest of the day.

I also remember what a wonderful gardener he was. He knew plants cold. His glorious day lilies filled me with jealous longings, so one day he appeared at the house with plastic bags full of some of his prize stock, ready to go into the ground.

In a more recent project, Bill took on the restoration of the DNR property along the east side of the Shenandoah—Shannondale Springs. Restoration of the old buildings and acting as cheerleader for the site were the driving forces for several years of his life.

As I reflected on the rich life this man enjoyed and how he touched ours, I recall anecdotes related by other PVASers: For an Audubon Council meeting in Blackwater Falls State Park, he left behind the ham that Jean had carefully prepared for us, forcing him to buy a canned version in Davis.

We are the richer for the influence he had on our chapter, and the infectious enthusiasm he had for the natural world. How fortunate we were to be able to enjoy him and his generous friendship.

I know I'll miss him.

## BILL BELTON, LONGTIME PVAS INTERNATIONAL CHAIR, DIES AT 95

Before Bill Belton came onto the Eastern Panhandle scene, he had the unique distinction of being the proverbial 'legend in his own time'. Not only had he pursued a long career in the Foreign Service of the U. S. State Department, he was a renowned neo-tropical ornithologist, recognized as a leading authority on the birds of Brazil. Bill's recordings of indigenous birds are at the Cornell Laboratory of Ornithology. Indeed, the American Bird Conservancy (ABC) manages "The William Belton Conservation Grants Program -- the oldest continuously running bird conservation grant program in the Western Hemisphere. The program helps local conservation groups and scientists by providing funds that make emerging conservation efforts, such as fieldwork and travel, possible, and by assisting with the development of conservation plans. Grants often involve local communities in implementing conservation and developing solutions.

We were lucky that Bill and Judy Belton built their retirement house in Great Cacapon and joined our Audubon chapter, where he became a force for our participation in international bird conservation. True, we were small, but we did have his list of contacts in many South American countries where we could send small grants for the purchase of binoculars, field guides, and other equipment to birders there.

During the 1992 NAS Convention in Estes Park, Colorado, Wil Hershberger and Bill worked very hard to help with the Chiapas Project. This bio-diverse area of southern Mexico has wonderful unspoiled habitat and, together with Seattle Audubon, PVAS became active in helping local conservationists to preserve it.

Here at home, however, Bill became our conscientious 'gad-fly'. He pushed the PVAS board to develop the Yankauer Nature Preserve in partnership with The Nature Conservancy. Later, his crowning achievement was to pursue the same goal with TNC's Eidolon Nature Preserve in Morgan County. He was instrumental in persuading the board to adopt the same partnership with TNC, and today that is a reality.

Bill didn't live to see his most fervent desire for Eidolon come to fruition. It was his hope that the stone cottage be restored to a working building to serve as a centerpiece for activities at Eidolon and as a community resource in Morgan County. But just before his passing he was pleased to learn that public parking and road improvements inside the preserve were completed and Eidolon was that much closer to living up to its potential as an education and conservation gem in Morgan County. To his credit, Bill just wouldn't let the land go fallow.

Our friend has gone, but we revel in the realization that we helped some of his dreams come true.



## January Program Will Look at Wintering Waterbirds

PVAS's next program at the National Conservation Training Center will be a January 13 presentation about "Populations and Conservation of Wintering Waterbirds in the Chesapeake Bay and Mid-Atlantic Coastal Waters."

The speaker will be a leading expert on the subject: migratory bird biologist Doug Forsell.

Doug has studied migratory birds for more than three decades, mostly with the U.S. Fish and Wildlife Service.

After earning a Master's Degree in Wildlife Management from California State University Humboldt, he spent ten years in Alaska primarily studying the at-sea distribution and abundance of marine birds. He spent four years as the refuge manager of five remote tropical Pacific islands where he studied breeding biology of tropical seabirds.

Since moving to the Fish and Wildlife Service's Chesapeake Bay Field Office in 1990, his major activities have been focused on interpretation of waterfowl population trends, surveys of waterbirds in offshore waters of the Chesapeake Bay, assessing the mortality of waterbirds in anchored gillnets, modeling diving duck distributions, and identifying threats to birds and their habitats and promoting their restoration.

He has also conducted aerial winter waterbird surveys to determine the distribution of waterbirds along the mid-Atlantic coast.

## Wee Naturalist Program Continues

The very popular "Wee Naturalists" program for preschoolers will have its last programs in 2009 on December 16 at the Yankauer Preserve in Berkeley County and on the December 17 at Craftworks at Cool Spring, south of Charles Town. Space is still available at both locations. To register or learn more, contact Suzi Taylor at 301-432-1908.

The program will continue in 2010 at the Yankauer location, the third Wednesday of January, February, March and April. The time of the program will continue to be 9:30-11 am in 2010. The program is open to children ages 3 to 5. All participating children must be accompanied at each session by a parent, grandparent or other adult relative or guardian to explore the preserve together. The programs at CraftWorks in southern Jefferson County will likely resume later in the year.

