

AGENDA
JEFFERSON COUNTY COMMISSION
THURSDAY, SEPTEMBER 2, 2010
9:30 A.M.

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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES - August 19, 2010 and include the following motion:

Main motion by Mr. Manuel to approve a drawdown of all the dollars from the insurance accounts and move that money over to a separate account to finance the two and a half percent increases. Motion seconded by Ms. Noland and passed 3-2.

APPROVAL OF PURCHASE ORDERS

APPROVAL OF ACCOUNTS PAYABLE

PUBLIC COMMENT

COUNTY ADMINISTRATOR REPORTS

COUNTY COMMISSION REPORTS

PRESENTATIONS:

1. 10:00 a.m. Arts & Humanities Alliance
 - Stephen Skinner & Paul Pritchard - Application for 2011 WV Certified Arts Community Application - Discussion/Action
 - T. Nicole Saunders-Meske - Annual Report and Funding Request - Discussion/Action

2. 10:20 a.m. Laura Rattenni, Circuit Clerk - Recent Employee 2.5% Raise - Discussion/Action

3. 10:30 a.m. Noventri - Cable Station Creation - PowerPoint Presentation - Discussion/Action
 - Charlotte Hernandez-Velez, IT Specialist - Recommendation for Cable Channel and Intern Position to Support Cable Channel

4. 10:45 a.m. Thomas Bayuzik, Executive Director - Development Authority
 - Requesting the Commission consider an Impact Fee/Fees Committee including M. Dyck, A. Paonessa, Dave Mills, JCDA Staff
 - Provide Update on Heritage and Culture Activities
 - Request Funding Assistance Regarding Table Game Proceeds to Help Jump Start Revolving Loan Fund
5. 11:15 a.m. Kirk Davis, Capital Projects Manager - Update on Cement Mill Property - Shepherdstown Battlefield (Blount Property)
6. 11:30 a.m. Interviews and Appointments
 - Farmland Protection Board
7. 11:40 a.m. Appointments to the Enhanced 911 Board
8. 11:45 a.m. Legal Update and Report - (Stephanie Grove)
9. 12:00 p.m. Jennifer S. Maghan - County Clerk's Report

NEW BUSINESS:

10. Legislative Issues
11. Water Advisory Committee - Proposal to Form a Watershed Association and Scheduling of a Workshop to Facilitate Interest in the Proposed Association (PN)
12. Jefferson County Emergency Services Agency - Funding Request
13. Resolution to Recognize Friday, September 10, 2010 as the 10th Anniversary of the Jefferson County Black History Preservation Society
14. Salary Equity and the Impact of a Percentage Increase on Employee's Experiencing than Inequity - Discussion/Action (DM)
15. Allocation of Table Games Revenues that were Reinstated - Discussion/Action (DM)
16. Reinstate employment of James Hayden as Public Safety Dispatcher II, Communications