As in the past, the program is aimed at providing regular opportunities for small children and loving adults to explore nature together safely under the guidance of an experienced PVAS instructor. All sessions are conducted whatever the weather, and use a hands-on discovery approach. To ensure that everyone receives close, personal attention, enrollment is limited to ten child/adult teams per session. (If demand warrants, a second session will be scheduled after the morning session again next year.)

Families may register for one, several, or all of the sessions but pre-registration is required. The fee will be \$8 per child/adult team per session or \$7/session if a child registers for three or more

sessions. (A slight increase to support the program without grant funding.)

The Wee Naturalists program was initiated last January with start-up funding provided by a grant from the Eastern West Virginia Community Foundation's Two Rivers Giving Circle.

Registration materials for the 2010 program series can be found at [www.PotomacAudubon.org](http://www.PotomacAudubon.org). For more information, contact the Wee Naturalist Director, Suzi Taylor, at 301-432-1908.

## Sign Up Now for Christmas Bird Counts

PVAS has set December 19 and January 2 as the dates for this winter's annual Eastern Panhandle Christmas Bird Counts.

The December 19 count will focus on Jefferson County. The January 2 count will focus on Berkeley and Morgan counties.

These local-area counts are part of a Christmas Bird Count that has been conducted throughout the western hemisphere every year since 1900 under the auspices of the National Audubon Society.

The purpose is to monitor the status and distribution of early-winter bird populations.

The data collected from this volunteer-based effort have been folded into what is now the longest-running database in ornithology, representing over 100 years of continuous information. This database is used to help spot trends in bird populations, which in turn can help identify shifts in environmental conditions.

Currently, over 50,000 volunteers across the Americas participate in each year's count.

Both experienced and novice birders are welcome to join in this season's Eastern Panhandle counts. Novice volunteers will be teamed with those who have more experience.

All those who participate must register beforehand with PVAS.

To register and/or to obtain more information, contact Nancy Kirschbaum at 304-876-6881 or [nancyk500@comcast.net](mailto:nancyk500@comcast.net).

## Reminder: Eidolon Hunting and Hiking Schedule for December

If you're planning to visit the Eidolon Nature Preserve in early December, please remember that the firearm season for deer continues through December 12 and keep the following rules in mind:

- Eidolon's trails will be closed to hikers on Saturday December 5 and Saturday December 12.
- In accordance with state law, no hunting will be permitted on Sundays.
- On all other days during the firearm season for deer, the trails will be open to hikers from 10 a.m. until 3 p.m. only.
- Hunters must be licensed by the state and follow all applicable state laws and regulations.
- For their part, hikers should exercise appropriate caution at all times during hunting season and wear at least one item of blaze orange clothing.

Full details can be found on the PVAS website.

## VALLEY VIEWS

*School Trip* (continued from page 1)

macro invertebrates, salamanders, and crayfish. Many students were seeing these creatures for the first time.

The fourth graders had a close look at a Great Blue Heron walking in the park's wetlands. The bird lifted off and flew over the group, much to their delight.

The students had been prepared for their field trips by a series of PVAS-led classroom lessons about watershed issues and aquatic habitats.

The students, teachers, and chaperones who participated in the field trips expressed enthusiasm for the new park.

Several parents commented that they themselves had grown up playing outside and exploring streams, but their children had not. The parents were glad to learn about the new natural park and said they appreciated having such a place nearby for their children to explore.

The park, which is approximately 30 acres in size, is located between Flowing Springs Road and Route 9, near the Potomac Towne Center shopping center.

It contains the spring that is the source of Flowing Springs Run and provides habitat for a rich variety of wildlife.

Ranson city officials say they want to preserve as many of the park's natural features as possible.

PVAS is part of an advisory group that is helping city officials develop the park, and has been conducting inventories of the property's flora and fauna.

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## The Cornell Lab of Ornithology

### What's That Bird Doing? Explore Bird Behavior with New Online Course

*Students develop new skills with e-learning offering from Cornell Ithaca, NY—Why does a Red-winged Blackbird flare its colorful wing patches? What does it mean when ducks bob their heads? Is the way a bird arranges its feathers significant?*

Answering these questions gets to the heart of bird behavior, which is all about sex and survival. Anyone can explore fascinating patterns of bird behavior in a new five-week online course from the Cornell Lab of Ornithology. The goal of "**Investigating Behavior: Courtship and Rivalry in Birds**" is to help people learn how to observe and interpret some of the ways birds are communicating with their behavior. Some of those behaviors are literally a matter of life and death.

"The online course will make all my bird watching that much richer," said Phyllis K. of Washington state, one of the first students to go through the course

"It's not your typical text-heavy, lecture-based tutorial," said course instructor and content coauthor Colleen McLinn. "It's packed with multimedia and interactive activities that make this course unlike anything else available. We wanted to create a learning environment

that's friendly and accessible to everyone." Course multimedia content comes from the Cornell Lab's Macaulay Library, the largest archive of animal sounds in the world, with a growing video collection.

"Courtship and Rivalry in Birds" explores a basic principle of bird behavior each week, featuring common and exotic species. From Florida Scrub-Jay families in which siblings help raise new chicks, to the jaw-dropping plumages and bizarre dances of the birds-of-paradise, the goal is to help students develop new skills in observing birds and be able to apply what they've learned anywhere.

"You get the whole gamut—from birds you might see in your backyard to the most spectacular birds on the planet," said course coauthor Kevin McGowan. "If you pay attention, there are a lot of things happening—you can look at small movements, see how movements are put together, and figure out what it all means."

As part of the course, students participate in online discussions with the instructor and classmates. Interactive activities include trying to think like a bird—making behavioral decisions that have a direct impact on survival.

"With this new online course, we want to share our passion for birds and nature in a new way," said John Fitzpatrick, director of the Cornell Lab of Ornithology. "We want anyone who is curious about nature to come along as we explore the fascinating, beautiful, and continually surprising world of birds!"

The online course was developed in partnership with eCornell, a wholly-owned subsidiary of Cornell University. For more information about the course and to register for the five-week session **beginning November 11**, visit [www.ecornell.com/birds](http://www.ecornell.com/birds)--**be sure to watch the video** with more about the course contents. Another session will begin January 6, 2010. The cost of the course is \$295 (\$255 for Cornell Lab members) with a \$30 dollar registration fee. To receive the Cornell Lab member discount, sign up by phone at (866) 326-7635.

**Contact:** Pat Leonard, Cornell Lab of Ornithology, (607) 254-2137, [pel27@cornell.edu](mailto:pel27@cornell.edu)  
© Cornell Lab of Ornithology

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## Nature Photographers

The Potomac Valley Nature Photographers will meet at NCTC on the 11<sup>th</sup> of December at 7 p.m. The group has invited a guest speaker from a Northern Virginia Camera club as the presenter. Go to the website at [www.potomacvalleynaturephotographers.org/new/index.php](http://www.potomacvalleynaturephotographers.org/new/index.php) for more information as the event gets closer. Members are also invited to provide up to three photos for the "Show and Share," to share their recent photos with other club members.



## Annual Great Backyard Bird Count Kicks Off

This year's Great Backyard Bird Count (GBBC) is scheduled for Presidents Day Weekend (February 12 - 15). Please save these dates! This year National Audubon Society and the Cornell Lab of Ornithology are promoting the GBBC as a great activity for families that's both free and educational, while also getting kids outside. In a time when people are cutting back expenses, the GBBC makes the perfect stay-cation.. Visit [www.birdcount.org](http://www.birdcount.org) to view this year's press release for the GBBC.



The GBBC Web page makes the citizen science clear. *Each year the GBBC provides the most detailed real-time snapshot of bird distribution across North America, and we can see how birds are responding to changing weather patterns, available food sources, and other factors. With all of the results publicly available online, anyone can explore the data to see how birds are faring in their area. Although in-depth studies are necessary to further confirm any trends in bird distribution found during the GBBC, and to document their causes, these preliminary results are often clear indicators of how birds are responding to changes in our shared environment.*

More on that point, (quoting the Web site) *last year Audubon produced a report on common birds that are declining across their range (<http://stateofthebirds.audubon.org/cbid>). This report documented declines in bird numbers seen on the Christmas Bird Count and Breeding Bird Surveys. Last year we noted that we could see similar declines in the same species on the Great Backyard Bird Count (<http://www.birdsource.org/gbbc/science-stories/08Highlights>). This year we continue to see declines in some of these species. Declines are not only evident in the wild; they are showing up in our back yards.*

Join in, have some fun, and take part in some citizen science.

## PVNWG Readers' Club First Anniversary

The Potomac Valley Nature Writing Group formed in early 2009 to promote and celebrate this fascinating genre of literature. The PVNWG Readers' Club will soon mark its first anniversary. We meet on the first Sunday of each month to discuss the previous month's book selection. Recent books of the month included *Red-tails in Love* by Marie Winn, and *The Long Legged House* by Wendell Berry. For December 2009, it is reader's choice--any book by Diane Ackerman—to be the subject of the Club's meeting in January 2010. The Readers' Club currently convenes in a member's home. Individuals interested in joining may attend a first meeting as a guest of a current member.

Aspiring nature writers who would like to support and encourage one another are also encouraged to contact PVNWG. If there is enough interest, a writer's group to complement the reader's group will be formed.

For more information and/or to arrange to attend the Readers' Group as a guest, go to <http://potomacvalleynaturewritinggroup.blogspot.com/> or contact Sandra Bloom, [pvnaturewriters@gmail.com](mailto:pvnaturewriters@gmail.com)

*The poem below is published as a seasonal treat of fun and whimsy. It is intended solely for entertainment and in appreciation of a creative twist on a familiar literary work.*