Break for Lunch

~~~~~ **AFTERNOON SESSION** ~~~~~

17. 2:00 p.m. Bonding Policy Decision - Discussion/Action

18. 2:30 p.m. Budget Work Session

- As part of the budget discussion on September 2, I would like to make the following recommendations: (LW)

**\$100,000 - \$150,000 to JCDA for a partnership with Shepherd U and local banks to create jobs. Funds would be used to create a revolving fund that would help local businesses to expand or help local entrepreneurs form a start up company. JCDA has indicated their commitment to provide funds and banks should also contribute.**

Distribution of this money to JCDA would occur after a detailed program and implementation strategy are presented to the County Commission by JCDA.

**\$20,000 local match for \$100,000 US 340 traffic management plan. The US 340 plan is a high priority of HEPMO and has received strong support from DOH staff and our state delegation.**

**\$10,000 to So. Jefferson Library –Other libraries in the county have municipal partners; South Jefferson Library does not so extra funding should be given to this important center of community life.**

**\$250,000 for elevator for Mason Building. Two county departments that receive a lot of public interest and interaction (planning department and GIS) are on the second floor and there is no elevator.**

**\$50,000 for electronics recycling event (grant may lower or eliminate the need for this amount). This event, sponsored by WAC and held for the first time this year, was extremely popular and citizens have asked it be repeated.**

19. 4:05 p.m. Certification of Election Results

**CORRESPONDENCE:**

Staff memo received from the Public Service Commission concerning the JUI surcharge funds.

Letter of resignation received from Kellie Boles as the Agricultural Development Officer.

Letter of resignation received from Stephen Alemar as a member of the Planning Commission.

Fiduciary Commissioner's Report received for the Estate of Enid W. Strider.

Correspondence received from Don Burgess concerning the Harpers Ferry Potomac Street Project.

Information received concerning ARRA reporting requirements.

Correspondence received from Dr. James G. Gibson concerning the Old Standard Quarry.

West Virginia Ethics Reporter received.

Video lottery weekly settlement report received from the West Virginia Lottery.

**ANNOUNCEMENTS:**

Reminder that County offices will be closed on Monday, September 6, 2010 for Labor Day.

Jefferson County Commission together with Berkeley/Jefferson Day Report Center will hold a Breakfast Meeting on Tuesday, September, 7, 2010 9:30 a.m. at the Ranson Civic Center to discuss the Day Report Center and Jail costs.

Notice of Special Session on Tuesday, September 7, 2010 at 1:00 p.m. at the Old Charles Town Library meeting room for the Estate of John J. Warfield.

**RECESS**

*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.*

## Jefferson County Commission

Thursday, August 19, 2010

---

A meeting of the Jefferson County Commission was held on Thursday, August 19, 2010 at the Old Charles Town Library meeting room located at 200 E. Washington Street, Charles Town, WV 25414. Present were Lyn Widmyer, President, Commissioners Frances Morgan, Patsy Noland, Jim Surkamp and Dale Manuel, Tim Boyde, County Administrator and Nichelle Hosby. (An audio tape of the August 12, 2010 meeting is available through the Jefferson County Commission Office.)

The Meeting was called to order at 9:30 a. m. by Commissioner Widmyer.

### **PLEDGE OF ALLEGIANCE.**

### **APPROVAL OF MINUTES.**

#### **Jefferson County Commission Regular Meeting Minutes of August 12, 2010.**

Motion by Ms. Morgan to approve the minutes of August 12, 2010 as presented Motion seconded by Mr. Manuel and unanimously approved. (An audio tape of the August 12, 2010 meeting is available through the Jefferson County Commission Office.)

#### **Jefferson County Commission Special Meeting Minutes of August 9, 2010.**

Motion by Ms. Morgan to approve the minutes of August 9, 2010 as presented. Motion seconded by Mr. Manuel and unanimously approved. (An audio tape of the August 9, 2010 meeting is available through the Jefferson County Commission Office.)

#### **Jefferson County Commission Special Meeting Minutes of July 22, 2010.**

Motion by Ms. Morgan to approve the minutes of July 22, 2010 as amended. Motion seconded by Ms. Noland and unanimously approved. (An audio tape of the July 22, 2010 meeting is available through the Jefferson County Commission Office.)

### **APPROVAL OF PURCHASE ORDERS**

Motion by Ms. Noland to approve Purchase Orders in the amount of \$87,689.93 being purchase order numbers: 48494, 48899, 48787, 48788, 48789, 48827, 48593, and 48828. Motion seconded by Ms. Morgan and was unanimously approved.

### **APPROVAL OF ACCOUNTS PAYABLE**

Motion by Ms. Morgan to approve \$344,593.16 in accounts payable. Motion seconded by Mr. Manuel and was unanimously approved.

### **PUBLIC COMMENT (General)**

Budge Blake congratulated the County and Planning Commission on how fast they shared information regarding the Old Standard Quarry Brownfield Development. Ms. Blake requested the Commission go a step further and obtain a Federal Attorney to address this issue.

Roger Eitleman reported that STOP PATH had submitted an application for funding.

Gaye Snyder and Ryan Guerrero asked the Commission to address the Preschool Amendments in the Subdivision and Land Development Regulation Amendments.

**COUNTY ADMINISTRATOR REPORTS**

**County Administrator Tim Boyde:**

- (1) Reported that the Personnel Policy draft is ready.
- (2) Reported that the Issue Resolution draft has been submitted to council.
- (3) Reported that Kellie Boles has submitted a letter of resignation effective September 2, 2010.
- (4) Reported that the County may possibly not get proceeds from the Table Games this year.
- (5) Reported that the Berkeley/Jefferson Day Report Center has asked for \$10,000.00 less which will be a savings to the County.

**PRESENTATIONS**

- (1) Jennifer Brockman, Director of Planning and Zoning requested a decision on the Proposed Amendments to the Jefferson County Subdivision and Land Development Regulations and answered questions related to the Preschool Amendment request.

Motion by Ms. Morgan to approve the adoption of the Amendments to the Jefferson County Subdivision Regulations as recommended by staff. Motion seconded by Mr. Surkamp and approved 4-1. Ms. Noland voted no.

Gaye Snyder was present and allowed to make comment.

- (2) Motion by Ms. Morgan to approve exoneration's due to erroneous assessments as presented by Angela Banks, Assessor. Motion seconded by Mr. Manuel and unanimously approved.

| Name              | District  | Type        | Ticket # | Amount   |
|-------------------|-----------|-------------|----------|----------|
| Janet M. Eldridge | Kabletown | Real Estate | 16800    | 2,359.34 |

Ms. Banks asked to remove her budget item as it will be rescheduled at a later date.

**The Commission took a 5-minute break at 10:25 a. m.**

- (3) **Budget Discussion:**

Tim Boyde reported on Table Game Revenue and noted that there is a question about County and Municipal distributions.

Mark Schiavone reported on the unencumbered funds.

Motion by Mr. Manuel to approve One million dollars or fifty percent of the unencumbered balance, whichever is smaller, be allocated into the Capital Savings Account. Further, that for this calculation the final unencumbered balance be considered after the capital outlay funds and the seventy thousand voted to be reallocated to volunteer fire companies be subtracted. Motion seconded by Ms. Noland.

Ms. Widmyer ruled that the motion is divisible.

Motion by Mr. Manuel, to approve One million dollars or fifty percent of the unencumbered balance, whichever is smaller, be allocated into the Capital Savings Account. Motion seconded by Ms. Noland. Motion deferred until later in the day's deliberation.

Motion by Mr. Manuel to set aside \$153,400 to the Capital Outlay Funds pending comments from the elected officials on how the funds will be used. Motion seconded by Mr. Surkamp and approved 4-1. Ms. Morgan voted no.

Motion by Mr. Manuel to reallocate \$140,000 to the volunteer fire companies and that the service guidelines provided by the Jefferson County Emergency Services Agency be adhered to by the fire companies. Motion seconded by Mr. Surkamp.

Amended motion by Ms. Morgan to restore fifty percent or \$70,000 to the volunteer fire companies and that the service guidelines provided by the Jefferson County Emergency Services Agency be adhered to and that certification is given to the Commission in writing. Motion seconded by Ms. Widmyer.

Amendment to the Amendment motioned by Ms. Noland to reallocate \$112,000 to the fire companies with each company agreeing in writing to certification from the Jefferson County Emergency Services Agency that the service guidelines they provided to the Commission be adhered to by each company and that this matter will be revisited in January 2011. Motion seconded by Mr. Manuel and approved 4-1. Ms. Morgan voted no.

Main motion as amended by Ms. Noland to reallocate \$112,000 to the fire companies with each company agreeing in writing to certification from the Jefferson County Emergency Services Agency that the service guidelines they provided be adhered to by each fire company. Motion seconded by Mr. Manuel and approved 4-1. Ms. Morgan voted no.

Mr. Boyde reported on three proposals for general wage increases.\

Motion by Mr. Manuel that \$450,000 is placed in a fund to be utilized to implement salary increases and salary equity. Motion failed.

Motion by Ms. Noland to approve the recommendation from Mr. Boyde for a three percent general wage increase retroactive to July 1, 2010. Motion seconded by Mr. Manuel and failed 2-3. Ms. Morgan, Ms. Widmyer and Mr. Surkamp voted no.

Motion to amend by Mr. Manuel to approve a drawdown of all the unused dollars from the health insurance accounts and use that money to finance the three percent increase. Motion seconded by Ms. Noland and failed 2-3. Ms. Widmyer, Ms. Morgan and Mr. Surkamp voted no.

Motion by Ms. Widmyer to approve a two and a half percent cost of living increase for employees with the primary source of funding coming from the unused health insurance accounts. Motion seconded by Ms. Noland and approved 3-2. Mr. Surkamp and Ms. Morgan voted no.

Motion to amend by Mr. Manuel to approve a drawdown of all the dollars from the insurance accounts and move that money to a separate account to finance the two and a half percent increases. Motion seconded by Ms. Noland and passed 3-2. Ms. Morgan and Mr. Surkamp voted no.

Motion by Mr. Surkamp to allocate \$5000 to STOP PATH for an expert study on the adverse health effects on the PATH transmission lines. Motion failed.

**(4) Stephanie Grove– Assistant Prosecuting Attorney – Annexation Ordinance, Certificate and Order for WVA 340 Limited Partnership:**

Ms. Grove gave a brief summary of the Annexation proposal.

Motion by Mr. Surkamp to approve the Annexation Ordinance, Certificate and Order for WVA 340 Limited Partnership. Motion seconded and unanimously approved.

**(5) Jennifer Brockman – Approval and Signing of Urban Tree Canopy Grant sponsored by the WV Division of Forestry – Chesapeake Bay Community Grants:**

Ms. Brockman gave a brief over view of the Urban Tree Canopy Grant.

Motion by Ms. Morgan to support the joint Urban Tree Canopy Grant application led by Jefferson County, City of Ranson and the City of Charles Town planning staffs and, hereby authorize the County Commission President to affix her signature, on behalf of the County Commission, the Urban Tree Canopy Grant application sponsored by the WV Division of Forestry – Chesapeake Bay Community Grants. Motion seconded by Mr. Surkamp and unanimously approved.

**(6) Jennifer S. Maghan – County Clerk’s Report**

Ms. Maghan reminded the Commission that the Special Election will be held August 28, 2010 and that the Canvass is scheduled for August 31, 2010 at 9:00 a. m. and that it must be completed by 4:00 p.m. on Wednesday, September 1.

Ms. Maghan reported that the public test on Wednesday, August 18, 2010 went very well.

Ms. Maghan distributed a summary of the James Packard - Gomez case. (See attached)

**The Commission recessed for lunch at 12:30 p. m.**

**The Commission reconvened at 1:40 p.m.**

**(7) Budget Discussion continued:**

Mr. Boyde presented a list of budget restorations.

Motion by Ms. Noland to approve \$27,260 to restore the County Clerk court benefit restoration, \$3,327 to the VOCA Grant Prosecuting Attorney and \$12,000 to the Sheriff-Law for trip guards. Motion seconded by Mr. Manuel and approved.

Motion by Mr. Manuel to approve the allocation of \$60,000 to the Potomac Street Project in Harpers Ferry. Motion seconded by Ms. Widmyer and unanimously approved.

Mr. Alsdorf, Harpers Ferry Historic Town Foundation, was present and gave comments.

Ms. Morgan gave an overview of the budget request from the Farmland Protection Board.

Motion by Ms. Morgan to approve a loan in the amount of \$335,000 at zero interest for five years and a balloon payment at the end of the five years to the Farmland Protection Board pending completion of and entering into a memorandum of understanding between the Board and the County Commission. Motion seconded by Ms. Noland.

Motion to amend by Mr. Manuel to reduce the amount to \$150,000. Motion seconded by Ms. Noland and failed 2-3. Mr. Surkamp, Ms. Morgan and Ms. Widmyer voted no.

**(8) Delegation –Senator Herb Snyder, Senator John Unger, Delegate Tiffany Lawrence and Delegate John Doyle:**

Delegate Lawrence presented two grants on behalf of Governor Manchin: Focus Coalition and the Children’s Home Society of WV.

Ms. Slater accepted the Grant on behalf of the Children’s Home Society of WV and made comments.

Senator Snyder, Senator Unger, Delegate Doyle and Delegate Lawrence made comments concerning Table Games Funds distributions.

Stephanie Grove was present and gave comment.

Senator Unger commented on the opening of Rte 9 and the 340 study.  
Senator Unger spoke briefly on "net neutrality".

The Commission took a five minute break at 3:02 p.m.

**(9) Discussion with Delegation concerning the Brownfield Development District for Old Standard Quarry:**

Ms. Widmyer reported on the open house Monday, August 16, 2010.

Senator Snyder explained the process on Bundling.

Comments were made by the following individuals:

|                |                   |                |
|----------------|-------------------|----------------|
| Senator Snyder | Delegate Lawrence | Delegate Doyle |
| Senator Unger  | Paul Rosa         | Barbara Humes  |
| David Webb     | Budge Blake       | Jerry Dungan   |
| John Maxey     |                   |                |

Closing remarks from the Delegation were as follows:

Senator Snyder reported on Rte 340 and the table games distribution.

Delegate Lawrence reported that she was proud of the County and how well the community is coming together.

Senator Unger thanked the Commission for keeping the community informed on issues and for allowing the Delegation an opportunity to speak.

Delegate Doyle thanked the Commission for all that they are doing to keep the community informed.

The Commission took a 5 minute break at 4:30 p.m.

**Budget continued:**

Amended motion by Mr. Manuel for the Farmland Protection Board to pay \$75,000 per year from the first \$75,000 of revenues to pay down the debt. Motion seconded by Ms. Noland and failed 2-3. Ms. Widmyer, Ms. Morgan and Mr. Surkamp.

Motion by Ms. Morgan to approve a loan with a Memorandum of Understanding to the Farmland Protection Board in the amount of \$335,000 at zero percent interest for five years with

a balloon payment at the end of the five years. Motion seconded by Mr. Surkamp and approved 3-2. Ms. Noland and Mr. Manuel voted no.

Motion by Ms. Morgan to approve the minutes of July 22, 2010 as amended. Motion seconded by Ms. Noland and unanimously approved.

Motion by Mr. Manuel to approve allocation of \$50,000 to the Jefferson Center for capital equipment purchases. Motion seconded by Mr. Surkamp and unanimously approved.

Motion by Mr. Manuel to approve fifty percent or \$293,175 of the unencumbered balance be allocated into a Capital Savings Account. Motion seconded by Ms. Morgan. Seconded withdrawn by Ms. Morgan and Ms. Noland then made the second.

Amendment to the motion by Ms. Noland to approve \$175,000 into a Capital Savings Account. Motion seconded by Ms. Widmyer and passed 4-1. Mr. Noland voted no.

Main motion to approve \$175,000 into a Capital Savings Account and was unanimously approved.

Motion by Mr. Surkamp for approval to the request for a building permit fee refund to Elwood and Juliet Breeden. Motion seconded by Ms. Morgan and was unanimously approved.

Motion by Mr. Manuel that the director and the necessary department heads begin work on a five year budget plan in an effort to scope out our future needs and our ability to finance them. Motion seconded by Ms. Widmyer and unanimously approved.

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

---

LYN WIDMYER, COMMISSION PRESIDENT

**Laura Kuhn**

---

**From:** "Nichelle Hosby" <nhosby@jeffersoncountywv.org>  
**To:** <laura@jeffersoncountywv.org>  
**Cc:** "'Sandy McDonald'" <sandy@jeffersoncountywv.org>  
**Sent:** Wednesday, August 25, 2010 4:23 PM  
**Subject:** Agenda for 9-2-10

Laura,

Under the approval of minutes, can you place these two bullet motions (as they were not previously voted on).

1. Main motion by Mr. Manuel to approve a drawdown of all the dollars from the insurance accounts and move that money over to a separate account to finance the two and a half percent increases. Motion seconded by Ms. Noland and passed 3-2.
2. Motion by Ms. Morgan to approve a loan in the amount of \$335,000 at zero interest for five years and a balloon payment at the end of the five years to the Farmland Protection Board pending completion of and entering into a memorandum of understanding between the Board and the County Commission. Motion seconded by Ms. Noland.

Working to serve you better,

Nichelle Hosby  
Administrative Assistant  
PO Box 250  
Charles Town, WV 25414  
Phone: 304-728-3284  
Fax: 304-725-7916

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

AGENDA REQUEST FORM

Name: STEPHEN SKINNER  
PAUL POLITCHARD

Department or Entity: ARTS & HUMANITIES ALLIANCE

Estimation of amount of time needed for appointment: 15 minutes

Date Requested - 1<sup>st</sup> Choice: SEPTEMBER 2, 2010

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

If a specific date is needed, please provide reason for specific date:  
SEPTEMBER 2, 2010

Subject: JEFFERSON COUNTY APPLICATION FOR 2011 WV CERTIFIED ARTS COMMUNITY APPLICATION

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

REQUEST AUTHORIZATION FOR AHA TO SERVE AS THE CONVENOR TO DEVELOP AND SUBMIT THE CERTIFIED ARTS COMMUNITY APPLICATION FOR JEFFERSON COUNTY, PER BUDGET IN AHA ANNUAL REPORT & FUNDING REQUEST.

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

TO AUTHORIZE THE ARTS AND HUMANITIES ALLIANCE TO DEVELOP AND SUBMIT THE CERTIFIED ARTS COMMUNITY APPLICATION FOR JEFFERSON COUNTY ON BEHALF OF THE JEFFERSON COUNTY COMMISSION.

Attachments:  
PENDING

**Board of  
Directors  
2010-2011**

Terry L. Marcus  
President

Mark Dyck  
Vice President

Ann Paonessa  
Secretary/Treasurer

James D. Campbell  
Linda Case  
William H. Chesley  
Helen Dettmer  
Paul Espinosa  
Ira Hale  
Conrad C. Hammann  
George Holland  
Dale Manuel  
Howard Mills  
P. David Mills  
James A. Tolbert

**Staff**

Thomas Bayuzik, Jr.  
Executive Director

Whitney Barrett  
Research Assistant

Kellie Boles  
Agriculture  
Development  
Officer

Beverly Bolger  
Director, Jefferson  
County Telework  
Center

Lane Donley  
Administrative  
Assistant

PO BOX 237  
CHARLES TOWN  
WV25414

304.728.3255  
f: 304.725.3133

WWW.JCDA.NET

**JEFFERSON COUNTY**  
DEVELOPMENT AUTHORITY

August 23, 2010

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

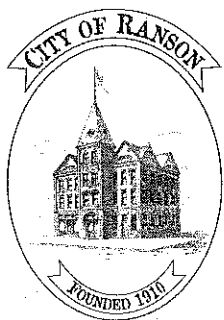
Dear Commissioners:

I am writing to respectfully request your support of the Arts and Humanities Alliance of Jefferson County's (AHA!) application to the State of West Virginia for Jefferson County to be designated as a Certified Arts Community. The Jefferson County Development Authority applauds the efforts of AHA! to support cultural planning and the enhancement of the arts and humanities in our communities throughout the county. The County's arts and cultural organizations contribute significantly to quality of life, to economic development, to educational quality and to strong civic engagement of our citizens and visitors. Designation as a Certified Arts Community will further cooperative planning and development among the arts, government, and other private and public organizations dedicated to community development.

Sincerely,



Thomas Bayuzik, Jr.  
Executive Director



# City of Ranson



**Office of the Mayor**  
312 South Mildred Street  
Ranson, West Virginia 25438-1621  
Phone (304) 724-3874 FAX (304) 728-8579

E-mail: [mayor@cityofransonwv.net](mailto:mayor@cityofransonwv.net)

P. David Mills - City Manager

Ray A. Braithwaite - City Recorder

**Council Members**

David Cheshire  
Scott Coulter  
Donnie Haines  
Duke Pierson  
Debbie McClure

August 23, 2010

Dear Jefferson County Commissioners:

I am writing to you to respectfully request your support of The Art and Humanities Alliance of Jefferson County's application to the State of West Virginia for Jefferson County as a Certified Arts Community. As the Mayor of Ranson, I applaud the efforts of The Art and Humanities Alliance of Jefferson County to support cultural planning and the enhancement of the arts and humanities in our communities throughout the county. The County's arts and cultural organizations contribute significantly to quality of life, to economic development, to educational quality and to strong civic engagement of our citizens and visitors. Designation as a Certified Arts Community will further cooperative planning and development among the arts, government, and other private and public organizations dedicated to community development.

Thank you for your support as we move forward together as a community to attract more creative arts professionals, as well as, arts and culture consumers, which in turn will contribute to the local economy.

Sincerely,

A. David Hamill - Mayor



## CORPORATION OF SHEPHERDSTOWN

104 NORTH KING STREET  
P.O. BOX 248  
SHEPHERDSTOWN, WEST VIRGINIA 25443-0248  
TEL: (304)876-2312  
FAX: (304) 876-1473

August 24, 2010

Dear Jefferson County Commissioners,

I am writing to you to respectfully request your support of The Art and Humanities Alliance of Jefferson County's (AHA!) application to the State of West Virginia for Jefferson County as a Certified Arts Community.

As the Mayor of the Corporation of Shepherdstown, I applaud the efforts of AHA! to support cultural planning and the enhancement of the arts and humanities in our communities throughout the county. The County's arts and cultural organizations contribute significantly to quality of life, to economic development, to educational quality and to strong civic engagement of our citizens and visitors. Designation as a Certified Arts Community will further cooperative planning and development among the arts, government, and other private and public organizations dedicated to community development.

Yours truly,



Arthur J. Auxer, III  
Mayor



# City of Charles Town

101 East Washington Street, P.O. Box 14, Charles Town, WV 25414  
Phone: (304) 725-2311 ♦ Fax: (304) 725-1014 ♦ Web: [www.charlesstownwv.us](http://www.charlesstownwv.us)