## 'Twas the Morning of Christmas by Scott Shalaway

'Twas the morning of Christmas,  
And all 'round the house,  
The feeders were empty,  
Not enough for a mouse.  
Each feeder was hung  
From its perch with great care,  
But on this frosty morning,  
The cupboards were bare.  
Tubes, trays and suet bags...  
Too many to mention.  
In the Christmas Eve rush  
They'd escaped my attention.  
The rising sun on the breast of a new fallen snow,  
Accented the vacuum in the feeders below.  
I couldn't believe it, I'd stayed up too late.  
I'd forgotten my friends on this most special date.  
A hungry flock waited in dawn's early light, Reminding  
me clearly of my rude oversight.  
Impatient, they perched in an old apple tree, Famished  
and- anxious, some scolded me.  
Ashamed and embarrassed, I flew down the stairs,  
I whistled and shouted like a big angry bear.  
"now Linda, now Nora, and Emma, you, too,  
We've got empty feeders, there's so much to do!"  
I spoke no more words, We all went to work.  
We filled every feeder, I'd been such a jerk.  
The birds quickly forgave me and flocked to the food,  
I knew in a moment, they'd lost their foul mood.  
Cardinals and titmice and nuthatches, too,  
Were first to arrive at my backyard bird zoo.  
The black-oiled seeds disappeared with great speed,  
I smiled contently, I'd fixed my misdeed.  
Then finches and siskins sought the feeder with thistle,  
They flew so intently, looked like a missile,  
Soon sparrows and juncos ventured onto the tray,  
Ravenously joining the late breakfast fray.  
Even the water dish pulled in a crowd,  
Those six thirsty chickadees were certainly loud.  
When finally woodpeckers found the replenished suet,  
We were completely forgiven, the whole family knew it.  
I began to feel better, I'd made up for my goof,  
When suddenly a voice caught my ear from the roof.  
(You may not believe this, but I swear it's the truth.)  
From a perch at the top, sang a sassy blue jay,  
"Happy Christmas to all, and to all a good day!"

*From an article in the Charleston Gazette,  
Tuesday, December 20, 1994.*

### Homemade Suet Recipe

For those of us that like to make up our own suet to fill those 'suet bags,' here's a quick recipe that is time tested.

- 1 cup lard
- 1 cup crunchy peanut butter
- 2 cups quick oats
- 2 cups corn meal
- 1 cup flour
- 1/3 cup sunflower, millet, or nyjer (niger thistle) seed

Melt the lard and peanut butter over a low flame. Stir in the remaining ingredients. Pour into molds (almost any cleaned, previously used plastic container from the grocery store), and refrigerate or freeze.

### Calendar of Events

- December 5** Christmas Parade in Shepherdstown (11am)
- December 6** Potomac Valley Nature Writers meeting
- December 9** **NO PVAS MEETING IN DECEMBER**
- December 11** Potomac Valley Nature Photographers
- December 19** Jefferson County Christmas Bird count
- January 2** Berkeley & Morgan county Christmas Bird Count
- January 15** Master Naturalist Applications Due
- January 13** PVAS program at NCTC- Migratory Water Birds
- February 10** Program at NCTC - Chesapeake Bay
- February TBA** field trip: Winter tree ID at Yankauer
- February TBA** Winter wildlife-tracking at Cacapon State Park
- March 10** PVAS program at NCTC: Maryland's Wood Duck population
- April 14** PVAS program at NCTC: "Identifying Spring Warblers by Sight and Song."
- March 28** Annual Children's Egg Hunt at the Yankauer Preserve.
- April 17** Annual Wildflower Festival at the Yankauer Preserve
- April 24** Annual "This Race is for the Birds" at NCTC

### JOIN PVAS TODAY!

We now offer two kinds of memberships:

#### 1. PVAS Local Membership

Here's what you get:

- Access to a wide variety of PVAS programs and events for adults and children.
- Discounts for selected chapter activities, like children's summer camps.
- A subscription to PVAS's newsletter and e-mail alerts about events and programs of special interest.
- ALL your dues stay here to support local PVAS efforts!

To become a local member: Enclose a check for \$20 (\$15 for seniors and students). Please make check out to "PVAS." This fee covers membership for everyone in your household for one year.

#### 2. Dual Membership with National Audubon

You get all the benefits of PVAS membership plus membership in the National Audubon Society, which includes a subscription to *Audubon* magazine. If you select this option, almost all of your dues will go to National Audubon. To obtain a dual membership, enclose a check for \$20 if you are joining NAS for the first time or \$35 to renew an existing NAS membership (\$15 in either case for seniors and students). Make check out to "National Audubon Society."

#### Membership Form

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip code: \_\_\_\_\_  
 Phone (optional): \_\_\_\_\_  
 E-mail: (optional): \_\_\_\_\_

#### Membership Type (check one):

**PVAS Local Membership** \_\_\_\_\_  
 (For PVAS local membership, check the box following if you do NOT want PVAS to share your contact information with National Audubon: \_\_\_\_\_)

**Dual Membership with National Audubon** \_\_\_\_\_

I'd like to get *Valley Views* by e-mail \_\_\_\_\_ US mail \_\_\_\_\_ (check one)

..... (Audubon chapter code C9ZYS40Z)

#### Clip and mail this form to:

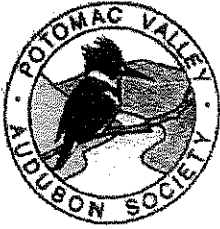
Membership Chair, PVAS  
 PO Box 578  
 Shepherdstown, WV 25443

Thank you for your support!