---

MAYOR

*Peggy A. Smith*

August 25, 2010

CITY  
COUNCIL

*Rich  
Bringewatt*

*Donald  
Clendening*

*MaryLois  
Gannon-Miller*

*Chet  
Hines*

*Ruth  
McDaniel*

*Sandra  
Slusher  
McDonald*

*Ann  
Paonessa*

*Michael  
Sloner*

CITY  
MANAGER

*Gary  
Rawlings*

CITY CLERK

*Joe  
Cosentini*

Jefferson County Commission  
P.O. Box 250  
Charles Town, WV 25414

Dear Jefferson County Commissioners:

I am writing to you to respectfully request your support of The Art and Humanities Alliance of Jefferson County's (AHA!) application for Jefferson County as a Certified Arts Community.

As the Mayor of the City of Charles Town, I applaud the efforts of AHA! to support cultural planning and the enhancement of the arts and humanities in our communities throughout the county. The County's arts and cultural organizations contribute significantly to our quality of life, to economic development, to educational quality and to strong civic engagement.

Designation as a Certified Arts Community will further the development of cooperative planning and development among the arts, government, and other private and public organizations dedicated to community development.

Sincerely,

Mayor Peggy A. Smith



# Corporation of Harpers Ferry

1000 WASHINGTON STREET

P.O. BOX 217

Harpers Ferry, West Virginia 25425

(304) 535-2206

FAX (304) 535-6520

James Arthur Addy

MAYOR

## COUNCIL MEMBERS

CHARLOTTE THOMPSON

DAN RISS

ELAYNE EDEL

JOE ANDERSON

PAT MORSE

RECORDER  
KEVIN GARDEN

TOWN CLERK  
BRENDA SMITH

August 26, 2010

Ms. Lynn Widmeyer, President  
Jefferson County Commission  
P.O. Box 250  
Charles Town, WV 25415

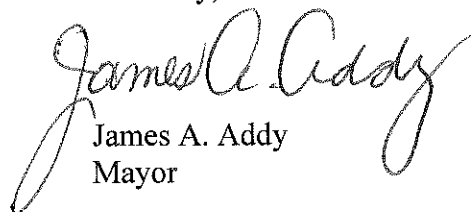
Dear Ms. Widmeyer,

I am writing to you and the other County Commissioners seeking your support for the Art and Humanities Alliance of Jefferson County's application for certification as a Certified Arts Community. Harpers Ferry is pleased to join in this effort in order to support and enhance cultural planning for the arts and humanities in communities throughout our county. During the John Brown Sesquicentennial (AHA!) financially supported the production of John Brown's Body for the Town's edification and enjoyment. Without this support we could not have proceeded with an important historical-educational and cultural event of national import.

Designation as a Cultural Arts Community will further the development of cooperation planning on a county wide basis. Thus government, community initiative and cultural tourism will be positively promoted.

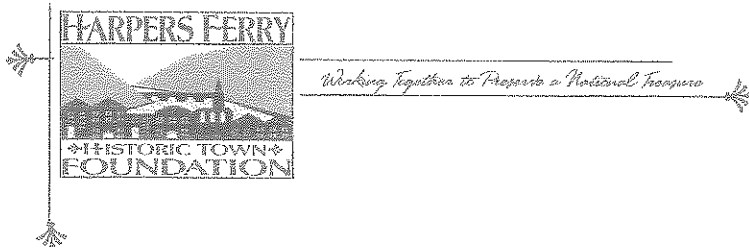
Please consider Harpers Ferry's support of our request for AHA.

Sincerely,



James A. Addy  
Mayor

Historic District  
Where The Shenandoah Meets The Potomac



Aug 25, 2010

To the Jefferson County Commissioners,

I am writing to respectfully request your support of The Art and Humanities Alliance (AHA!) of Jefferson County's application to the State of West Virginia for Jefferson County as a Certified Arts Community.

The Directors of the Harpers Ferry Foundation believe the work of AHA affects all communities in Jefferson County and thus greatly helps support the foundation's vision of "a town that inspires citizens and visitors with its history, beauty and hospitality".

Designation as a Certified Arts Community will further cooperative planning and development among the arts, government, and other private and public organizations such as the Harpers Ferry Foundation which are dedicated to community development and quality of life.

Respectfully,

Al Alsdorf,  
For the Board of Directors,  
The Harpers Ferry Foundation

Commission Office Use Only

Date on Agenda:

Appt Time or New Business:

AGENDA REQUEST FORM

Name: T. Nicole Saunders-Meske, Vice Chair

Department or Entity: AAA!

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

Date Requested - 1<sup>st</sup> Choice: Sept. 2<sup>nd</sup>

Date Requested - 2<sup>nd</sup> Choice: Sept. 9<sup>th</sup>

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

Subject: Annual report and funding request.

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

Please refer to the overview and Annual report previously provided

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

Fully fund AAA's percentage of hotel/motel tax and the Three Year Plan proposal for funding. (See attached)

Attachments:

- 1. Annual Report
- 2. Three Year Plan

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

**AGENDA REQUEST FORM**

Name: Laura Rattenni

Department or Entity: Circuit Clerk

Estimation of amount of time needed for appointment: 10 Minutes

Date Requested – 1<sup>st</sup> Choice: September 2, 2010

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

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

Subject: **Recent Employee 2.5% raise**

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

**Recently, the County Commission approved a 2.5% raise for all employees. With this new increase, the difference in pay equity has become even greater. Out of the approximately \$211,000 the commission has allocated for this raise, my office will only receive \$6,525 which has to be divided among 9 employees, some of whom have been here, 30 years and 15 years.**

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

The Circuit Clerk is granted an additional 2.5% increase in the salary and wages line item of her budget, for a total of a 5% raise to her employees, which will then help to somewhat lessen the difference in pay equity between departments.

Attachments:

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

**AGENDA REQUEST FORM**

Name: Nichelle Hosby

Department or Entity: County Commission

Estimation of amount of time needed for appointment: 15-30 minutes

Date Requested – 1<sup>st</sup> Choice: 9-2-10

Date Requested – 2<sup>nd</sup> Choice: 9-9-10

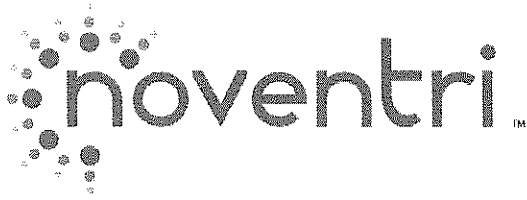
If a specific date is needed, please provide reason for specific date:

Subject: **Noventri – Cable Station Creation**

Please provide the County Commission with a description of your request or presentation, including any background information: **Noventri will do a PowerPoint presentation on what the County Commission Channel could look like and what it will be able to do.**

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **I move to approve Noventri to work on Digital Signage in creation of the Jefferson County Governmental television channel.**

Attachments:



20940 Twin Springs Drive  
 Smithsburg, MD 21783  
 PH: 800-359-1858 | 301-790-0103  
 FX: 301-790-0173  
 www.noventri.com

# Quotation

Quote Number:  
062310SS1-C

Quote Date:  
Aug 9, 2010

Page:  
1

**Quoted to:** Jefferson Commission  
 114 East Washington St.  
 Charles Town, WV 25414

| Customer ID         | Good Thru | Payment Terms | Sales Rep |
|---------------------|-----------|---------------|-----------|
| JEFFRSON COMMISSION | 9/8/10    | Pre Pay       | Tim       |

| Quantity                                                                                                                                                                                                                                                                                                                                              | Description                                                                                                          | Unit Price | Extension |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|------------|-----------|
| 1                                                                                                                                                                                                                                                                                                                                                     | Noventri SF-3000 Creation Station with 19" LCD, Keyboard, Mouse, UPS, Live Video Option, InfocasterCreation Station. | 5,500.00   | 5,500.00  |
| 1                                                                                                                                                                                                                                                                                                                                                     | Noventri SF-3000 Digital Signage Player                                                                              | 3,500.00   | 3,500.00  |
| 1                                                                                                                                                                                                                                                                                                                                                     | Network Manager Software                                                                                             | 2,500.00   | 2,500.00  |
| 16                                                                                                                                                                                                                                                                                                                                                    | Content Creation                                                                                                     | 85.00      | 1,360.00  |
| 1                                                                                                                                                                                                                                                                                                                                                     | 26" Preview Monitor (NTSC Compatible)                                                                                | 450.00     | 450.00    |
| Includes one eight hour day of training, and one-year standard Warranty                                                                                                                                                                                                                                                                               |                                                                                                                      |            |           |
| Payment terms require half up front and the remaining amount will be due upon completion of project.                                                                                                                                                                                                                                                  |                                                                                                                      |            |           |
| To accept this quote, please sign below and fax to 301-790-0173.<br>Signature: _____ (SEAL) Date: _____                                                                                                                                                                                                                                               |                                                                                                                      |            |           |
| Confidentiality Notice: This quote is intended only for the person or entity to which it is addressed and may contain information that is privileged, confidential or otherwise protected from disclosure. Dissemination, distribution or copying of this quote or the information herein by anyone other than the intended recipient, is prohibited. |                                                                                                                      |            |           |

Quoted by: Andrew Hoffman

\_\_\_\_\_  
 Vice President  
 Specialized Communications Corp. / Noventri

|              |                  |
|--------------|------------------|
| Subtotal     | 13,310.00        |
| Sales Tax    |                  |
| <b>Total</b> | <b>13,310.00</b> |

#4

**Laura Kuhn**

---

**From:** "Sandy McDonald" <sandy@jeffersoncountywv.org>  
**To:** "Laura Kuhn" <laura@jeffersoncountywv.org>  
**Sent:** Thursday, August 12, 2010 11:55 AM  
**Subject:** Fw: agenda

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

**From:** Thomas Bayuzik  
**To:** Tim Boyde ; Sandy McDonald  
**Sent:** Thursday, August 12, 2010 11:36 AM  
**Subject:** agenda

Tim/Sandy:

I am requesting to be at the JCC next Thursday, August 19, 2010 to discuss the following items:

- 1 . Requesting the JCC consider an Impact Fee/ Fees Committee including M. Dyck, A. Paonessa, Dave Mills, JCDA staff (me)
- 2 . Provide update to JCC about heritage and culture activities.
- 3 . Request funding assistance from JCC regarding table game proceeds to help jump start revolving loan fund.

Thanks,

Tom Bayuzik

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

**AGENDA REQUEST FORM**

Name: Kirk Davis, Capital Projects Manager

Department or Entity: **Department of Capital Planning and Management**

Estimation of amount of time needed for appointment: 15 Minutes

Date Requested – 1<sup>st</sup> Choice: September 2, 2010

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

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

Subject: Update on Cement Mill Property – Shepherdstown Battlefield (Blount Property)

Please provide the County Commission with a description of your request or presentation, including any background information: **Update on Cement Mill Property**

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

# 4

Commission Office Use Only

Date on Agenda:

Appt Time or New Business:

**AGENDA REQUEST FORM**

Name: Nichelle Hosby

Department or Entity: Jefferson County Boards and Commissions

Estimation of amount of time needed for appointment: 5 minutes

Date Requested – 1<sup>st</sup> Choice: 08/19/2010

Date Requested – 2<sup>nd</sup> Choice: 09/2/2010

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

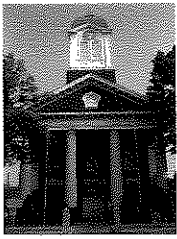
Subject: **Interview and Appointment to The Farmland Protection Board**

Please provide the County Commission with a description of your request or presentation, including any background information: **Interview and Appointment for a non-farmer vacancy on the Farmland Protection Board**

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **Move to appoint \_\_\_\_\_ to the Jefferson County Farmland Protection Board.**

Attachments:

# THE COUNTY COMMISSION OF JEFFERSON COUNTY



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

Phone: 304/728-3284

[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)

Fax: 304/725-7916



The Jefferson County Commission proposes to name persons to serve on the following Authorities, Boards, Commissions, or Committees on Thursday, August 19<sup>th</sup>, 2010, or as soon thereafter as the Commission may decide:

## **Farmland Protection Board - Four-year terms ending September 7, 2014**

Persons who may be interested in the above listed agency should submit a letter of interest and a resume or statement of qualifications to the Jefferson County Commission, P.O. Box 250, Charles Town, WV 25414, prior to the proposed date of appointment.

Additional information regarding these appointments may be obtained by calling the Commission Office at (304) 728-3284.

**SPIRIT OF JEFFERSON:**

**PLEASE ADVERTISE ON:**

**July 22 & 29, August 5 & 12, 2010**

**THANKS - JEFFERSON COUNTY COMMISSION**

\* Non Farmer

## Nichelle Hosby

---

**From:** Sandy McDonald [sandy@jeffersoncountywv.org]  
**Sent:** Wednesday, July 21, 2010 1:24 PM  
**To:** Nichelle Hosby  
**Subject:** Fw: Letter of interest to serve on the Jefferson County Farmland Protection Board

**Importance:** High

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

**From:** Garcia, Gil  
**To:** [kellie@jcda.net](mailto:kellie@jcda.net); [sandy@jeffersoncountywv.org](mailto:sandy@jeffersoncountywv.org)  
**Sent:** Wednesday, July 21, 2010 1:20 PM  
**Subject:** Letter of interest to serve on the Jefferson County Farmland Protection Board

I understand that there is a vacancy for a non-farmer member of the Board. This email serves to acknowledge my interest in serving on the Board.

I have been a resident of Jefferson County for over 20 years. I am a career Federal civil servant in education. My partner and I live in Elk Run Estates in Harpers Ferry on a 10 acre estate. We moved here for the rural and farming qualities of the area. My undergraduate studies were in biology and chemistry, so I come to gardening with an informed perspective. In fact, I am an avid gardener who comes from a Texas-raised family that includes agronomists, ranchers, and regional parks designers. My objective as a gardener is to protect natural habitats and to minimally disrupt nature's cycles. But, I also appreciate that farming is a necessary endeavor that results in many benefits to all of us.

I am interested in serving on the Board to help it carry out its mission and plans. The 21<sup>st</sup> Century already has dealt many environmental and land use challenges. Given our proximity to metropolitan areas and our natural recreation resources, it is important, I believe, for Board members to craft evidence-based plans that will result in land preservation, while ensuring that farm and open land be used appropriately.

Please let me know if I need to provide other information.

Sincerely,

Gil  
Gil Narro Garcia  
881 Elk Run Dr.  
Harpers Ferry, WV 25425  
304-535-2235  
[gilnarrogarcia@comcast.net](mailto:gilnarrogarcia@comcast.net)

← Del called & left message  
with Jami re 11:30 interview on  
Thurs.

# Elizabeth M. Uible

PO Box 599 \* Charles Town, WV 25414 \* 304-283-8640 \* Liz@Uible.com

## Experience

### **Analysis and Property Oversight Specialist @ Mitchell Holdings, Inc**

April 2004 - Present (6 Years)

Gardena, CA

- Created project management systems to keep projects on time and within budget.
- Worked with investors, vendors, and team members to manage and adjust contracts, expectations and budgets.
- Systematized Investment Analysis, Due Diligence, and Deal Coordination for REITeam, LLC, a commercial real estate investment team.
- Navigated state and national regulatory systems to successfully rehabilitate and rent up apartment buildings in Oklahoma and Mississippi

### **Program Coordinator, Trainer and Researcher @ Women for Wealth.com**

June 2006 – August 2008 (2 Years)

Tuscan, AZ

- Worked with experts in the field to develop teach outstanding on-going curriculum on business development, personal financial management and investments.
- Maintained cohesive and dynamic long-term client relationships through communications and quick reaction time.
- Created and executed online marketing plan to drive business to site and increase sales.
- Marketed and trained women business owners around the world including France, East Africa and South Africa.
- Founded and ran the WomenforWealth.com Foundation, providing training and micro-loans to almost 100 people in Rwanda. Maintained oversight of on-the-ground partners and led two delegations to Rwanda in 2007.

### **Client Relations and Marketing Manager @ Akre Capital Management**

January 2002 - April 2004 (2 years 4 months)

Middleburg, VA

- Marketed the high-end Hedge Fund product
- Created a superior customer service environment for select private client group
- Oversaw the successful completion of routine SEC audit of all client records, with accolades from auditors for thorough and extensive records per regulations.
- Managed back office duties including Quickbooks for firm's operating accounts, all vendor negotiations and contract management, and supply ordering.

## Education

**Georgetown University:** Bachelor of Science in Foreign Service

Major- Economics: International Finance and Commerce, 2001

International Business Diplomacy Honors Program

## Community Service

**Treasurer, The Bower, LLC:** Manage finances of 14 member family organization, spearheaded the selling of 125acre conservation easement through the Jefferson County Farmland Protection Board and the Land Trust of the Eastern Panhandle in 2009- a task that took approx. 8 years.

**Treasurer, Birthright of Charles Town:** Manage books and monthly business reporting for local non-profit organization.

**Assistant Treasurer, Zion Episcopal Church:** count money and sign checks as needed.

# Elizabeth M. Uible

Jefferson County Commission  
P.O. Box 250  
Charles Town, WV 25414

Dear Commissioners,

I am writing to express my interest in serving Jefferson County on the Farmland Protection Board. My interest is threefold: My personal experience and interest in farmland protection in the county, the important role of agriculture in the economy of the Jefferson County, and the important role of farms in education and quality of life here.

The Bower, in Leetown, has been in my family since it was built in 1805. I worked closely with the Farmland Protection Board over the past 5 years to get buy-in from a 14-member family organization to sell an easement of 125 acres, creating conserved land in perpetuity. That was a boon to our family's dream of preserving our farm, and made the Jefferson County Farmland protection board very close to my heart. As you know, this is a crucial organization to protect our farms as our county grows, and I appreciate the Commissions continued efforts to do so.

Plainly put, we need farmers to continue farming. Farmers who do not want to develop their land into tract housing need conservation easements to ease the financial burden of not developing. As the County Commission has decided over and over again, farming is too important to our economy and to the development of our county to let it fall away. I am grateful to the commission for continuing to put the county resources behind such an important economic driver.

Lastly, our high quality of life in Jefferson County is due largely to farming and farm life. Hopefully, more of our children will continue to know what a cow smells like, if only from the county fair. Hopefully, our children know that carrots grow underground, and that corn should be at least knee high by the fourth of July. Field trips to local farms are part of everyday curriculum. That is part of why we live here.

Serving out community has been a high priority for me as evidenced by my involvement with various local organizations. I would be honored and excited to give my talents and energy to this board and its goals to help make Jefferson County and even better place to farm, to live and the prosper.

Sincerely,



Liz McDonald Uible

Commission Office Use Only

Date on Agenda:

Appt Time or New Business:

#7

### AGENDA REQUEST FORM

Name: Nichelle Hosby

Department or Entity: Jefferson County Enhanced E-9-1-1 Board

Estimation of amount of time needed for appointment: 10 minutes

Date Requested – 1<sup>st</sup> Choice: 08/19/2010

Date Requested – 2<sup>nd</sup> Choice: 09/2/2010

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

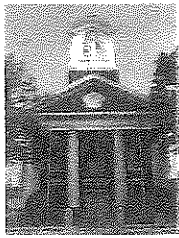
Subject: **Appointments to The Enhanced E-9-1-1 Board**

Please provide the County Commission with a description of your request or presentation, including any background information: **Appointments For representatives for: Municipal Police Department, Fire Departments, Emergency Medical Services and Jefferson County Sheriff's Department**

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **Move to appoint \_\_\_\_\_ to the Jefferson County Enhanced E-9-1-1 Board.**  
*reappoint*

Attachments:

# THE COUNTY COMMISSION OF JEFFERSON COUNTY



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



Phone: 304/728-3284

[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)

Fax: 304/725-7916

---

July 16, 2010

Chief William Roper  
312 South Mildred Street  
Ranson, WV 25438

Dear Chief Roper:

Please be advised that your term on the Jefferson County Enhanced E-9-1-1 Board will expire on September 1, 2010. Until the County Commission has acted to appoint someone for another Three-year term ending September 1, 2013 term, you are asked to remain serving.

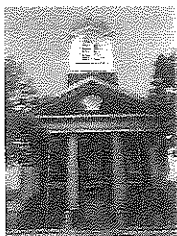
The County Commission is in the process of advertising for this position as standard procedure. Please contact us in writing at your earliest convenience to let us know if you are or are not interested in being considered for another term. We will be making the appointments on Thursday, August 19<sup>th</sup>, 2010 or as soon thereafter as the Commission may decide.

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

For the Commission,

Nichelle Hosby  
Administrative Assistant

# THE COUNTY COMMISSION OF JEFFERSON COUNTY



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



Phone: 304/728-3284

[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)

Fax: 304/725-7916

---

July 16, 2010

Craig Simpson  
106 Lemon Drive  
Shepherdstown, WV 25443

Dear Mr. Simpson:

Please be advised that your term on the Jefferson County Enhanced E-9-1-1 Board will expire on September 1, 2010. Until the County Commission has acted to appoint someone for another Three-year term ending September 1, 2013 term, you are asked to remain serving.

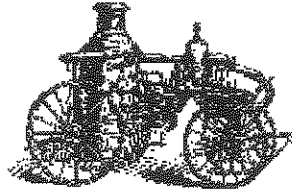
The County Commission is in the process of advertising for this position as standard procedure. Please contact us in writing at your earliest convenience to let us know if you are or are not interested in being considered for another term. We will be making the appointments on Thursday, August 19<sup>th</sup>, 2010 or as soon thereafter as the Commission may decide.

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

For the Commission,

Nichelle Hosby  
Administrative Assistant

# JEFFERSON COUNTY FIRE & RESCUE ASSOCIATION



Organized 1959

To: Jefferson County Commission

From: Ronald L. Fletcher,  
President

Date: August 12, 2010

Reference: E-911 Advisory Board

To Whom It May Concern:

This letter is in reference to the Fire representative of the Jefferson County Fire and Rescue Association on the E-911 Advisory Board. Our current representative is Craig Simpson. His (3) year term is up in October.

After making contact with the members of the Jefferson County Fire and Rescue Association, it is the decision of the Association that Craig Simpson continues as our representative to the E-911 Advisory Board. Mr. Simpson's information is as follows:

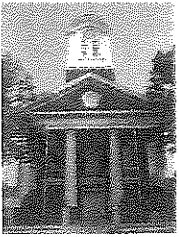
Craig Simpson  
6240 Martinsburg Pike  
Shepherdstown, WV 25443  
(304) 676-6941 (Cell)  
(304) 876-2110 (Home)

Thank you for your attention in this matter. If there is anything you may need, please contact me anytime.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Ronald L. Fletcher". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ronald L. Fletcher,  
President



# THE COUNTY COMMISSION OF JEFFERSON COUNTY

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

Phone: 304/728-3284

[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)

Fax: 304/725-7916



July 16, 2010

Dr. Henry B. Christie  
882 Keys Ferry Road  
Charles Town, WV 25414

Dear Dr. Christie:

Please be advised that your term on the Jefferson County Enhanced E-9-1-1 Board will expire on September 1, 2010. Until the County Commission has acted to appoint someone for another Three-year term ending September 1, 2013 term, you are asked to remain serving.

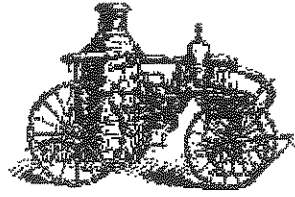
The County Commission is in the process of advertising for this position as standard procedure. Please contact us in writing at your earliest convenience to let us know if you are or are not interested in being considered for another term. We will be making the appointments on Thursday, August 19<sup>th</sup>, 2010 or as soon thereafter as the Commission may decide.

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

For the Commission,

Nichelle Hosby  
Administrative Assistant

# JEFFERSON COUNTY FIRE & RESCUE ASSOCIATION



Organized 1959

To: Jefferson County Commission

From: Ronald L. Fletcher,  
President

Date: July 8, 2010

Reference: E-911 Advisory Board

To Whom It May Concern:

This letter is in reference to the EMS representative of the Jefferson County Fire and Rescue Association on the E-911 Advisory Board. Our current representative is Henry Christie. His (3) year term is up in September.

After making contact with the members of the Jefferson County Fire and Rescue Association, it is the decision of the Association that Henry Christie continues as our representative to the E-911 Advisory Board. Mr. Christie's information is as follows:

Henry Christie  
116 W. Washington St., Suite 2E  
Charles Town, WV 25414  
(304) 279-6024

Thank you for your attention in this matter. If there is anything you may need, please contact me anytime.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Ronald L. Fletcher". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ronald L. Fletcher,  
President



HENRY B. CHRISTIE, JR. D.C.

*Family Chiropractic Care*  
116 WEST WASHINGTON STREET, SUITE 2B  
CHARLES TOWN, WEST VIRGINIA 25414  
304-725-9622

29 July 2010

Nichelle Hosby  
Administrative Assistant  
P.O. Box 250  
Charles Town, WV 25414

RE: E-911 Advisory Board

Dear Ms. Hosby,

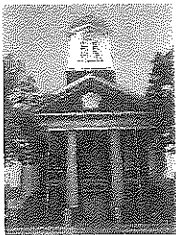
I am very interested in continuing on the Board for another term. This position represents the EMS providers. In the past, this position has been appointed upon nomination by the Jefferson County Fire and Rescue Association. To this end, I sent a letter to President Ron Fletcher informing him of the term expiration and expressing my interest in continuing in the position. He later informed me that he would be sending the Commission a letter nominating me for the position.

Thank you for your consideration of this matter. I can be reached at 304-725-9622 (o) or 304-279-6024 (c).

Sincerely,

Henry B. Christie, Jr. DC

# THE COUNTY COMMISSION OF JEFFERSON COUNTY



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



Phone: 304/728-3284

[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)

Fax: 304/725-7916

July 16, 2010

Sgt. Tom Hansen  
102 Industrial Blvd.  
Kearneysville, WV 25430

Dear Sgt. Hansen:

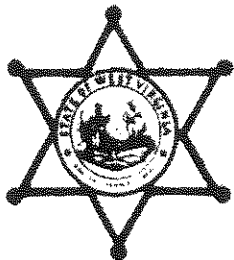
Please be advised that your term on the Jefferson County Enhanced E-9-1-1 Board will expire on September 1, 2010. Until the County Commission has acted to appoint someone for another Three-year term ending September 1, 2013 term, you are asked to remain serving.

The County Commission is in the process of advertising for this position as standard procedure. Please contact us in writing at your earliest convenience to let us know if you are or are not interested in being considered for another term. We will be making the appointments on Thursday, August 19<sup>th</sup>, 2010 or as soon thereafter as the Commission may decide.

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

For the Commission,

Nichelle Hosby  
Administrative Assistant



Telephone: 728-3205  
Tax Office: 728-3220  
Fax: 728-3299

## SHERIFF and TREASURER *of Jefferson County*

Robert E. Shirley  
P.O. Box 9  
Charles Town, WV 25414

August 10, 2010

Jefferson County Commission  
124 East Washington Street  
Charles Town WV 25414

Re: Appointment to E911 Advisory Board

Dear Commissioners:

I would like to reappoint Lieutenant Thomas H Hansen to another three year term as the representative of the Jefferson County Sheriff's Office on the Jefferson County Enhanced 911 Advisory Board.

Lt Hansen has been a member of this board since its inception, with his current term expiring September 1, 2010.

As senior member of the Sheriff's Department, I could not imagine a more suitable candidate for the position.

Sincerely,

Robert E. Shirley  
Sheriff and Treasurer  
Jefferson County

# (1)

**Laura Kuhn**

---

**From:** "Sandy McDonald" <sandy@jeffersoncountywv.org>  
**To:** "Laura Kuhn" <laura@jeffersoncountywv.org>  
**Sent:** Monday, August 09, 2010 12:34 PM  
**Attach:** WatershedAssociationFormationWorkshopProposal4aug2010.doc  
**Subject:** Fw: Wac proposal re: watershed associations

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

**From:** Tim Boyde  
**To:** 'Sandy McDonald'  
**Sent:** Monday, August 09, 2010 12:31 PM  
**Subject:** FW: Wac proposal re: watershed associations

---

**From:** Patricia Noland [mailto:patsynol@gmail.com]  
**Sent:** Wednesday, August 04, 2010 10:37 PM  
**To:** Tim Boyde  
**Cc:** fdrfdr@comcast.net  
**Subject:** Fwd: Wac proposal re: watershed associations

Tim,

Please find attached a proposal from the WAC to form a Watershed Association and to conduct a workshop to facilitate interest in the proposed association?

I understand that the August 19th meeting is already booked. If that is the case, please place this on the agenda for discussion and action at the first meeting in September?

Thanks,  
Patsy

----- Forwarded message -----

**From:** <patsynol@frontiernet.net>  
**Date:** Wed, Aug 4, 2010 at 10:27 PM  
**Subject:** Fwd: Wac proposal re: watershed associations  
**To:** patsynol <patsynol@gmail.com>

----- Forwarded Message -----

**From:** "Dan Riss" <fdrfdr@comcast.net>  
**To:** patsynol@frontiernet.net  
**Cc:** "Roger Ethier" <engnerswobord@hotmail.com>  
**Sent:** Wednesday, August 4, 2010 10:54:54 AM  
**Subject:** Wac proposal re: watershed associations

I have received no further input on this proposal. It is ready for the next step.

As I understand it, you have requested that you would take this proposal to the Commission yourself.

Would this be an agenda item?

Should I be there to answer questions?

Or will this be presented for information only, and we should proceed with further planning?

--

Dan Riss  
Harpers Ferry WV

# MEMORANDUM

4 August 2010

To: Jefferson County Commission  
From: Jefferson County Water Advisory Committee  
Subject: Proposed workshop on formation of watershed organizations

Whereas the WAC was formed to advise the Commission on matters of water quality and supply; and

Whereas Jefferson County has a number of streams, some of which are more or less polluted; and

Whereas the WAC believes citizen input and advocacy is important in carrying out its objectives; and

Whereas three streams in the County have watershed associations, or the equivalent, comprised of interested citizens who work to improve water quality and reduce pollution; namely those for the Opequon Creek, Rocky Marsh Run, and Elks Run; and

Whereas there are several other streams in the County without associations and which all together drain large portions of the county; primarily Flowing Springs, Evitts Run, Bullskin Run, Long Marsh Run, and Rattlesnake Run; and

Whereas there may be citizens interested in water quality in those areas without associations;

Therefore the WAC requests permission to hold a public workshop on the formation of watershed associations for any citizens who desire to do so.

Details might be as follows:

- hold it on a Saturday morning, so most people can attend;
- keep the time down to 2 hours, so as not to drain interest.
- hold it in the meeting space below the Charles Town Library
- publicize with a story in the Spirit and Journal; send notices to be posted in post offices; send notices to the CEOS clubs, Kiwanis, Boy/Girl Scouts, science teachers, Audubon Society, garden clubs, and so on.

Topics might include:

- Brief review of the hydrology of Jefferson County, stream pollution and sources, and pollution solutions
- State agencies and regulation
- Watershed associations
  - what are they?
  - how can they help?
  - how does one form one?

Who?

Alana Hartman of the WV DEP and Michael Schwartz of the Freshwater Inst. have agreed to speak. One or more experts in addition are possible. Hold sometime in September???



# JEFFERSON COUNTY EMERGENCY SERVICES AGENCY

419 Sixteenth Avenue  
Ranson, WV 25438  
E-mail – jeffcoamb@citlink.net  
Telephone – 304-728-3287  
Fax – 304-728-6221

To: Lyn Widmyer  
Pres. Jefferson County Commission

From: Douglas M. Pittinger  
Director

Re: Funding Request

Date: 24 August 2010

RECEIVED

AUG 25 2010

JEFFERSON COUNTY COMMISSION

Jefferson County Emergency Services Agency has questions and concerns about the funding of our Strategic Five Year Plan for emergency services. We are being proactive proceeding forward with the assistance of Tim Boyde, County Administrator and Stephanie Grove, Esquire to bid and award a contract to a consulting firm in the immediate future for this plan. This progress is now in a “holding pattern” until the funding issue is resolved. It’s our understanding after attending the Jefferson County Commissioners roundtable meeting on 22<sup>nd</sup> of July that this Agency had the verbal commitment from the Commissioners that the funding for this project would be approved at the next County Commissioners meeting on Aug 19<sup>th</sup>. It was even discussed that the Commission may as well; cover the expense of hiring a part time coordinator to expedite this project. As we know, this topic was discussed at that Commissioners meeting but never officially approved to allocate funds to cover the cost of a consulting firm to do this work. JCESA’s current budget does not allow us to fund this project due too budget restrains.

This strategic plan is going to establish the future of the fire and ems services in this county and will address many phrases such as cost, fees, staffing and goals of JCESA. It will, as well meet the requests placed on us the Commission on numerous occasions by previous meeting to submit a detailed plan. It’s vital to the growth and survival of the emergency services that this plan be developed and submitted to the Commission in early 2011 so the funding aspect of fire and ems services can be met and included in your FY 2012 budget.

Also during the discussion on 22<sup>nd</sup> of July, our understanding was that the County funding would be done quickly for a part time coordinator through our Agency to expedite this plan and provide logistical support to the consulting firm awarded the contract. JCESA feels it will take approximately 90 – 120 days to complete this study and it's now becoming time sensitive to meet the early 2012 deadline placed on the Agency to comply with your verbal request. Again, please allow me to state on behalf of the Agency the importance of this project and its funding so that we may remain proactive for the vital emergency services that will be provided as a result of you actions for years to come.

We are in receipt of a "Notice of Meeting" of the Jefferson County Roundtable Meeting scheduled for Wednesday, September 1<sup>st</sup>. Discussion topics on that agenda do not include the above mentioned request.

For the stated reasons, we ask the Commission to place this funding request on the agenda for the next regular County Commissioners meeting on Thursday, 02 September 2010 and take action on the same. Without your support and funding allocations, this major project will have to remain idle. We thank you in advance for your consideration in this matter.

cc:

Dale Manuel  
James Surkamp  
Frances Morgan  
Patricia Noland  
Tim Boyde  
Stephanie Grove

**RESOLUTION**

**JEFFERSON COUNTY BLACK HISTORY PRESERVATION SOCIETY, INC.  
10<sup>TH</sup> ANNIVERSARY**

WHEREAS, in September of 2010 James L. Taylor, Nathaniel Downing, George C. Rutherford and James A. Tolbert met to begin compiling the largest collection of Black history ever undertaken in Jefferson County and;

WHEREAS, in light of many significant historical events in Jefferson County and the exclusion of Black history in Jefferson County historical writings, the continuing trend of exclusion of these historical events could of led to the complete loss of Black history for present and future generations; and

WHEREAS, this group decided to form the Jefferson County Black History Preservation Society and continue their research of Jefferson County Black history; and

WHEREAS, the Jefferson County Black History Preservation Society has become the only acceptable authority for Jefferson County Black History; and

SO, THEREFORE BE IT RESOLVED, that the County Commission of Jefferson County recognizes the Jefferson County Black History Preservation, Inc. on their 10<sup>th</sup> anniversary for their hard work and dedication to preserving Jefferson County's Black history.

September 2, 2010

\_\_\_\_\_  
Lyn Widmyer, President

\_\_\_\_\_  
Patsy Noland, Commissioner

\_\_\_\_\_  
Frances B. Morgan, Commissioner

\_\_\_\_\_  
Dale Manuel, Commissioner

\_\_\_\_\_  
James Surkamp, Commissioner

# 14

**Laura Kuhn**

---

**From:** "Sandy McDonald" <sandy@jeffersoncountywv.org>  
**To:** "Laura Kuhn" <laura@jeffersoncountywv.org>  
**Sent:** Thursday, August 26, 2010 9:10 AM  
**Subject:** Fw: agenda item

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

**From:** Dale Manuel  
**To:** 'Tim Boyde'; sandy@jeffersoncountywv.org ; sgrove@jeffersoncountywv.org  
**Sent:** Wednesday, August 25, 2010 10:32 PM  
**Subject:** agenda item

Please place the following on next week's agenda:

Salary Equity and the impact of a percentage increase on employee's experiencing that inequity:  
Discussion and Action

Thanks,  
Dale Manuel

# 15

**Laura Kuhn**

---

**From:** "Sandy McDonald" <sandy@jeffersoncountywv.org>  
**To:** "Laura Kuhn" <laura@jeffersoncountywv.org>  
**Sent:** Thursday, August 26, 2010 11:30 AM  
**Subject:** Fw: agenda item

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

**From:** Dale Manuel  
**To:** 'Tim Boyde'; sandy@jeffersoncountywv.org ; sgrove@jeffersoncountywv.org  
**Sent:** Thursday, August 26, 2010 11:26 AM  
**Subject:** agenda item

Please place the following on this week's agenda:

Allocation of the Table Games revenues that were reinstated : Discussion / Action

Thanks,  
Dale Manuel

**MEMORANDUM**

**Jefferson County, West Virginia  
Engineering Department**

**TO:** File  
**FROM:** Roger Goodwin  
Chief County Engineer  
**DATE:** August 20, 2010  
**SUBJECT:** Bonding Policy Public Hearing Comments

The following is the response to comments submitted by Jennifer Syron at the public hearing for the new bonding policy held on August 5, 2010:

**1. Control of the HOA should be handed over to homeowners before bond money is released in its entirety.**

The Subdivision Ordinance, Appendix B, Division 2.0, Sec. 2.4 Subdivision Road & Common Area Ownership & Maintenance, states that:

- A. *A Homeowner's Association must be established without delay as soon as 50% of properties are sold. Membership in the association is mandatory for all property owners within the subdivision. The developers shall dedicate all common lands (SWM Basin, roads, right-of-ways, etc.) to the Homeowner's Association. A note to this effect is required on the Final Plat.*
- B. *A Common Interest Ownership Agreement must be established to provide for the maintenance of commonly owned land, including, but not limited to the private road system within the subdivision. This Common Interest Ownership Agreement must be developed in accordance with the Uniform Common Interest Ownership Act of West Virginia.*

This request has merit, and measures should be considered that compel the developer to form the homeowners' association (HOA) and to transfer the common areas to the HOA soon after 50% of the lots are sold. This could be done by making this an item on the bond estimate for which a bond amount shall be posted. The bond for this item would not be released until the developer has

provided documentation demonstrating creation of the HOA and transfer of ownership of the common areas to them. A proposed bond amount in the range of \$500 to \$1,000/lot should be considered for this purpose.

2. **Developer should have sufficient funds to develop the community without excessive borrowing. How does the County ensure that the Developer has sufficient funds to complete the project? Is there a way for the County to ensure that the same collateral is not promised to multiple lending sources?**

West Virginia State Code, Chapter 8A does not give the County the authority to dictate how a project is to be financed. Even if the county had the authority to dictate and monitor a company's method of financing a project, it would be difficult to oversee and monitor a developer's financing and forms of collateral unless we had unfettered access to this information, some sort of law/rules to follow, and a financial expert on staff capable of monitoring and interpreting the financial information for compliance purposes. In summary, trying to do this will be contrary to state code and is outside the authority of the county commission, and may be difficult to administer even if it was allowed.

However, Chapter 8A, Article 6, Section 1, allows the governing body to require bonding and sets the requirements for bonding of the infrastructure construction. The county's proposed bonding policy meets these requirements in that it:

1. Requires that the bond be in an amount to cover the infrastructure construction; and that
2. The bond is payable to the governing body; and that
3. The bond is backed by a surety satisfactory to the governing body; and that
4. The bonding policy specifies the time for completion of the infrastructure construction; and that
5. The bonding/surety agreement specifies the date and/or condition for when the bond will be released.

3. **Given the tendency for developers to wait until the community is nearly complete before building amenities, it would be prudent to have a defined sum of money put into escrow as each lot is sold to ensure sufficient funds at the end of the project to complete the promised amenities, thereby eliminating the practice of forming an LLC with the intention of going bankrupt. For example, if they know they need \$1,000,000 and they have 100 lots, then \$10,000 should be set aside with the sale of each lot.**

There appear to be two issues here. The first is that this comment seems to indicate a belief that if the developer is required to set aside the funds necessary to complete the site improvements, then the developer will not be inclined to form a corporation such as a limited liability corporation (LLC); thereby, allowing the developer to be held personally liable for meeting the obligations for completing the site improvements.