#### RED DOT ALERT

If a red dot appears on your mailing label, your membership may have expired and this could be your last issue of *Valley Views*. Take action to renew your Dual membership or Local membership.



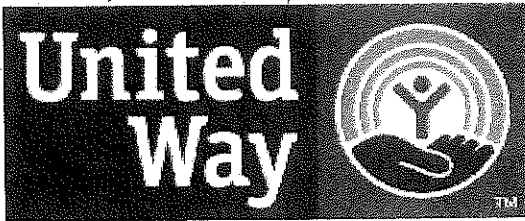
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 Shepherdstown, WV 25443  
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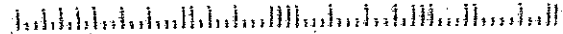
DATED MATERIALS

A proud partner of the United Way of  
 the Eastern Panhandle and the Com-  
 bined Federal Campaign.



MAIL TO:  
  
 Jefferson County Commission  
 100 E Washington Street  
 Charles Town, WV 25414-1072

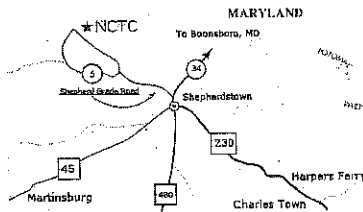
25414-1072 0001



December 2009

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The Potomac Valley Audubon Society meets at 7:00 p.m. on the second Wednesday of each month, September through April, at the US Fish and Wildlife Service National Conservation Training Center (NCTC), Shepherdstown, WV, in the Instructional West Building. Programs are free and open to the public. For additional information about PVAS or its programs and activities, please call any of the board members listed her or see <http://www.potomacaudubon.org>. PVAS serves the Eastern Panhandle of West Virginia and neighboring Washington County, Maryland.

**PVAS BOARD**  
 The PVAS Board meets every other month on the first Wednesday of the month (Sept.-June). Meeting location will be announced prior to meetings. These meetings are open to all PVAS members.

**PVAS Officers and Board Members**

- President: Peter Smith 304 876-1139 ..... pvsmitth@frontiernet.net
- Vice President: Nancy Kirschbaum ..... nancyk500@comcast.net
- Secretary: Mina Goodrich ..... larrymina@peoplepc.com
- Treasurer: Lex Miller ..... pamandlex@frontiernet.net
- Board Development: Wayne Braunstein 304 728-7181 ..... wbraun@frontiernet.net
- Board Members-at-Large: Don Briggs ..... 1donaldbriggs@gmail.com
- Susan Brookreson ..... brookre@earthlink.net
- Clark Dixon ..... dixonconsultants@aol.com
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- John Reisenweber ..... jreisenweber@centrabank.com
- Carolyn Thomas ..... webethomas@aol.com

**Ex Officio Board Members**

- Diana Mullis 304 267-3482 ..... dianamullis@aol.com

**Emeritus Board Members**

- Bill Belton ..... wbelton@hughes.net
- Jean Neely ..... jeaneely@comcast.net

**Special Contacts**

- Executive Director: Kristin Alexander 304 676-3397 ..... kaemail730@aol.com
- Web Master: Kathy Bilton ..... kathy@fred.net
- PVAS Wildlife Rescue Coord: Diana Mullis ..... 304-267-3482

#34

**WEST VIRGINIA LOTTERY  
WEEKLY SETTLEMENT FOR CHARLES TOWN**

Week Ending Date	Week Ending December 5, 2009 FY10 December 11, 2009
<b>To be Deposited on:</b>	
Amount Played	59,418,936.15
Amount Won	53,273,933.14
Amount Promo	219,747.00
MWAP Contribution	<u>21,725.32</u>
<b>Adjusted Gross Terminal Revenue</b>	<b><u>5,903,530.89</u></b>
Administrative Costs @ 4%	0.00
Excess Lottery Fund @ 4%	<u>238,141.24</u>
<b>Net Terminal Revenue</b>	<b><u>5,667,389.45</u></b>
Surcharge @ 10%	566,738.96
State Share Excess @ 58%	328,708.60
Track Share of Capital Reinvestment @ 42%	238,030.36
Track Share of Capital Reinvestment @ 42% - 88%	\$ 228,809.75
Track Share of Capital Reinvestment @ 42% - 4%	\$ 9,821.21
<b>Adjusted Net Terminal Revenue</b>	<b><u>5,100,650.49</u></b>
Racetrack @ 46.50% / 42%	2,142,273.21
Lottery Fund @ 30% / 0%	0.00
Excess Lottery Fund @ 0% / 41%	2,091,266.69
Race Track Purses @ 7% / 14% / 8%	408,052.04
Workers' Compensation Debt Reduction @ 7%	0.00
Employee Pension Fund @ 1% / .5%	25,503.25
Grayhound Development @ .75%	38,254.88
Thoroughbred Development @ .75%	38,254.88
Racing Commission @ 1%	51,006.51
County/Municipality @ 2%	102,013.02
<b>3% Funds:</b>	
Tourism Promotion Fund @ 1.375%	70,133.94
Development Office Promotion Fund @ .375%	19,127.44
Research Challenge Fund @ .5%	25,503.25
Capitol Renovation and Improvement Fund @ .6875%	35,066.97
2004 Capitol Complex Parking Garage Fund @ .0625%	3,187.91
<b>1% Funds:</b>	
State Capitol Complex Parking Garage @ 1%	0.00
Cultural Facilities and Capitol Resources @ .5%	25,503.25
Capitol Dome and Capitol Improvements @ .5% / 1%	<u>25,503.25</u>
	<b><u>5,100,650.49</u></b>