Most business ventures are usually conducted under the veil of some form of a corporation and the various forms of organization are established by state law. Every form of business, except for the sole proprietor, is considered a separate entity, which often provides a measure of legal and financial protection for the shareholders. As such, construction companies, professional firms, retail stores, land development companies, etc., are often organized as corporations in order to protect the stock holders from the risks and liability associated with such ventures. This is a tool of capitalism that is used to promote entrepreneurship, investment and economic growth. Since the corporation is a separate entity the stockholders in most cases are protected by the corporate veil from being personally liable for the actions of the corporation; and if a business fails, the owners are liable only to the extent of their investment in the business. In other words, they only stand to lose what they have invested in the corporation. Unfortunately, if the business venture fails - and especially if the corporation declares bankruptcy - the corporation may have little in the way of assets to go after if one is trying to recover a loss or damages from it. The stockholders' personal assets are separate from the corporation and are not subject to being used to satisfy the corporation's obligations. Considering the protection from personal liability that is provided by forming a corporation, it seems to me that even if the developer is required to escrow funds as stated above, there will always be strong motivation otherwise for a developer to form a corporation. In addition, I do not know anywhere in the state code that gives the county the authority to deny the developer the right to form a corporation and/or dictate the form of organization under which the business must be organized.

Second, with regard to escrowing money as each lot is sold to ensure completion of the site improvements, this is essentially the same as holding a bond and surety in the form of "cash-in-escrow", which is a form of surety that is already allowed in the bonding policy. However, we currently require that the full amount of the cash-in-escrow surety be provided up front instead of being collected as the lots are sold. If we were instead to collect the surety as the lots are sold, we will need some sort of agreement or legal obligation that causes the money to be automatically escrowed upon the closing of the sale of the lot, which might be difficult to implement without legal authority to require it. In addition, allowing only this form of surety will eliminate all other forms of surety currently allowed and proposed. The current policy on cash-in-escrow form of surety is more stringent and less cumbersome to obtain and administer.

4. **Third party inspection reports should be provided by independent parties with no ties to the Developer.**

In 2006, the Engineering Department created an Office Manual for Land Development Inspection. The manual contains all the tools needed to guide the Land Development Inspector through the process of reviewing the bond estimate, conducting pre-construction meetings, documenting field inspections, reviewing bond release requests, performing site inspections, and issuing notices of violation. The intent is to achieve consistency in the way we perform this work and to achieve a higher level of assurance that work is completed according to the approved plans.

One of the internal documents (Bond Reduction/Release - Inspections & Certifications – Information Request Checklist) from the manual spells out what the developer is to provide when using a third-party inspector to verify that roadway subgrade and stone depth, storm sewer systems, and storm water management facilities are constructed in accordance with the Preliminary Plat. I too have concerns about third-party inspectors being hired by the developer and being slanted in the developer's interests. However, we have spelled out what information we want to see in the certifications along with any backup information supporting the certification. We review the information to see if anything seems out of order and/or raises a red flag or concern; and to make sure that the inspector followed prudent inspection/engineering practices in making their determination. We have questioned the credibility of some certifications and field reports on other projects as a result of our review. The practices we have put in place are far more stringent than what was practiced in the past. Firms providing third-party inspections have equipment (i.e., compaction testing field and lab equipment, surveyors' instruments, AutoCAD software etc.) and skilled personnel that the county does not have. Making third-party inspections totally independent will probably require that the county provide these resources in-house or seek to set up a system where the county pays for the cost of hiring independent inspectors.

I believe that considering the limited resources we have (we don't have the ability to place a resident inspector on each project for 8 hours each day), that we are following prudent practices for verifying that the work is completed satisfactorily.

5. **Is there a way to monitor the financial situation of the Developer as the project proceeds so that the common areas do not end up for sale due to the Developer's failure to pay taxes?**

As stated in no. 2 above, even if the county had the authority to monitor a company's method of financing a project, it would seem difficult to oversee and monitor a developer's financing and forms of collateral unless we had unfettered access to this information, some sort of law/rules to follow, and a financial expert on staff capable of monitoring and interpreting the financial information. In

addition, the county would need to have the legal right to the financial information and the ability to control the finances. In summary, trying to do this will be contrary to state code and is outside the authority of the county commission, and may be difficult to administer even if it was allowed.

6. **When bond money comes up for release before the County Commissioners, Homeowners, as interested parties, should be notified via the mail. Eventually it might be enough to notify the HOA once homeowners are in control. This would probably require some kind of database of subdivisions and homeowners.**

In order to do this, we will need to have someone monitor land sales and maintain a database of all lot owners and their addresses for each subdivision under construction. County tax records are not current at the time of sale of a lot, so relying on them as the source of this information does not work. Notification of change of ownership presents another problem. This will need further study in order to determine if it is feasible and can be done without becoming labor intense and costly.

In the meantime however, the county commission agenda (with backup documents) is posted on the web page by Noon on the Monday prior to each meeting, and citizens can sign up on the county web page for an email notification when the agenda is posted. Also, the meetings can be viewed live on-line via the county's web page link at: <http://www.jeffersoncountywv.org/>

In addition, the bonding files are available for review in our office and the county's Bonding Administrator can be contacted at 304-728-3257 for bonding related questions and information.

- 7a. **When the Engineering Department provides updates to the County Commission, the agendas should include the name of the subdivision to be discussed.**

Each bond release request is submitted in accordance with County Commission agenda policy. Typically, on the Agenda Request Form, the name of the subdivision, section, lot numbers and Planning Commission file number are provided. However, when staff is required to appear before the county commission to give updates on projects, the county commission's agenda is not always specific on what is going to be discussed.

This item is not directly related to what the bonding policy addresses, but is more in the realm of the county commission since it is related to providing more transparent government. This is an item that would need to be addressed by county commission policy and procedures.

- 7b. **County Commission minutes should provide greater detail regarding the bond release, including amount, item, Engineering Department recommendation, discussion, and County Commission vote. This would make it easier for county residents to follow what is happening with their community.**

Each bond release is submitted in accordance with County Commission agenda policy. The following information is available on the Jefferson County web page under the county commission's agenda for each meeting:

Typically, on the Agenda Request Form, the following information is provided:

1. The purpose of the request and if it is for either a partial or full release of the construction bond; and
2. The name of the subdivision, section, lot numbers and Planning Commission file number; and
3. The name of the surety provider; and
4. The recommended motion (A bond release request will not get put on the agenda unless it has met the requirements for a reduction or release).

In addition to the agenda request form, backup documents are also provided, including:

1. Draft letter to the surety provider that includes the amount of the

reduction or release, the original bond amount, the new bond amount, and a general outline of what work remains to be completed; and

2. The "Bond Reduction or Release Request Report" that is completed by the land development inspector, stating the original bond amount, cost of work remaining, contingency amount, and the revised bond amount.

A review of the county commission's prior minutes indicates that typically, the following information is provided in the minutes:

1. The recommended motion with regard to the bond reduction/release request; and
2. The motion made, the person making the motion, the person seconding the motion, and the vote and whether or not the motion was approved or defeated.

This item is not directly related to what the bonding policy addresses, but is more in the realm of the county commission since it is related to providing more transparent government and access to information. This is an item that would need to be addressed by county commission policy and procedures.

**7c. Adopting a search engine for the county website, such as that of Berkeley County, would further increase transparency and ease of use.**

Several years ago, I visited with the Berkeley County Planning Department to see how they are managing documents and files. The Berkeley County Planning Department has a full time person whose sole job is to scan to digital files all land development applications, plans, plats, permits, correspondence, inspection reports, etc., for each land development project and building permit. The documents are then linked to the Berkeley County web page and made available to the public via their web site. The documents are posted in chronological order and a citizen can print them out from their home.

This item is not directly related to what the bonding policy addresses, but is more in the realm of the county commission since it is related to providing more transparent government and convenient access to documents and files. This will most likely require additional resources if it is to be implemented.

The following is the response to comments submitted by Rory Toth, received via email, in response to the public hearing for the new bonding policy held on August 5, 2010:

8. **That the administration and enforcement of failure of the developer to construct bonded improvements be clearly addressed. I don't know what the current regs say but I think the regs should explain what will happen in the event a developer has not, is slow to, or goes bankrupt before fulfilling the obligations. What are the penalties? Could there be stiff fines? Could there be limits on the number of times a bond can be renewed? Could there be County denial of permits until such items are constructed?**

The failure of the developer to construct bonded improvements is addressed in the county commission's bonding policy and the bonding agreement. There are no fines if the developer defaults; however, the developer does forfeit the bond to the county. The bonding policy provides limits on the number of times a bond time extension can be granted. Denial of permits is probably not permissible since the Building Code Enforcement Ordinance is a separate ordinance. If a building permit applicant meets the permit requirements of the ordinance, then the permit is to be issued. In addition, withholding a permit from a lot owner for a new home due to issues with the developer does not seem fair and only punishes the lot owner.

9. **For items such as telephone, cable, electric, gas, internet, does the current policy except these from requiring a surety? Can they be so we don't run into problems later after the road pavement is down and the roads and our lawns are ripped up to put them in. I'm not a lawyer but I wonder why these are not part of the bond.**

Bonding for underground electric, phone and cable t.v. should be a bonded item. This will be verified and included if it is not already included.

10. **Is there maintenance bond language in the bonding/subdivision ordinance? After roads, amenities, storm water systems, etc have been approved/accepted by the County what obligation(s) does the developer have to maintain these items later on down the road or if they are found to be done incorrectly?**

West Virginia State Code, Chapter 8A, does not give the county the authority to require maintenance bonds. This issue came up during the recent revisions to the Subdivision ordinance and the requirement for maintenance bonds was removed due to the lack of authority to require them. However, section 8B of the Bonding Policy states:

*"In the event that a previously approved and released component of the site improvements has failed before the final bond release, no further*

*bond reductions or final bond release shall occur until the developer has corrected, repaired, or replaced the failed site improvement, or re-posted the bond surety necessary to cover the costs of the repair or replacement of the failed component, to the satisfaction of the Chief County Engineer.”*

This means up until the time that the bond is fully released, the developer is required to make good on any work that has failed.

11. **If not already in place, stricter inspection procedures and documentation by the County, where the County must physically inspect the roads, utilities, infrastructure and community amenities and clearly report their findings as to whether they are done right before the County approves them and releases the bond. These items should be shown on an approved record plat or site plan. What is the current policy, if any, on testing to make sure roads and SWM ponds will hold up and SWM function properly now and in the future? I think that the Zoning Ordinance and/or subdivision ordinance/bonding policies require that these features be clearly shown on a site plan or record plat so there is no question what the community is getting.**

The required improvements are shown on the Preliminary Plat (construction plans), which is on record with the Jefferson County Planning Commission. In 2006, the Engineering Department created an Office Manual for Land Development Inspection. The manual contains all the tools needed to guide the Land Development Inspector through the process of reviewing the bond estimate, conducting pre-construction meetings, documenting field inspections, reviewing bond release requests, performing site inspections, and issuing notices of violation. The intent is to achieve consistency in the way we perform this work and to achieve a higher level of assurance that work is completed according to the approved plans. Jefferson County's Land Development Inspector performs periodic milestone inspections, which is supplemented with third-party inspections and certifications, and requirements for as-built plans. The office manual spells out what the developer is to provide when using a third-party inspector and/or when providing as-built certifications to verify that roadway subgrade and stone depth, storm sewer systems, and storm water management facilities are constructed in accordance with the Preliminary Plat.

12. **Suggest that the County look at neighboring jurisdictions so they can see the language other counties use so they can make changes to their Zoning Ordinances, Subdivision Ordinances and Bonding Policies.**

Several years ago, the county hired a consulting firm to guide them through the process of re-writing the subdivision and zoning ordinances. The consulting firm has done work across the country and had previously written a new ordinance for

Fredrick County, Maryland. This is in addition to in-house professional planning staff that the county hired to guide them through this process.

When updating the bonding policy, a committee was formed consisting of members from the building industry, the banking industry, legal counsel, and engineering staff. During the process of revising the bonding policy, the committee obtained and reviewed information from the Surety Information Office, the City of Winchester, VA, Loudon and Montgomery counties, VA, the City of Fredrick, MD, Washington County, MD, the City of Martinsburg, WV, and Berkeley County, WV. Based on the information we received, I believe that our proposed policy and bonding agreements are clearer and as stringent, if not more so, than the surrounding jurisdictions. (As a side note: our storm water management quantity control requirements are the most stringent in the region).

In addition, during our current process of updating our bonding unit cost estimate data, we requested cost estimate data from the same jurisdictions mentioned above. Based on the information we received, it appears that our itemized list of infrastructure items to be bonded is more thorough than any of the other jurisdictions.

**NOTICE OF PUBLIC HEARING**  
**Site Improvements Bonding & Bond Surety Policy**

The County Commission of Jefferson County will hold a Public Hearing on Thursday, August 5, 2010, at 1:30 p.m. The meeting will be held in the Old Charles Town Library Meeting Room located at 200 East Washington Street, Charles Town, West Virginia 25414. The purpose of the public hearing is to receive comments on the proposed Site Improvements Bonding & Bonding Policy.

Land Development  
**Site Improvements Bonding & Bond Surety Policy**

**Draft Policy Presentation to County Commission  
June 17, 2010**

- On May 7, 2009, Mike Wiley and Carla Coffey appeared before the County Commission, on behalf of the local land development and building industry, and proposed changes to the County Commission's bonding policy.
  - As a result of the presentation and request, "the County Commission directed that a committee be formed to review the current bonding policy and determine if amendments to the policy may be beneficial to the County, lending institutions and the development community.
  - On February 17, 2010, the committee submitted to the County Commission a report with ten recommendations (pages 11 – 13) for changes to the bonding policy. As a result of this presentation, the County Commission directed the committee to draft a new bonding policy.
  - The draft bonding policy before you combines the requirements of the current bonding policy with the ten recommendations from our report. The policy includes the following:
    1. The written policy and procedures; and
    2. Appendix A – templates for the Bond Agreement forms for the four different project bonding scenarios; and
    3. Appendix B – templates for the different scenarios of providing bond surety. There are three types of surety:
      - Irrevocable Letter-of-Credit
      - Cash-in-Escrow
      - Performance/Surety Bond (includes the bond agreement)
- The bond agreement and bond surety forms from Fredrick, MD, Loudon County and Montgomery Counties, VA, and Winchester, VA were used as models for developing these forms and templates. The language was similar across all jurisdictions.
4. Appendix C - is the template for the Tolling of Bonding Agreement.

- The bonding policy, agreement and surety forms, and the Tolling of Bonding Agreement, were reviewed by the County's attorney and changes to the language were made as directed.
- In summary, during the past year, the committee has performed research and gathered information in order to better understand the various forms of bonding, and to determine how other jurisdictions handle bonding. The proposed bonding policy is a result of what we believe to be the best practices for Jefferson County. We believe that the written bonding policy and procedures is clearer than the current bonding policy; and along with the templates contained in the appendices, is the complete tool box for managing bonding of land development projects in Jefferson County.

It is my understanding from the February 17<sup>th</sup> meeting that the County Commission wants to hold a public hearing on the proposed bonding policy before considering adopting it.

JEFFERSON COUNTY

Land Development

**SITE IMPROVEMENTS BONDING & BOND SURETY POLICY**

Effective Date: \_\_\_\_\_

All required bonding shall be provided by the owner/developer, approved by staff, and in place prior to the recordation of the subdivision final plat or the issuance of a permit for a land development project, in accordance with this policy.

1. Projects That Require Construction Bonds & Bond Surety:

When required, the owner/developer shall provide a construction bond as a guarantee that the site improvements will be completed and installed in accordance with the approved plans. The construction bond shall be secured with an acceptable form of surety. Projects requiring a construction bond and bond surety are as follows:

- A. Approved subdivisions of land requiring site/infrastructure improvements; and
- B. Commercial (for-profit & non-profit), industrial, institutional, religious facilities, and multi-family residential development projects, etc., that require a site plan and site improvements.

2. Bonding Arrangements:

- A. Bonding arrangements cannot be made prior to Planning Commission approval of a project.
- B. The owner/developer's engineer of record shall provide a complete and accurate bond estimate in a format acceptable to the Chief County Engineer. The bond estimate shall be based on the estimated costs of the site improvements utilizing current market rates. However, in no event shall the estimated cost be less than the unit costs provided by the Jefferson County Engineering Department. The unit costs are subject to change from time to time, as deemed necessary by the Chief County Engineer.
- C. A 15% contingency amount shall be added to the bond estimate. However, for projects with estimated construction costs under \$100,000.00, the minimum bond contingency amount shall be \$15,000.00.
- D. After the Chief County Engineer approves the construction bond amount, the developer shall submit the bond surety to the Bonding Administrator. The Bonding Administrator will then prepare the

construction bond documents (**See Appendix A**). Upon notification by the Bonding Administrator that the construction bond and bond surety documents are in order and in accordance with this Construction Bond and Bond Surety Policy, the County Commission president or County Administrator may affix their signature to the bond; this will constitute acceptance by the County Commission of Jefferson County, with no additional approvals required by them. All such action shall be reported to the County Commission as an agenda information item at their next meeting.

3. Length of Construction Bonds:

The initial bond shall be effective for a 2-1/2 year period. The developer shall have 2-1/2 years to complete the site improvements and infrastructure work unless time extensions are granted in accordance with this policy.

4. Time Extensions of Construction Bonds:

Upon written request by the developer, the staff may grant two additional 1-1/2 year time extensions for completion of all site improvements, for a total of 5-1/2 years, provided that:

- A. All occupied dwelling units are served by a road that is totally improved with the exception of the top/finish coat of asphalt; and
- B. All erosion and sediment control measures are in place in accordance with the approved sediment and erosion control plan and functioning properly; and
- C. The stormwater management facilities are in place and functioning as either temporary sediment traps per the sediment and erosion control plan, or as permanent stormwater management basins that are protected from discharging sediment from undisturbed areas on the project site. In either case, the stormwater management facility shall itself be stabilized; and
- D. Existing infrastructure that has failed is satisfactorily reconstructed; or redesigned if necessary and additional surety provided; and
- E. Elements of the preliminary plat or site plan that are not constructed, are reviewed for compliance with the current design standards; and the preliminary plat or site plan elements not meeting current standards, at the discretion of the Chief County Engineer and where practical, are redesigned or modified to meet current standards; and
- F. The bond amount is re-evaluated to determine if the amount is still adequate; and
- G. The bond amount is increased and additional surety provided if the bond amount is determined to be inadequate; and

- H. The owner/developer paid the non-refundable processing fee for the bond time extension request, in accordance with the prevailing fee schedule.

Time extensions beyond the 5-1/2 year time period may only be considered by the County Commission and may be granted for justifiable reasons on a case-by-case basis.

5. Approved Forms of Bond Surety:

- A. Acceptable forms of bond surety are limited as follows:

1. Irrevocable Letter-of-Credit (see Appendix B) from any FDIC-insured bank or lending institution within 150 miles of Charles Town, West Virginia; or
2. Cash-in-Escrow (see Appendix B) that is escrowed at any FDIC-insured bank or lending institution within 150 miles of Charles Town, West Virginia; or
3. Performance/Surety Bond (see Appendix B) from an acceptable surety bond provider; shall be allowed for projects with estimated construction cost equal to or greater than \$50,000.

- B. Surety documents shall be formatted as required by this policy unless other format is approved by the County Administrator or the County Commission in writing.

- C. Parties other than the owner/developer may provide the surety and execute the construction bond; provided, however, that the third-party adds their signature to the statement of acceptance on the associated construction plans and plat.

6. Renewal of Bond Surety:

- A. Irrevocable Letters-of-Credit:

The owner/developer or surety provider is required to renew any surety before it expires and provide evidence of renewal to the Bonding Administrator a minimum of 30 days prior to the surety's expiration date.

Approximately 90 days prior to the expiration of a letter-of-credit, the Bonding Administrator will notify the developer and the bank that an irrevocable letter-of-credit is due to expire and needs to be renewed by the bank. However, failure on the County's part to provide 90 days notice shall not preclude the County from their right to call-in sureties in

the form of a letter-of-credit prior to their expiration. The onus is on the owner/developer to renew the letter of credit before it expires.

B. Cash-in-Escrow:

Surety in the form of cash-in-escrow will not have an expiration date and shall run for the duration of the construction bond/project.

C. Surety Bonds:

Surety in the form of a surety bond shall be in effect for a minimum of one (1) year and shall automatically renew for additional minimum terms of one (1) year unless, and until, the surety provider shall give sixty (60) days prior written notice by certified mail, return receipt requested, to:

Bonding Administrator  
Jefferson County Engineering Department  
116 East Washington Street, Suite 100  
Charles Town, WV 25414

of its intent to terminate the surety bond at the expiration of the sixty (60) day period.

7. Land Development Site Inspections:

After the initial installation of the erosion and sediment control devices have been inspected and approved, all subsequent land development milestone site inspections, re-inspections, and legitimate complaint inspections shall be performed at a cost to the owner/developer in accordance with the prevailing fee schedule. County discretionary inspections shall not be assessed the fee.

8. Bond Reductions & Bond Releases:

A. As installation of the site improvements progresses, the owner/developer may make written request for periodic bond reductions. Bond reduction requests shall be for a minimum of \$100,000 of work but not more than 3 requests may be submitted per calendar year. The developer's engineer shall submit an itemized bond reduction request in a format acceptable to the Chief County Engineer.

For projects under \$100,000, the full \$15,000 contingency amount shall remain in full force until the project's bond is fully released; and

For bond estimates equal to or less than \$333,333, the full initial bond contingency amount (\$15,000 min to \$50,000 max) shall remain in force until the project's bond is fully released; and

For bond estimates greater than \$333,333, the initial contingency amount may be reduced in a pro-rated manner along with periodic bond reductions; but, the total bond amount shall never be reduced to less than \$50,000 or 10% of the total original bond amount, whichever is greater, and shall remain in force until the work is 100% complete and the project's bond is fully released.

- B. Upon completion of all site improvements, the owner/developer may make a written request for final release of the remaining bond amount. The owner/developer's engineer shall submit an itemized bond release request in a format acceptable to the Chief County Engineer.

In the event that a previously approved and released component of the site improvements has failed before the final bond release, no further bond reductions or final bond release shall occur until the developer has corrected, repaired, or replaced the failed site improvement, or re-posted the bond surety necessary to cover the costs of the repair or replacement of the failed component, to the satisfaction of the Chief County Engineer.

- C. Upon review and approval of the bond reduction request or the bond release request by the staff, the Bonding Administrator will submit a County Commission agenda item request in accordance with the County Commission's policy. The County Commission will schedule the item on their agenda and the staff will appear before the County Commission at their regularly scheduled meeting and present the request to them for their consideration and approval.

- D. The owner/developer shall pay a non-refundable processing fee for each bond reduction request and bond release request, in accordance with the prevailing fee schedule.

9. Default by the Owner/Developer:

In the event the owner/developer defaults in their obligation to complete the required site improvements and infrastructure work, the County Commission may "call-in" the bond and use the surety to complete the project. All costs incurred by the County shall be recoverable and are considered valid charges against the surety; this includes, but is not limited to, construction costs, administrative costs, and legal fees, including costs incurred for both in-house and/or contracted services.

10. Tolling of Bonding:

During periods of economic downturn (i.e., downturn in housing market due to economic conditions, loss of source of project financing/capitol necessary to begin the project, etc.), as determined by the Jefferson County Commission, the owner/developer may defer construction and obtain temporary partial

release of construction bond and surety on projects that are recorded and bonded, but have not started construction of site improvements and/or sold any lots or portions of the subdivided parcel. This is known as "Tolling of Bonding. Tolling of Bonding shall only be allowed to occur one time on each phase of each subdivision project. A bond of \$10,000 shall remain in place during the course of any tolling of bonding agreement.

The "Agreement Regarding Bonding Obligations and Declaration of Covenants, Conditions and Restrictions" (**see Appendix C**) shall be executed by the developer.

The tolling of construction shall require that no construction and installation of site improvements shall be allowed to start until the developer has re-posted the full bond amount, and that the bond amount shall be in accordance with the bonding unit cost figures in effect at that time; and

The tolling of construction shall require the recording of a document in the County Clerk's office - for purposes of notifying the public through title search - that the lots are restricted from being sold, and that no building permits will be issued on these lots until the developer has restored the full bond amount and the restriction is lifted by the Jefferson County Commission via a document recorded in the County Clerk's Office; and

The tolling of bonding shall have a sunset provision whereby the lots shall be un-platted (merged) upon expiration of the sunset provision, unless the bond and surety are re-posted in its entirety prior to the sunset provision expiration date. The owner/developer shall execute a merger deed at the time of executing the agreement. The merger deed shall be held by the Bonding Administrator and only recorded in the Office of the County Clerk upon expiration of the sunset provision and upon directive of the County Commission of Jefferson County, unless the bond and surety are re-posted in its entirety prior to the sunset provision expiration date; and

The tolling of construction shall not apply to projects where construction of the site improvements has already begun.

The Owner/Developer, or their agent, acknowledges receipt of the Jefferson County Construction Bonding and Bond Surety Policy.

(Owner/Developer/Agent)

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(title)

\_\_\_\_\_  
(company/organization name)

\_\_\_\_\_  
(mailing address)

\_\_\_\_\_  
(city)

\_\_\_\_\_  
(state)

\_\_\_\_\_  
(zip code)

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Appendix A

Bond Agreement Forms

| Form No.                                 | Type           | Surety Type                  | Project Type |
|------------------------------------------|----------------|------------------------------|--------------|
| A-1                                      | Bond Agreement | Irrevocable Letter of Credit | Subdivision  |
| A-2                                      | Bond Agreement | Irrevocable Letter of Credit | Site Plan    |
| A-3                                      | Bond Agreement | Cash-in-Escrow               | Subdivision  |
| A-4                                      | Bond Agreement | Cash-in-Escrow               | Site Plan    |
| Performance/Surety Bond – See Appendix B |                |                              |              |

**Form A-1**  
**(Subdivisions)**

BOND AGREEMENT - IRREVOCABLE LETTER-OF-CREDIT

KNOW ALL MEN BY THESE PRESENTS, that the undersigned,  
(Applicant/Developer Name & Subdivision Name), (Mailing/Street Address, City,  
State, Zip Code), is held and firmly bound to the COUNTY COMMISSION OF  
JEFFERSON COUNTY, a West Virginia public corporation with control and  
supervisory functions over the Jefferson County Planning Commission, in the penal  
sum of

\$ \_\_\_\_\_ *(Dollar amount in figures)*  
\_\_\_\_\_ *(Dollar amount in words),*

for the completion of erosion and sediment control devices, storm water management  
measures, site grading & drainage, roadways, water and sewer systems, utility lines,  
paving, property corners, and all other site improvements and associated  
appurtenances, for the payment of which, well and truly to be made, it binds itself, it  
successors in title and assigns.

The condition of the above obligation is such that, whereas, the Jefferson County  
Planning Commission has approved and consented to the recordation in the Office of  
the County Clerk of Jefferson County, the Final Plat of the  
(Name of Subdivision), (Phase of Subdivision), (Lot Numbers) and residue, a  
subdivision of lands of (Name of Property Owner), the property is located (Route No.,  
Road Name, Mile Marker, etc.), which is to consist of (No. and type of lots), on (No.  
of Acres), more or less, with roadways and appurtenances thereto, for the purpose of  
selling such lots and appurtenances thereto to buyers thereof, and whereas, the site  
improvements required to be made on such subdivision, as required by the Jefferson  
County Subdivision Ordinance and the construction plans have not yet been made,  
which improvements are detailed in Planning Commission file no. (JCPC file no.).

NOW THEREFORE, if the developer of the (Applicant/Developer Name &  
Subdivision Name), shall well and truly complete the construction and installation of  
such site improvements by (bond expiration date), and pay all costs attendant

thereto, in compliance with the Jefferson County Subdivision Ordinance, then this bond shall be wholly null and void; otherwise, it shall remain in full force and effect.

A. The County Commission of Jefferson County, West Virginia, shall execute and deliver to the Maker hereof complete or partial satisfaction of this bond when the same is requested by the Maker hereof, according to the following provisions:

1. A complete satisfaction and exoneration shall be granted by the County Commission of Jefferson County upon presentation of evidence by the Maker that all terms and conditions of this bond have been satisfied.
2. Requests for partial satisfaction may be made from time to time; provided that such requests are for no less than the minimum amounts established by the Construction Bonding & Bond Surety Policy; partial satisfaction shall be granted upon presentation of evidence by the Maker that work equal in value to the amount of the satisfaction requested, has been completed and that all terms and conditions of the surety sought to be partially satisfied have been satisfied.
3. The County Commission of Jefferson County shall not consent to any satisfaction under provisions 1 and 2 above, until being first provided with a written statement from the County Engineer certifying that required improvements have been satisfactorily completed. Furthermore, the County Commission of Jefferson County shall not consent to any satisfaction under provisions 1 or 2 above, until the Maker has paid the County Commission of Jefferson County a fee, in accordance with the prevailing fee schedule, for each site inspection (after the erosion & sediment control devices have been inspected and approved) performed by the County Engineer at the request of the Maker.

B. The Bond is secured by an Irrevocable Letter-of-Credit (LOC #), dated the

\_\_\_\_\_ day of (Month, Year), from (Bank Name), (Mailing Address, City, State, Zip), which is on file in the offices of the Jefferson County Department of Planning & Zoning and the Engineering Department. By acceptance of the above irrevocable letter-of-credit as security, the following conditions shall apply:

1. The Irrevocable Letter-of-Credit in the amount of \$ \_\_\_\_\_ shall be attached to this document and made a part hereof; and
2. The irrevocable letter of credit shall be clearly written to provide the beneficiary with direct and immediate access to the loan funds upon submission by the beneficiary of a written and signed draft request; and
3. An irrevocable letter-of-credit shall remain in full force and effect as security for this Bond until such time as the bond is released.

**The letter of credit shall be renewed by (Name of Applicant/Developer Name & Subdivision Name), thirty (30) days prior to the expiration of the letter-of-credit, in order to provide uninterrupted security for this bond.**

**EXPIRATION DATES FOR ALL LETTERS-OF-CREDIT SHALL BE EITHER JANUARY 15<sup>TH</sup> OR JULY 15<sup>TH</sup> OF A GIVEN YEAR.**

4. Signed draft requests against the irrevocable letter-of-credit will be made by the Jefferson County Commission (beneficiary) for one or both of the two following reasons:
  - A. Failure on the part of (Applicant/Developer Name & Subdivision Name), to complete improvements according to the terms of this bond.
  - B. Failure on the part of (Applicant/Developer Name & Subdivision Name), to renew the irrevocable letter-of-credit thirty (30) days prior to the expiration date.

5. Drafts made against the irrevocable letter-of-credit by the Jefferson County Commission will be used exclusively for the purpose of completion of site improvements herein required.
  
6. Drafts made against the irrevocable letter-of-credit for reason 4A above, will be used by the Jefferson County Commission to complete or procure the completion of improvements herein above required.
  
7. Drafts made against the irrevocable letter-of-credit for reason 4B above, will be escrowed with a local bank or savings and loan association by the Jefferson County Commission and will be held, during the life of this bond, for the purpose of guaranteeing improvements herein above required.

Witness the following signatures and seals:

WITNESS:

*(Applicant/Developer Name)*  
*(Subdivision Name)*

\_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

WITNESS:

COUNTY COMMISSION OF JEFFERSON  
COUNTY,  
WEST VIRGINIA

\_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Form A-2  
(Site Plans)**

BOND AGREEMENT - IRREVOCABLE LETTER-OF-CREDIT

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, (Owner/Developer Name), (Mailing/Street Address, City, State, Zip Code), is held and firmly bound to the COUNTY COMMISSION OF JEFFERSON COUNTY, a West Virginia public corporation with control and supervisory functions over the Jefferson County Planning Commission, in the penal sum of

\$ \_\_\_\_\_ *(Dollar amount in figures)*

\_\_\_\_\_ *(Dollar amount in words),*

for the completion of erosion and sediment control devices, storm water management measures, site grading & drainage, roadways, water and sewer systems, utility lines, paving, property corners, and all other site improvements and associated appurtenances, for the payment of which, well and truly to be made, it binds itself, its successors in title and assigns.

The condition of the above obligation is such that, whereas, the Jefferson County Planning Commission has approved and consented to the issuance of Improvement Location Permit(s) for property located on (describe location of property, lot no., route no., street name, etc.), which is to consist of (generally describe the project), with associated site improvements and appurtenances thereto, on (# of acres), more or less, and whereas the improvements required to be made on such project, as required by the Jefferson County Improvement Location Permit Ordinance, have not yet been made, which improvements are detailed in Planning Commission File No. (JCPC file no.)

NOW THEREFORE, if the developer of the (Owner/Developer Name), shall well and truly complete the construction and installation of such site improvements by (bond expiration date), and pay all costs attendant thereto, in compliance with the Jefferson County Improvement Location Permit Ordinance and Subdivision Ordinance, then this bond shall be wholly null and void; otherwise, it shall remain in full force and effect.

A. The County Commission of Jefferson County, West Virginia, shall execute and deliver to the Maker hereof complete or partial satisfaction of this bond when the same is requested by the Maker hereof, according to the following provisions:

1. A complete satisfaction and exoneration shall be granted by the County Commission of Jefferson County upon presentation of evidence by the Maker that all terms and conditions of this bond have been satisfied.
2. Requests for partial satisfaction may be made from time to time; provided that such requests are for no less than the minimum amounts established by the Construction Bonding & Bond Surety Policy; partial satisfaction shall be granted upon presentation of evidence by the Maker that work equal in value to the amount of the satisfaction requested, has been completed and that all terms and conditions of the surety sought to be partially satisfied have been satisfied.
3. The County Commission of Jefferson County shall not consent to any satisfaction under provisions 1 and 2 above, until being first provided with a written statement from the County Engineer certifying that required improvements have been satisfactorily completed. Furthermore, the County Commission of Jefferson County shall not consent to any satisfaction under provisions 1 or 2 above, until the Maker has paid the County Commission of Jefferson County a fee, in accordance with the prevailing fee schedule, for each site inspection (after the erosion & sediment control devices have been inspected and approved) performed by the County Engineer at the request of the Maker.

B. The Bond is secured by an Irrevocable Letter-of-Credit (LOC #), dated the \_\_\_\_\_ day of (Month, Year), from (Bank Name), (Mailing Address, City, State, Zip), which is on file in the offices of the Jefferson County Department of

Planning & Zoning and the Engineering Department. By acceptance of the above irrevocable letter-of-credit as security, the following conditions shall apply:

1. The Irrevocable Letter-of-Credit in the amount of \$\_\_\_\_\_ shall be attached to this document and made a part hereof; and
2. The irrevocable letter of credit shall be clearly written to provide the beneficiary with direct and immediate access to the loan funds upon submission by the beneficiary of a written and signed draft request; and
3. An irrevocable letter-of-credit shall remain in full force and effect as security for this Bond until such time as the bond is released.

**The letter of credit shall be renewed by (Name of Applicant/Developer Name & Subdivision Name), thirty (30) days prior to the expiration of the letter-of-credit, in order to provide uninterrupted security for this bond.**

**EXPIRATION DATES FOR ALL LETTERS-OF-CREDIT SHALL BE EITHER JANUARY 15<sup>TH</sup> OR JULY 15<sup>TH</sup> OF A GIVEN YEAR.**

4. Signed draft requests against the irrevocable letter-of-credit will be made by the Jefferson County Commission (beneficiary) for one or both of the two following reasons:
  - A. Failure on the part of (Applicant/Developer Name & Subdivision Name), to complete improvements according to the terms of this bond.
  - B. Failure on the part of (Applicant/Developer Name & Subdivision Name), to renew the irrevocable letter-of-credit thirty (30) days prior to the expiration date.

5. Drafts made against the irrevocable letter-of-credit by the Jefferson County Commission will be used exclusively for the purpose of completion of site improvements herein required.
  
6. Drafts made against the irrevocable letter-of-credit for reason 4A above, will be used by the Jefferson County Commission to complete or procure the completion of improvements herein above required.
  
7. Drafts made against the irrevocable letter-of-credit for reason 4B above, will be escrowed with a local bank or savings and loan association by the Jefferson County Commission and will be held, during the life of this bond, for the purpose of guaranteeing improvements herein above required.

Witness the following signatures and seals:

WITNESS:

*(Applicant/Developer Name)*  
*( Project Name)*

\_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

WITNESS:

COUNTY COMMISSION OF JEFFERSON  
COUNTY,  
WEST VIRGINIA

\_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Form A-3**  
**(Subdivisions)**

BOND AGREEMENT – CASH-IN-ESCROW

KNOW ALL MEN BY THESE PRESENTS, that the undersigned,  