WV LOTTERY  
WEST VIRGINIA LOTTERY  
First Benchmark  
Charles Town  
County / City Split  
Fiscal Year 2009

Charles Town  
1999 Net Terminal Revenue \$ 45,603,174  
Benchmark Goal @ 2% \$ 912,063.48

DATE	2% OF ADJ. NET REVENUE	TO JEFFERSON COUNTY	TO FIVE CITIES	BOLIVAR 12.42%	CHARLES TOWN 34.56%	HARPERS FERRY 3.65%	RANSON 35.08%	SHEPHERDS TOWN 14.29%
4 days ending: 7/1/09- 7/4/09	\$ 128,262.42	\$ 128,262.42	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Week ending:								
07/11/09	\$ 168,815.08	\$ 168,815.08	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
07/18/09	\$ 160,652.98	\$ 160,652.98	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
07/25/09	\$ 158,868.08	\$ 158,868.08	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
08/01/09	\$ 174,493.08	\$ 174,493.08	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
08/08/09	\$ 155,846.74	\$ 138,408.80	\$ 17,437.94	\$ 2,165.79	\$ 6,026.55	\$ 636.48	\$ 6,117.24	\$ 2,481.88
08/15/09	\$ 182,444.26	\$ 81,222.14	\$ 81,222.14	\$ 10,087.79	\$ 28,070.37	\$ 2,964.61	\$ 28,492.73	\$ 11,606.64
08/22/09	\$ 152,520.62	\$ 76,260.31	\$ 76,260.31	\$ 9,471.53	\$ 26,355.56	\$ 2,783.50	\$ 26,752.12	\$ 10,897.60
08/29/09	\$ 160,945.84	\$ 80,472.92	\$ 80,472.92	\$ 8,894.74	\$ 27,811.44	\$ 2,937.26	\$ 26,229.90	\$ 11,498.58
09/05/09	\$ 161,596.30	\$ 80,798.15	\$ 80,798.15	\$ 10,035.13	\$ 27,923.84	\$ 2,949.13	\$ 26,343.99	\$ 11,546.08
09/12/09	\$ 172,573.84	\$ 88,286.92	\$ 88,286.92	\$ 10,716.84	\$ 29,820.76	\$ 3,149.47	\$ 30,269.45	\$ 12,330.40
09/19/09	\$ 140,020.30	\$ 70,010.15	\$ 70,010.15	\$ 8,695.26	\$ 24,195.51	\$ 2,555.37	\$ 24,559.56	\$ 10,004.45
09/26/09	\$ 138,633.74	\$ 89,316.87	\$ 89,316.87	\$ 8,609.18	\$ 23,855.91	\$ 2,530.07	\$ 24,318.35	\$ 9,905.38
10/03/09	\$ 144,572.08	\$ 72,288.04	\$ 72,288.04	\$ 8,977.93	\$ 24,982.06	\$ 2,638.44	\$ 25,357.93	\$ 10,329.68
10/10/09	\$ 139,301.26	\$ 69,650.63	\$ 69,650.63	\$ 8,650.61	\$ 24,071.25	\$ 2,542.25	\$ 24,433.44	\$ 9,953.08
10/17/09	\$ 147,120.42	\$ 73,560.21	\$ 73,560.21	\$ 9,136.18	\$ 25,422.41	\$ 2,684.95	\$ 25,804.92	\$ 10,511.75
10/24/09	\$ 135,163.32	\$ 67,581.66	\$ 67,581.66	\$ 8,393.64	\$ 23,356.22	\$ 2,466.73	\$ 23,707.85	\$ 9,657.42
10/31/09	\$ 129,056.80	\$ 84,528.30	\$ 84,528.30	\$ 8,014.41	\$ 22,300.98	\$ 2,355.28	\$ 22,638.54	\$ 9,221.09
11/07/09	\$ 127,483.18	\$ 63,741.59	\$ 63,741.59	\$ 7,916.71	\$ 22,029.09	\$ 2,326.57	\$ 22,360.55	\$ 9,106.67
11/14/09	\$ 131,819.28	\$ 65,959.64	\$ 65,959.64	\$ 8,192.19	\$ 22,795.65	\$ 2,407.53	\$ 23,138.64	\$ 9,425.83
11/21/09	\$ 119,084.10	\$ 59,547.05	\$ 59,547.05	\$ 7,995.74	\$ 20,579.46	\$ 2,173.47	\$ 20,888.11	\$ 8,509.27
11/28/09	\$ 144,799.96	\$ 72,399.98	\$ 72,399.98	\$ 8,982.08	\$ 25,021.43	\$ 2,642.60	\$ 25,397.91	\$ 10,345.96
12/05/09	\$ 102,013.02	\$ 51,006.51	\$ 51,006.51	\$ 6,335.01	\$ 17,627.85	\$ 1,861.74	\$ 17,893.08	\$ 7,288.83
<b>Subtotal</b>	<b>\$ 3,356,197.52</b>	<b>\$ 2,134,130.51</b>	<b>\$ 1,222,087.01</b>	<b>\$ 151,780.74</b>	<b>\$ 422,346.34</b>	<b>\$ 44,605.45</b>	<b>\$ 428,701.11</b>	<b>\$ 174,633.37</b>