(Applicant/Developer Name & Subdivision Name), (Mailing/Street Address, City,  
State, Zip Code), is held and firmly bound to the COUNTY COMMISSION OF  
JEFFERSON COUNTY, a West Virginia public corporation with control and  
supervisory functions over the Jefferson County Planning Commission, in the penal  
sum of

\$ \_\_\_\_\_ *(Dollar amount in figures)*  
\_\_\_\_\_ *(Dollar amount in words),*

for the completion of erosion and sediment control devices, storm water management  
measures, site grading & drainage, roadways, water and sewer systems, utility lines,  
paving, property corners, and all other site improvements and associated  
appurtenances, for the payment of which, well and truly to be made, it binds itself, it  
successors in title and assigns.

The condition of the above obligation is such that, whereas, the Jefferson County  
Planning Commission has approved and consented to the recordation in the Office of  
the County Clerk of Jefferson County, the Final Plat of the  
(Name of Subdivision), (Phase of Subdivision), (Lot Numbers) and residue, a  
subdivision of lands of (Name of Property Owner), the property is located (Route No.,  
Road Name, Mile Marker, etc.), which is to consist of (No. and type of lots), on (No.  
of Acres), more or less, with roadways and appurtenances thereto, , for the purpose  
of selling such lots and appurtenances thereto to buyers thereof, and whereas, the  
site improvements required to be made on such subdivision, as required by the  
Jefferson County Subdivision Ordinance and the construction plans have not yet  
been made, which improvements are detailed in Planning Commission file no.  
(JCPC file no.).

NOW THEREFORE, if the developer of the (Applicant/Developer Name &  
Subdivision Name), shall well and truly complete the construction and installation of

such site improvements by (bond expiration date), and pay all costs attendant thereto, in compliance with the Jefferson County Subdivision Ordinance, then this bond shall be wholly null and void; otherwise, it shall remain in full force and effect.

A. The County Commission of Jefferson County, West Virginia, shall execute and deliver to the Maker hereof complete or partial satisfaction of this bond when the same is requested by the Maker hereof, according to the following provisions:

1. A complete satisfaction and exoneration shall be granted by the County Commission of Jefferson County upon presentation of evidence by the Maker that all terms and conditions of this bond have been satisfied.
2. Requests for partial satisfaction may be made from time to time; provided that such requests are for no less than the minimum amounts established by the Construction Bonding & Bond Surety Policy; partial satisfaction shall be granted upon presentation of evidence by the Maker that work equal in value to the amount of the satisfaction requested, has been completed and that all terms and conditions of the surety sought to be partially satisfied have been satisfied.
3. The County Commission of Jefferson County shall not consent to any satisfaction under provisions 1 and 2 above, until being first provided with a written statement from the County Engineer certifying that required improvements have been satisfactorily completed. Furthermore, the County Commission of Jefferson County shall not consent to any satisfaction under provisions 1 or 2 above, until the Maker has paid the County Commission of Jefferson County a fee, in accordance with the prevailing fee schedule, for each site inspection (after the erosion & sediment control devices have been inspected and approved) performed by the County Engineer at the request of the Maker.

---

B. The Bond is secured by Escrow Agreement ), dated the \_\_\_\_ day of (Month, Year), from (Bank Name), (Mailing Address, City, State, Zip), which is on file in the offices of the Jefferson County Department of Planning & Zoning and the Engineering Department. By acceptance of the above Escrow Agreement as security, the following conditions shall apply:

1. The Escrow Agreement shall be in the amount of \$\_\_\_\_\_ shall be attached to this construction bond agreement and made a part hereof; and
2. The Escrow Agreement shall be clearly written to provide the beneficiary with direct and immediate access to the loan funds upon submission by the beneficiary of a written and signed draft request; and
3. An Escrow Agreement shall remain in full force and effect as security for this Bond until such time as the bond is released.
4. Signed draft requests against the Escrow Agreement will be made by the Jefferson County Commission (beneficiary) for failure on the part of (Applicant/Developer Name & Subdivision Name), to complete the improvements according to the terms of this construction bond.
5. Drafts made against the Escrow Agreement by the Jefferson County Commission will be used exclusively for the purpose of completion of site improvements herein required.

Witness the following signatures and seals:

WITNESS:

*(Applicant/Developer Name)*

*(Subdivision Name)*

\_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

WITNESS:

COUNTY COMMISSION OF JEFFERSON  
COUNTY,  
WEST VIRGINIA

\_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Form A-4**  
**(Site Plans)**

BOND AGREEMENT – CASH-IN-ESCROW

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, (Owner/Developer Name), (Mailing/Street Address, City, State, Zip Code), is held and firmly bound to the COUNTY COMMISSION OF JEFFERSON COUNTY, a West Virginia public corporation with control and supervisory functions over the Jefferson County Planning Commission, in the penal sum of

\$ \_\_\_\_\_ *(Dollar amount in figures)*

\_\_\_\_\_ *(Dollar amount in words),*

for the completion of erosion and sediment control devices, storm water management measures, site grading & drainage, roadways, water and sewer systems, utility lines, paving, property corners, and all other site improvements and associated appurtenances, for the payment of which, well and truly to be made, it binds itself, its successors in title and assigns.

The condition of the above obligation is such that, whereas, the Jefferson County Planning Commission has approved and consented to the issuance of Improvement Location Permit(s) for property located on (describe location of property, lot no., route no., street name, etc.), which is to consist of (generally describe the project), with associated site improvements and appurtenances thereto, on (# of acres), more or less, and whereas the improvements required to be made on such project, as required by the Jefferson County Improvement Location Permit Ordinance, have not yet been made, which improvements are detailed in Planning Commission File No. (JCPC file no.)

NOW THEREFORE, if the developer of the (Owner/Developer Name), shall well and truly complete the construction and installation of such site improvements by (bond expiration date), and pay all costs attendant thereto, in compliance with the Jefferson County Improvement Location Permit Ordinance and Subdivision Ordinance, then this bond shall be wholly null and void; otherwise, it shall remain in full force and effect.

A. The County Commission of Jefferson County, West Virginia, shall execute and deliver to the Maker hereof complete or partial satisfaction of this bond when the same is requested by the Maker hereof, according to the following provisions:

1. A complete satisfaction and exoneration shall be granted by the County Commission of Jefferson County upon presentation of evidence by the Maker that all terms and conditions of this bond have been satisfied.
2. Requests for partial satisfaction may be made from time to time; provided that such requests are for no less than the minimum amounts established by the Construction Bonding & Bond Surety Policy; partial satisfaction shall be granted upon presentation of evidence by the Maker that work equal in value to the amount of the satisfaction requested, has been completed and that all terms and conditions of the surety sought to be partially satisfied have been satisfied.
3. The County Commission of Jefferson County shall not consent to any satisfaction under provisions 1 and 2 above, until being first provided with a written statement from the County Engineer certifying that required improvements have been satisfactorily completed. Furthermore, the County Commission of Jefferson County shall not consent to any satisfaction under provisions 1 or 2 above, until the Maker has paid the County Commission of Jefferson County a fee, in accordance with the prevailing fee schedule, for each site inspection (after the erosion & sediment control devices have been inspected and approved) performed by the County Engineer at the request of the Maker.

B. The construction bond is secured by an Escrow Agreement, dated the \_\_\_\_\_ day of (Month, Year), from (Bank Name), (Mailing Address, City, State, Zip), which is on file in the offices of the Jefferson County Department of Planning &

---

Zoning and the Engineering Department. By acceptance of the above escrow agreement as security, the following conditions shall apply:

1. The Escrow Agreement shall be in the amount of \$\_\_\_\_\_ and shall be attached to this construction bond agreement and made a part hereof; and
2. The Escrow Agreement shall be clearly written to provide the beneficiary with direct and immediate access to the funds upon submission by the beneficiary of a written and signed draft request; and
3. An Escrow Agreement shall remain in full force and effect as security for this Bond until such time as the bond is released.
4. Signed draft requests against the Escrow Agreement will be made by the Jefferson County Commission (beneficiary) for failure on the part of (Applicant/Developer Name & Site Plan Name), to complete improvements according to the terms of this construction bond.
5. Drafts made against the Escrow Agreement by the Jefferson County Commission will be used exclusively for the purpose of completion of site improvements herein required.

Witness the following signatures and seals:

WITNESS:

*(Applicant/Developer Name)*

*(Project Name)*

\_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

WITNESS:

COUNTY COMMISSION OF JEFFERSON  
COUNTY,  
WEST VIRGINIA

\_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## Appendix B

### Bond Surety Forms

| Form No. | Surety Type                  | Project Type               |
|----------|------------------------------|----------------------------|
| B-1      | Irrevocable Letter of Credit | Subdivision                |
| B-2      | Irrevocable Letter of Credit | Site Plan                  |
| B-3      | Cash-in-Escrow               | Subdivision                |
| B-4      | Cash-in-Escrow               | Site Plan                  |
| B-5      | Surety Bond                  | Subdivision<br>& Site Plan |

**Form B-1**  
**(Irrevocable Letter-of-Credit - Subdivision)**

Bank Name  
Address  
Telephone Number

Date

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

Re: Irrevocable Letter-of-Credit # \_\_\_\_\_ Amount \$ \_\_\_\_\_

Dear Jefferson County Commission:

By this letter, (Bank 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 \$ \_\_\_\_\_, 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 its expiration on (January 15<sup>th</sup> or July 15<sup>th</sup> 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; and
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 its expiration on (January 15<sup>th</sup> or July 15<sup>th</sup> of a given year).

Except as otherwise stated herein, this credit is subject to the Uniform Commercial Code and shall be construed under the laws of the State of West Virginia. Any draft upon this Letter-of-Credit shall be marked "Drawn under (Bank Name) Letter-of-Credit" for (Project Name/Borrower) dated (Date of Letter-of-Credit).

Very Truly Yours,  
(Bank Name)  
(Signature of Bank Officer)  
(Type Bank Officer's Name & Title)  
(Date)

**Form B-2**  
**(Irrevocable Letter-of-Credit – Site Plan)**

Bank Name  
Address  
Telephone Number

Date

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

Re: Irrevocable Letter-of-Credit # \_\_\_\_\_ Amount \$ \_\_\_\_\_

Dear Jefferson County Commission:

By this letter, (Bank 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 \$ \_\_\_\_\_, 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 its expiration on (January 15<sup>th</sup> or July 15<sup>th</sup> 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; and
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 its expiration on (January 15<sup>th</sup> or July 15<sup>th</sup> of a given year).

Except as otherwise stated herein, this credit is subject to the Uniform Commercial Code and shall be construed under the laws of the State of West Virginia. Any draft upon this Letter-of-Credit shall be marked "Drawn under (Bank Name) Letter-of-Credit" for (Project Name/Borrower) dated (Date of Letter-of-Credit).

Very Truly Yours,  
(Bank Name)  
(Signature of Bank Officer)  
(Type Bank Officer's Name & Title)  
(Date)

**Form B-3**  
**(Cash-in-Escrow – Subdivision)**

**ESCROW AGREEMENT**

THIS AGREEMENT dated this \_\_\_\_\_ day of *(Month, Year)*, by and between *(Owner/Developer Name)*, having their address at *(Mailing/Street Address)*, *(City)*, *(State)*, *(Zip Code)*, party of the first part, and *(Bank Name)*, *(Mailing/Street Address)*, *(City)*, *(State)*, *(Zip Code)*, as Escrow Agent for the County Commission of Jefferson County, West Virginia, 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 *(Dollar Amount in Words)*, *(Dollar Amount in Figures)*, as security for its undertaking to complete construction of the required erosion and sediment control devices, storm water management measures, site grading and drainage, paving, roadways, water and sewer systems, utility lines, paving, property corners, and all other site improvements and appurtenances to serve the *(Subdivision Name)*, *(Phase)*, as more particularly described in Planning Commission File *(JCPC file no)*. 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 Engineering Department. Construction must be completed by *(required completion date)*.

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.

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)*  
BY: \_\_\_\_\_

DATE: \_\_\_\_\_ PRINT NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_ *(Bank Name)*  
BY: \_\_\_\_\_

DATE: \_\_\_\_\_ PRINT NAME: \_\_\_\_\_  
**AFFIX BANK SEAL** TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

**Form B-4**  
**(Cash-in-Escrow – Site Plan)**

**ESCROW AGREEMENT**

THIS AGREEMENT dated this \_\_\_\_ day of (Month, Year), by and between (Owner/Developer Name), having their address at (Mailing/Street Address), (City), (State), (Zip Code), party of the first part, and (Bank Name), (Mailing/Street Address), (City), (State), (Zip Code), as Escrow Agent for the County Commission of Jefferson County, West Virginia, 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 (Dollar Amount in Words), (Dollar Amount in Figures), as security for its undertaking to complete construction of the required erosion and sediment control devices, storm water management measures, site grading & drainage, roadways, water and sewer systems, utility lines, paving, property corners, and all other site improvements and associated appurtenances to serve the (Site Plan Name), as more particularly described in Planning Commission File (JCPC file no). 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 Engineering Department. Construction must be completed by (required completion date).

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.

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

DATE: \_\_\_\_\_ PRINT NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_ (Bank Name)  
BY: \_\_\_\_\_

DATE: \_\_\_\_\_ PRINT NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

**AFFIX BANK SEAL** DATE: \_\_\_\_\_

---

**Jefferson County, West Virginia**

**Subdivision & Site Plan**

**PERFORMANCE BOND**

**INSTRUCTIONS**

1. The following forms shall be used when a performance/surety bond is used. There shall be no deviation from this form without written approval of Jefferson County Commission or the County Administrator.
2. The full legal name, business address, and telephone number of both the Principal(s) and Surety(ies) shall be inserted in the spaces designated "Principal" and "Surety" on the face of the form. The Bond shall be signed by the person authorized to act on behalf of the Principal and the Surety. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved, evidence of his authority shall be furnished. For a power-of-attorney from a surety company to execute bonds, a certified copy of such power-of-attorney shall be submitted.
3. Surety, Fidelity, and Insurance Companies executing the Bond must be licensed to transact business in West Virginia by the West Virginia Insurance Commissioner. The surety provider shall provide to the County Commission of Jefferson County, the Obligee, a "Certificate of Good Standing" from the West Virginia Offices of the Insurance Commissioner. If the Surety Company was not organized under the laws of West Virginia, the bond must be countersigned by a resident agent licensed in West Virginia. The Company must have an A.M. Best rating of "A", or better, with a Financial Size Category (FSC) of "VII", or higher.
4. The name of each person signing this Bond must be typed or legibly printed in the space provided.
5. The "DATE BOND EXECUTED", as shown on the face of the Bond, must be

---

the same as, or later than, the Bond Agreement that the Surety Bond secures.

6. The performance bond shall be submitted to:

Jefferson County Engineering Department  
P.O. Box 716  
116 East Washington Street  
Charles Town, WV 25414

Attention: Bonding Administrator

Phone: 304-728-3257

**(Remainder of Page Intentionally Left Blank)**



KNOW ALL MEN BY THESE PRESENTS, that, we, the Principal and Surety hereto recite and declare that:

1. We are held and firmly bound to the Obligee, the County Commission of Jefferson County, West Virginia (herein after called "County"), a political subdivision of the State of West Virginia, in the sum written above in lawful money of the United States of America, to be paid to the County, its successors or assigns, for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by this Bond.
2. The condition of this Bond is that if the Principal shall in every respect discharge its obligations under the project identified above and satisfactorily complete the required site improvements and appurtenances, as required by law, the approved plans (JCPC File No.) and/or permits, by (bond expiration date), then this Bond shall be void; otherwise, this Bond shall remain in full force until discharged in accordance with its terms, as determined by the County. This Bond shall only be terminated upon written release by the County Commission of Jefferson County, stating that the Principal/Developer has well and truly performed and fulfilled the obligations required under the approved subdivision or site plan and this Bond.
3. If Principal fails to complete its obligations, the County shall notify the Principal and Surety that they are in default. If such obligations are not then completed by the Principal and Surety within fifteen (15) days after notification by the County, the Surety shall pay the full penal sum amount of the Bond to the County within thirty (30) days of the initial notification referenced above. Payment by the Surety shall not be conditional on suit by the County. The County may extend the time period for completion of the Principal's and Surety's obligations; any time extension granted shall be in writing.
4. Surety expressly Waives any right to receive notice of, review, or approve any revisions to the approved project plans, and no such revision shall in any way affect the obligation of the Surety under this Bond.
5. In the event that any suit, action, or proceeding is brought by the County in order to enforce the provisions of this Bond, it is expressly agreed and understood that, regardless of when the breach of the underlying project obligations occurs, or the breach of this Bond occurs, the measure of damages recoverable shall be computed as the costs of completion or correction, or both, of the work required to be completed under the project, (1) at the time the work is actually completed and/or corrected to local and state approval and acceptance, or (2) at the time of final judgment of a court of competent jurisdiction; it is further expressly agreed and understood that the measure of damages shall include expenses attributable, but not limited to, administrative costs, litigation costs, attorney's fees, maintenance costs, deterioration, inflation, and any cost increases arising from delay occasioned by litigation, action, or proceedings necessary to enforce the provision of this

---

Bond.

6. Nothing in the Bond shall be construed as creating an obligation upon the County to pay for the completion or correction of the work guaranteed under the provisions of this Bond.
7. By signatures, hereto, the Principal and the Surety do hereby expressly Waive any objection that they, or either of them, might interpose in the authority of the County to require each and every provision of the foregoing Bond.

**(Remainder of This Page Intentionally Left Blank. Signature Page Follows)**

BOND NO. \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused this BOND to be executed under the Seal as of the day and year on the date set forth above.

**PRINCIPAL / CO-PRINCIPAL**

SIGNATURE: \_\_\_\_\_ (SEAL)

NAME: \_\_\_\_\_  
(Typed)

TITLE: \_\_\_\_\_  
(Typed)

SIGNATURE: \_\_\_\_\_ (SEAL)

NAME: \_\_\_\_\_  
(Typed)

TITLE: \_\_\_\_\_  
(Typed)

(Notary Certification Shall Be On The Same Page As The Signatures Being Notarized)

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, to wit:

I \_\_\_\_\_, a Notary Public in and for the State and County aforesaid, do hereby certify that \_\_\_\_\_ and \_\_\_\_\_, as \_\_\_\_\_ and \_\_\_\_\_, respectively of the \_\_\_\_\_, whose names are signed to the foregoing, this day personally appeared before me in my State and County aforesaid and acknowledged their signatures above (and the Corporate Seal as the genuine Seal of the said corporation).

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My Commission Expires: \_\_\_\_\_

BOND NO. \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused this BOND to be executed under the seal as of the day and year on the date set forth above.

**CORPORATE SURETY**

NAME: \_\_\_\_\_  
(Typed)

ADDRESS: \_\_\_\_\_  
(Mailing Address)

TELEPHONE NO.: \_\_\_\_\_  
(City) (State) (Zip Code)  
(Typed)

STATE OF INCORPORATION OR ORGANIZATION: \_\_\_\_\_

LIABILITY LIMIT: \_\_\_\_\_

**Attorney(s)-In-Fact**

SIGNATURES: 1. \_\_\_\_\_(SEAL) 2. \_\_\_\_\_(SEAL)

NAME: \_\_\_\_\_  
(Typed) (Typed)

TITLE: \_\_\_\_\_  
(Typed) (Typed)

(Notary Certification Shall Be On The Same Page As The Signatures Being Notarized)

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, to wit:

I \_\_\_\_\_, a Notary Public in and for the State and County aforesaid, do hereby certify that \_\_\_\_\_ and \_\_\_\_\_, as \_\_\_\_\_ and \_\_\_\_\_, respectively of the \_\_\_\_\_, whose names are signed to the foregoing, this day personally appeared before me in my State and County aforesaid and acknowledged their signatures above (and the Corporate Seal as the genuine Seal of the said corporation).

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My Commission Expires: \_\_\_\_\_

---

Appendix C

Tolling of Bonding Agreement