Benchmark Goal @ 2% \$ 912,063.48

Remainder until 1% / 1% Split \$ -

#35

To: ALL COMMISSIONERS  
and Sheriffs

Article of Interest

From: WVACO 12-10-09

# W.Va. tax project proposes legislation

■ *Property charges on business inventory and equipment are biggest obstacle to new companies*

By TOM BREEN  
THE ASSOCIATED PRESS

Property taxes on business inventory and equipment are the biggest obstacle to attracting new companies to West Virginia, members of a tax research group said Wednesday. But they stopped short of recommending any changes.

The Tax Modernization Project Work Group has twice considered recommendations to Gov. Joe Manchin to push for changes in the state constitution that would give the Legislature flexibility in reducing or eliminating the personal property tax on inventory and equipment.

The group may discuss the subject again in a meeting before the legislative session begins next month, but major questions remain about which taxes would be affected and how local governments would replace the lost revenue.

The property tax provisions in the West Virginia Constitution date back to the early 1930s, when the goal was to reduce property tax burdens on individuals with an eye toward keeping people in their homes.

"Right now, we're still saving farmers and homeowners from the Great Depression," said Deputy Revenue Secretary Mark Muchow, who called the taxes on inventory and equipment "the number one handicap" to economic growth in the state.

Members of the working group said an amendment to take tax policy out of the Constitution and put it in the hands of the Legislature would make the tax system more flexible and bring it in line with neighboring states.

"Right now, we impose a straitjacket through these statutory tax classifications and tax rates," said Tom Witt, director of the Bureau of Business and Economic Research at West Virginia University.

Those property taxes represent a significant source of revenue for county commissions and school boards, though. Muchow estimated they would bear about 60 percent of the cost of eliminating the taxes entirely.

County governments recognize the problem with the constitutional provisions on taxes, according to Greenbrier County Commissioner Brad Tuckwiler, but are wary of what revenue sources would replace them.

"The devil we know is the constitutional requirement, but the devil we don't know is whatever the Legislature might do to us," said Tuckwiler, who is not a member of the work group.

House Finance Chairman Harry Keith White discounted the

■ Turn to **TAXES/2C**

## Taxes

▲ Continued from 1C

prospects for advancing a proposed constitutional amendment during the regular, 60-day session.

The Mingo County Democrat cited the \$100 million general revenue shortfall that Manchin administration officials warn may occur if recession-weakened tax collections continue their dismal trend. Lawmakers fear the deficit threat may grow even larger before the budget year ends June 30, White said.

"I can't see the Legislature taking that up right now," White said at the Capitol, where lawmakers were meeting for interim study sessions. "I don't think the Legislature is going to be in any mood for any tax increases, either."

The work group did vote to propose several measures to Manchin, including making it easier for homeowners to get tax credits for using solar energy and simplifying the property tax credits available to senior citizens.

Other measures suggested by the work group include increasing the number of taxpayers required to file electronically and studying a variety of tax-related issues, from coal to local sales taxes.

H237

**Sandy McDonald**

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**From:** "James A Walker" <computernan@frontiernet.net>  
**To:** <sandy@jeffersoncountywv.org>  
**Sent:** Friday, December 04, 2009 9:12 PM  
**Subject:** Fw: Mountain Water Systems Replacement Project

**From:** James A Walker  
**Sent:** Friday, December 04, 2009 2:58 PM  
**To:** jsurkamp@comcast.net  
**Subject:** Mountain Water Systems Replacement Project

Hello Jim,

One of my grandchildren came to visit. For your information grandchildren ask lots of questions.

"Granddad, how long have you lived in Keys Ferry Acres." See what I mean. I answered, "about 28 years, Dusty".

"Granddad, how come I can't drink your water, is it because it gets muddy and yucky sometimes, granddad?" I responded "yes that's right, Dusty, our water gets muddy and yucky sometimes".

"how come, granddad?"

This is a question that I do not have the correct answer, "how come".

It is kind of like this:

Three people went to a hotel and rented a room for \$30, each paying \$10 for his share. Later, the clerk discovered that the price of the room was only \$25. He handed he bellman five \$1 bills and asked him to return them to the three people. The bellman, not knowing how to divide \$5 among three people, instead gave each person \$1 back and the rest to charity.

Here's the question: The three people originally paid \$10 each, but each received \$1 back, so they've now paid a total of \$27 for the room. Add to that the \$2 that the bellman gave away, and you have a total expenditure of \$29 instead of \$30. **What happened to the other dollar?**

As a Mountain Water System customer I am still saying "how come". I have attended several of the JCPSD meetings. At these meetings progress towards answering my grandchild's question "how come" is taking place. The JCPSD and Jefferson Utilities have the correct answer: getting clean water to the Mountain Water System customers is the priority.

Some it seems to me could care less if I ever have clean water to serve my grandchild, Dusty. On Dusty's next visit he will probably again ask:

*James A Walker*  
12/7/2009

**"What happened to the other dollar? What happened to your clean water?"**

With your help may he only ask: **"What happened to the other dollar?"**

With best wishes,

James Walker

**Sandy McDonald**

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**From:** "James A Walker" <computerman@frontiernet.net>  
**To:** <dmanuel@frontiernet.net>; <pnoland@jeffersoncountywv.org>; <treed@jeffersoncountywv.org>; <sandy@jeffersoncountywv.org>; <laura@jeffersoncountywv.org>  
**Sent:** Friday, December 04, 2009 9:17 PM  
**Subject:** Fw: Corrected e-mail address

**From:** James A Walker  
**Sent:** Friday, December 04, 2009 8:49 PM  
**To:** maxey@radlib.com ; tkelvington@thrashereng.com ; Neal@askneal.net ; carliii1@frontier.com ; mtnking@frontiernet.net ; admasst@jcpsd.com ; gm@jcpsd.com ; leesnyder@seswater.net ; fmorgan@jeffersoncountywv.org ; jsurkamp@comcast.net ; lynwidmyer@gmail.com ; maxey@radlib.com ; judystephens@frontiernet.net  
**Subject:** Corrected e-mail address

I just got a new computer and entered incorrectly my e-mail address.

This is my correct e-mail address:

**computerman@frontiernet.net**

Thanks,

Jim Walker

Date

# 38

✓

Anthony L. Hose  
107 Cedar Run Lane  
Harpers Ferry, WV 25425

December 1, 2009

Dale Manuel, President  
Jefferson County Commission  
P.O Box 250  
124 E. Washington Street  
Charles Town, WV 25414

RECEIVED  
DEC 04 2009  
JEFFERSON COUNTY COMMISSION

RE: November 16, 2009, Water Advisory Committee Meeting

Dear Mr. Manuel,

After reading the letter from Lee Snyder, President Jefferson Utilities, Inc., dated November 24, 2009, which summarizes the meeting of the Water Advisory Committee, I felt the need to offer my feedback on the new water system issue that has been percolating for some time.

As a longtime customer of Jefferson Utilities I understand the benefits an improved water system offer and look forward to the day when this will happen. In the meantime I continue to keep reading the arguments objecting and delaying the implementation of a new water system

While I may agree or disagree with some of the arguments associated with the idea of a new water system I strongly disagreed with the wild assertion that a ruptured or burst water **supply line** in the Water Mountain System can flood my septic system.


The water levels required to breach a septic system come from catastrophic events such as those caused by flooding like hurricane Katrina in New Orleans – not a burst pipe – and typically affect low lying areas.

The last time I drove up to my property I ended up on a mountain, not down in valley or gorge, which would make it impossible for an event even like Katrina to flood my yard.

Jefferson Utilities has proven itself more than once they are capable of promptly fixing any problem with the Water Mountain System. I suggest you listen to Larry Snyder and the rest of his crew. After all they know this system better than anyone, especially anyone who fears getting flooded off a mountain.

If you have any questions, please do not hesitate to contact me at your convenience.

Regards,



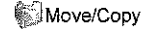
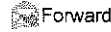
Anthony L. Hose

Cc:

Jim Surkamp, Vice President  
Lyn Widmyer, Commissioner  
Frances Morgan, Commissioner  
Patsy Noland, Commissioner  
Lee Snyder, President Jefferson Utilities, Inc.

439

Yet another staff person



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Print Hide Envelope

From: gil narro garcia [Add to Address Book](#)  
 To: [planningdepartment@jeffersoncountywv.org](mailto:planningdepartment@jeffersoncountywv.org)  
 CC: [info@jeffersoncountywv.org](mailto:info@jeffersoncountywv.org)  
 Date: Saturday, December 05, 2009 1:30:01 PM  
 Subject: Yet another staff person

During most of 2009, the outcry from County officials has been that funds and funding are limited! Then there was the decision to not fund the library system because there were no funds. Other County services have been curtailed as well. Then there was the issue of staff payroll equity---discussions that excluded any mention of pay for performance of staff at all levels!

Now, you want to add yet another staff person. Pretty soon, County government offices are going to be overstaffed and, that means higher taxes for residents to pay for these staff. I think it's time to put a stop to all of this. It is reckless, irresponsible, and because your actions exclude any accountability measures, might very well lead to a bloated and inefficient bureaucracy, if it isn't already that. Besides, what kind of Office Manager skills do you expect to get from a high school graduate? At least try to limit the search for someone with a college degree and management experience.

PS: I've added the County Commission on this response because the issue appears to be pervasive.

Gil N Garcia  
 Taxpayer and voter  
 881 Elk Dr.  
 Harpers Ferry  
 304-535-2235