**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 \_\_\_\_\_, 20\_\_, by [*INSERT NAME OF PROPERTY OWNER*] ("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 \_\_\_\_\_ ( ) 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 [*INSERT NAME OF SUBDIVISION PLAT*] 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/cash-in-escrow/surety bond*], in the amount of \$ \_\_\_\_\_ (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 \_\_\_\_\_ (the "Bond Estimate"), and approved by the Jefferson County Department of Planning, Zoning & Engineering (the "Department") on \_\_\_\_\_; and

**WHEREAS**, due to [*INSERT REASONS FOR DELAY IN DEVELOPMENT*], 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 condition precedent (the "Modification Conditions"):

(i) The Declarant submits to the Department a \$10,000 Site Stability Bond.

(b) Upon satisfaction of the Modification Condition, 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 a \$10,000 Site Stability Bond with the County Commission and complying with 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.

(c) The maximum length of time for tolling the bond shall be four (4) years. At the time of executing this agreement, the Declarant shall execute a merger deed that merges the lots back into the parent tract. The merger deed shall be held by the Bonding Administrator for the Jefferson County Commission. If the Declarant fails to repost the New Infrastructure Bond and the Bond Surety within four (4) years of the date of this agreement, the County Commission shall have the right to record the merger deed and revoke all project approvals; and the \$10,000 Site Stability Bond shall be forfeited to the County Commission. The merger deed may not be recorded by the County Commission if the Declarant reposts the Construction Bond and Bond Surety prior to expiration of the four (4) year tolling period; in such case, the merger deed shall be returned by the County Commission to the Declarant. In the event of recordation of the merger deed, the parent tract and residue parcel shall retain all

future development rights under the land development ordinances in effect at the time the future application for land development is presented to the County.

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.

11. **Recordation.** This agreement shall be recorded in the Office of the Clerk of the Jefferson County Commission in both the name of the developer and the project name. It shall be the Declarant's responsibility to record the agreement and provide the Bonding Administrator with confirmation of such recordation in the form of the deed book and page number reference.

\_\_\_\_\_  
(Subdivision Name)

Jefferson County Planning Commission File No. \_\_\_\_\_

\_\_\_\_\_  
(Applicant/Developer Name)

By: \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

**(Notary Certification Shall Be On The Same Page As The Signatures Being Notarized)**

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, to wit:

I \_\_\_\_\_, a Notary Public in and for the State and County aforesaid, do hereby certify that \_\_\_\_\_ and \_\_\_\_\_, as \_\_\_\_\_ and \_\_\_\_\_, respectively of the \_\_\_\_\_, whose names are signed to the foregoing, this day personally appeared before me in my State and County aforesaid and acknowledged their signatures above (and the Corporate Seal as the genuine Seal of the said corporation).

Given under my hand this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My Commission Expires: \_\_\_\_\_

COUNTY COMMISSION OF JEFFERSON COUNTY, WEST VIRGINIA

By: \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Print Name: \_\_\_\_\_, President

**(Notary Certification Shall Be On The Same Page As The Signatures Being Notarized)**

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, to wit:

I \_\_\_\_\_, a Notary Public in and for the State and County aforesaid, do hereby certify that \_\_\_\_\_ and \_\_\_\_\_, as \_\_\_\_\_ and \_\_\_\_\_, respectively of the \_\_\_\_\_, whose names are signed to the foregoing, this day personally appeared before me in my State and County aforesaid and acknowledged their signatures above (and the Corporate Seal as the genuine Seal of the said corporation).

Given under my hand this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

My Commission Expires: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Jennifer S. Maghan  
Clerk, County Commission of Jefferson County, WV

---

## Re: bonding policy review

---

**From :** Rory Toth <[rory.toth@jeffersoncountycolorado.gov](mailto:rory.toth@jeffersoncountycolorado.gov)>

Wed, Aug 04, 2010 03:28 PM

**Subject :** Re: bonding policy review

**To :** [jennifer@jeffersoncountycolorado.gov](mailto:jennifer@jeffersoncountycolorado.gov)

Jennifer:

Here are some of my thoughts on the bonding policies and suggested subdivision/zoning ordinance regulation changes:

That the administration and enforcement of failure of the developer to construct bonded improvements be clearly addressed. I don't know what the current regs say but I think the regs should explain what will happen in the event a developer has not, is slow to, or goes bankrupt before fulfilling the obligations. What are the penalties? Could there be stiff fines? Could there be limits on the number of times a bond can be renewed? Could there be County denial of permits until such items are constructed?

For items such as telephone, cable, electric, gas, internet, does the current policy except these from requiring a surety? Can they be so we don't run into problems later after the road pavement is down and the roads and our lawns are ripped up to put them in. I'm not a lawyer but I wonder why these are not part of the bond.

Is there maintenance bond language in the bonding/subdivision ordinance? After roads, amenities, storm water systems, etc have been approved/accepted by the County what obligation(s) does the developer have to maintain these items later on down the road or if they are found to be done incorrectly?

If not already in place, stricter inspection procedures and documentation by the County, where the County must physically inspect the roads, utilities, infrastructure and community amenities and clearly report their findings as to whether they are done right before the County approves them and releases the bond. These items should be shown on an approved record plat or site plan. What is the current policy, if any, on testing to make sure roads and SWM ponds will hold up and SWM function properly now and in the future? I think that the Zoning Ordinance and/or subdivision ordinance/bonding policies require that these features be clearly shown on a site plan or record plat so there is no question what the community is getting.

Suggest that the County look at neighboring jurisdictions so they can see the language other counties use so they can make changes to their Zoning Ordinances, Subdivision Ordinances and Bonding Policies.

I hope this helps.

Rory

-- On Wed, 8/4/10, [jennifer@jeffersoncountycolorado.gov](mailto:jennifer@jeffersoncountycolorado.gov) <[jennifer@jeffersoncountycolorado.gov](mailto:jennifer@jeffersoncountycolorado.gov)> wrote:

> From: [rory.toth@jeffersoncountycolorado.gov](mailto:rory.toth@jeffersoncountycolorado.gov) <[rory.toth@jeffersoncountycolorado.gov](mailto:rory.toth@jeffersoncountycolorado.gov)>

> Subject: bonding policy review

> To: "Rory Toth" <[rory.toth@jeffersoncountycolorado.gov](mailto:rory.toth@jeffersoncountycolorado.gov)>

> Date: Wednesday, August 4, 2010, 8:28 AM

> Rory,

> If you have some time, can you write down recommendations

> for the Jefferson County Bonding Policy Review. It's

> tomorrow and Barb was going to handle it, but she's

> away. And I'm working on two other projects. I'll be

> able to present it tomorrow, but I don't know what

> recommendations I should be making.

>

> I'm looking for a copy of the new policy, but haven't found

> it yet. If I find it, I'll send it.

>

>

> Thanks,

> Jennifer

>



**EASTERN PANHANDLE  
HOME BUILDERS  
ASSOCIATION, INC.**

A MEMBER OF THE HOME BUILDERS ASSOCIATION OF WEST VIRGINIA

Affiliated With



---

430 Randolph Street, Suite C ■ Martinsburg, West Virginia 25401  
Phone: (304) 267-4710 ■ Fax: (304) 267-8901 ■ E-mail: [info@easternwvhomebuilders.org](mailto:info@easternwvhomebuilders.org) ■ [www.easternwvhomebuilders.org](http://www.easternwvhomebuilders.org)

August 5, 2010

Jefferson County Commission  
PO Box 338  
Charles Town, WV 25414

**Comments on the proposed Site Improvements Bonding and Bond  
Surety Policy**

The revisions to this policy benefit the County by strengthening the current policy and should reduce the possibility of defaults.

The changes also are positive for the construction industry since they are similar to many other jurisdictions in the area progressive policies that provide the needed flexibility for developers and builders to react to economic market conditions - especially today's through a number of mechanisms such as surety types, reductions, and tolling provisions.

Although members of both EPHBA and JCCEP were significant contributing stakeholders, these policy revisions are a win for the County due to strengthened requirements. The EPHBA supports these changes.

Sincerely,

David Hartley  
Executive Officer

***A Building Force.***

As part of the budget discussion on September 2, I would like to make the following recommendations:

**\$100,000 - \$150,000 to JCDA** for a partnership with Shepherd U and local banks to create jobs. Funds would be used to create a revolving fund that would help local businesses to expand or help local entrepreneurs form a start up company. JCDA has indicated their commitment to provide funds and banks should also contribute.

Distribution of this money to JCDA would occur after a detailed program and implementation strategy are presented to the County Commission by JCDA.

**\$20,000** local match for \$100,000 US 340 traffic management plan. The US 340 plan is a high priority of HEPMO and has received strong support from DOH staff and our state delegation.

**\$10,000 to So. Jefferson Library** –Other libraries in the county have municipal partners; South Jefferson Library does not so extra funding should be given to this important center of community life.

**\$250,000 for elevator for Mason Building.** Two county departments that receive a lot of public interest and interaction (planning department and GIS) are on the second floor and there is no elevator.

**\$50,000** for electronics recycling event (grant may lower or eliminate the need for this amount). This event, sponsored by WAC and held for the first time this year, was extremely popular and citizens have asked it be repeated.

Public Service Commission  
Of West Virginia

---

201 Brooks Street, P. O. Box 812  
Charleston, West Virginia 25323



Phone: (304) 340-0300  
FAX: (304) 340-0325

August 25, 2010

Tim Boyde, County Administrator  
Jefferson County Commission  
PO Box 250  
Charles Town, WV 25414

RE: Case No. 10-1122-W-PC  
Jefferson County Commission

Dear Mr. Boyde:

Pursuant to Rule 2 of the Commission's Rules of Practice and Procedure, we are enclosing a copy of the Staff memorandum in this matter. If you wish to respond to the enclosed Staff memorandum, you may do so in writing, within 10 days, unless directed otherwise, of this date.

Your failure to respond in writing to the utility's answer, Staff's recommendations, or other documents may result in a decision in your case based on your original filing and the other documents in the case file, without further hearing or notice.

If you have provided an email address you will automatically receive notifications as documents are filed in this proceeding. The email notifications allow recipients to view a document within an hour from the time the filing is processed. If you have not provided your email address, please send an email to [caseinfo@psc.state.wv.us](mailto:caseinfo@psc.state.wv.us) and state the case number in the email subject field.

**General reminder** - if you submit any additional documents - in addition to filing an original and 12 copies of all documents with the Commission, you are required to **mail** a copy to all other parties of record. Please note - the Public Service Commission does not accept electronic filings.

Sincerely,

A handwritten signature in cursive script that reads "Sandra Squire/ks".

Sandra Squire, Director  
Executive Secretary Division

SS/tb  
Enc. - Memo

INITIAL AND FINAL JOINT STAFF MEMORANDUM

TO: SANDRA SQUIRE  
Executive Secretary

DATE: August 25, 2010

FROM: RONALD E. ROBERTSON, JR.   
Staff Attorney

SUBJECT: CASE NO. 10-1122-W-PC  
JEFFERSON COUNTY COMMISSION

On July 21, 2010, the Jefferson County Commission (County Commission) filed a petition for Commission approval to use surcharge funds of Jefferson Utilities, Inc. (JUI) to help fund the study to drill test wells for the residents of Blue Ridge. It is Staff's understanding that the residents of Blue Ridge are the mountain water customers of JUI which includes: 1) Keyes Ferry Acres; 2) Westridge Hills; and 3) Harper Ferry Campsites.

The County Commission states that they have commissioned and funded a study to drill test wells for the effected population. The initial cost estimates for the project will exceed the level of funding currently earmarked for the study. They are also aware that residents currently paying a \$12.00 surcharge to JUI per household for water system improvements and would like these surcharge monies to be available to fund the test well drilling effort.

Attached is the internal memorandum of David Pauley, Utilities Analyst Supervisor, Utilities Division, and Jonathan Fowler, P.E., Engineer, Engineering Division, that details the facts of the County Commission's filing and represents the Technical Staff's initial and final recommendation. The Legal Division has also reviewed the County Commission's petition and concurs with the Technical Staff's initial and final recommendation.

On December 21, 2009, the Public Service Commission entered an Order in Case No. 08-0544-W-42A, Jefferson Utilities, Inc., that the Public Recommended Decision, as corrected, is adopted and final for ratemaking purposes. This Order included in JUI's tariff "A surcharge in the amount of \$12.00 is to be charged on a monthly basis to each customer to be used for the replacement of water lines and water meters." Drilling test wells for the residents of Blue Ridge is not an authorized use of surcharge funds.

**CASE NO. 10-1122-W-PC**

**August 25, 2010**

**Page 2**

Staff recommends that the Jefferson County Commission's petition to use surcharge funds of Jefferson Utilities, Inc. to help fund the study to drill test wells for the residents of Blue Ridge be denied and that the case be dismissed. Furthermore, Staff believes that the Jefferson County Commission is not the proper party to make this filing. If the petition is filed again, it should be filed by Jefferson Utilities, Inc. for consideration by the Commission.

This case is ready for disposition consistent with the Staff recommendation.

RER/s


Attachment

CWS CWS

G:\Home\RRROBERTSON\2010 MEMOS\101122.wpd

**PUBLIC SERVICE COMMISSION OF WEST VIRGINIA**  
**UTILITIES DIVISION AND ENGINEERING DIVISION**  
**INITIAL AND FINAL MEMORANDUM**

FROM: David Pauley, Utilities Analyst Supervisor <sup>DAP</sup>  
Utilities Division

Jonathan Fowler, P.E.  
Engineering Division 

DATE: August 5, 2010

SUBJECT: **Case No. 10-1122-W-PC**  
**Jefferson County Commission**

Petition for consent and approval to use surcharge funds to fund the study to drill test wells for the residents of Blue Ridge.

10 AUG - 5 AM 9:12  
WEST VIRGINIA  
PUBLIC SERVICE COMMISSION  
LEGAL DIVISION

On July 21, 2010, the Jefferson County Commission filed a letter requesting the Public Service Commission's support for an idea to improve the water service for the residents of Blue Ridge. Presumably, the residents of Blue Ridge are the "mountain customers" of Jefferson Utilities, Inc. (JUI) in the areas of Keys Ferry Acres, Westridge Hills, and Harpers Ferry Campsites.

The Jefferson County Commission states they have commissioned and funded a study to drill test wells for the effected population and that the costs are exceeding their initial estimates. They are also aware of surcharge monies being collected from JUI customers for improvements to water service and would like these funds to be made available to fund this test well drilling effort.

In Case No. 08-0544-W-42A, the \$12.00 per month surcharge was authorized in JUI's tariff for the purposes of replacing water lines and installing meters. Drilling wells was not an authorized use of the funds and is not a part of the work plans filed and approved in the previous tariff case.

Staff recommends the request to change the original authorized use of the surcharge funds be denied and this case be dismissed.

EEM

August 18, 2010

Lyn Widmyer, President  
P.O Box 250  
124 E. Washington Street  
Charles Town, WV 25414

Dear Commissioner Widmyer:

Please accept this letter as my two-weeks notice of resignation. My last day of work will be Thursday, September 2, 2010.

While I have been satisfied at the Jefferson County Development Authority and the Jefferson County Farmland Protection Board, I have decided to make this move to advance my career. I have enjoyed working with the JCDA and the JCFPB and appreciate the opportunities I have been given here.

I will do my best to hand off my current projects prior to September 2, 2010. Please let me know if you need my help in any other way.

Sincerely,



Kellie S. Boles

CC: JB  
SR  
SB  
JQ  
AP

August 23, 2010

Stephen Alemar  
Planning Commissioner  
77 Cavalier View Ct  
Shepherdstown, WV 25443  
(304) 876 1811  
[ksalemar@frontiernet.net](mailto:ksalemar@frontiernet.net)

John Maxey  
President, Jefferson County, WV Planning Commission  
116 East Washington Street, 2nd Floor  
P.O. Box 338  
Charles Town, West Virginia 25414

Dear Mr. Maxey:

It is with great reluctance that I must tender my resignation as a Jefferson County Planning Commissioner effective on August 31, 2010. Although I have found my tenure on the commission to be most rewarding, I have accepted a professional position that will prohibit me from attending the twice monthly meetings, and indeed may require my relocation outside of Jefferson County and our state.

It has been an honor to serve this county and community, a pleasure to work with you and my fellow volunteer Planning Commissioners, as well as Director Brockman and the Department of Planning esteemed professional staff.

I wish you great success, and am confident that the Planning Commission will be instrumental in preserving our heritage, representing our citizens, and enhancing Jefferson County as one of the best communities in our state and country.

Sincerely,



Stephen Alemar

Cc: Lyn Widmeyer, President Jefferson County Commission



ARNOLD & BAILEY

ATTORNEYS AT LAW

S. Andrew Arnold, Esq. PARTNER  
Gregory A. Bailey, Esq. PARTNER  
Christopher P. Stroech, Esq. ATTORNEY

117 E. German Street  
P.O. Box 69  
Shepherdstown, WV 25443

VOICE: 304 876 1575  
FAX: 304 876 9186  
info@acbattorneys.com

August 17, 2010

Jefferson County Commission  
P.O. Box 250  
Charles Town, WV 25414

Re: Estate of Enid W. Strider

Dear Sir or Madam:

Please find enclosed the Fiduciary Commissioner's Report for your review.

Thank you for your time and attention in this matter.

Sincerely,

Kristine Zirkle, for  
S. Andrew Arnold, Esq.,  
Fiduciary Commissioner

Enclosure.

Cc: Michael W. Strider  
Steven C. Strider  
Scott D. Strider  
Christine T. Strider

**RECEIVED**

AUG 23 2010

Jefferson County Commission

IN THE COUNTY COMMISSION OF JEFFERSON COUNTY, WEST VIRGINIA

IN RE: Enid W. Strider

Your undersigned Fiduciary Commissioner respectfully reports unto said Commission that he has reviewed the accounting and correspondence from Michael Strider, Executor for the Estate of Enid W. Strider. This commissioner recommends that Michael Strider be removed as the fiduciary and the Sheriff of Jefferson County be appointed per West Virginia Code § 44-4-14 (a). Michael Strider failed to provide any evidence of good cause to delay the closing of the Estate of Enid W. Strider.

Since Michael Strider failed to post the required bond for an evidentiary hearing in this matter, your commissioner based his finding of fact upon the accountings filed with the Clerk of Jefferson County. With the accountings, your commissioner has determined that Michael Strider failed to provide the required vouchers per West Virginia Code §44-3A-6.

Your commissioner recommends that Michael Strider be removed as the fiduciary, that the Sheriff be appointed, and that the Sheriff seek reimbursement to the estate for the claims presented by Michael Strider in his accounting statements.

Dated 17 August 2010.

Respectfully Yours,



S. Andrew Arnold  
Fiduciary Commissioner



ARNOLD & BAILEY  
ATTORNEYS AT LAW

S. Andrew Arnold, Esq. PARTNER  
Gregory A. Bailey, Esq. PARTNER  
Christopher P. Stroech, Esq. ATTORNEY

117 E. German Street  
P.O. Box 69  
Shepherdstown, WV 25443

VOICE: 304 876 1575  
FAX: 304 876 9186  
info@acbattorneys.com

August 17, 2010

Jefferson County Commission  
P.O. Box 250  
Charles Town, WV 25414

Re: Estate of Alfred Franklin Benner

Dear Sir or Madam:

Please find enclosed the Fiduciary Commissioner's Report for your review.

Thank you for your time and attention in this matter.

Sincerely,

Kristine Zirkle, for  
S. Andrew Arnold, Esq.,  
Fiduciary Commissioner

Enclosure.

**RECEIVED**

AUG 23 2010

Jefferson County Commission


IN THE COUNTY COMMISSION OF JEFFERSON COUNTY, WEST VIRGINIA

IN RE: **Alfred Franklin Benner**, Deceased

Your undersigned Fiduciary Commissioner respectfully reports unto said Commission that Lorna Benner Frye., Executor for the estate of **Alfred Franklin Benner**, Deceased, has laid before him a statement showing all funds received by said executor, a first and final accounting, and has produced proper vouchers covering all disbursements made by said executor during this period of accounting, and your Commissioner having examined the accounts of said executor and found them to be correct, and your Commissioner returns hereinafter a settlement of the account of said fiduciary.

Your Commissioner further reports and does certify that she has included the name of said executor in the list of fiduciaries whose accounts are before him for settlement which list was published for two successive weeks, October 16 and October 30, 2009 in the Spirit of Jefferson Advocate prior to the next regular term of this Commission.

I hereby certify that this report has remained in my office for ten (10) days since its completion for inspection and exceptions thereto and that no exceptions having been field thereto, it is hereby filed for the record.

  
\_\_\_\_\_  
S. Andrew Arnold, Esquire  
Fiduciary Commissioner

Dated: 8/17/10



ARNOLD & BAILEY

ATTORNEYS AT LAW

S. Andrew Arnold, Esq. PARTNER  
Gregory A. Bailey, Esq. PARTNER  
Christopher P. Stroeck, Esq. ATTORNEY

117 E. German Street  
P.O. Box 69  
Shepherdstown, WV 25443

VOICE: 304 876 1575  
FAX: 304 876 9186  
info@acbattorneys.com

August 18, 2010

Jefferson County Commission  
P.O. Box 250  
Charles Town, WV 25414

Re: Estate of Bessie M. Burns

Dear Sir or Madam:

Please find enclosed the Fiduciary Commissioner's Report for your review.

Thank you for your time and attention in this matter.

Sincerely,

Kristine Zirkle, for  
S. Andrew Arnold, Esq.,  
Fiduciary Commissioner

Enclosure.

**RECEIVED**

AUG 24 2010

Jefferson County Commission

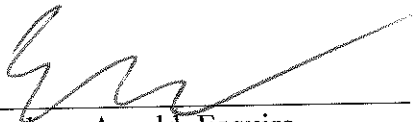
IN THE COUNTY COMMISSION OF JEFFERSON COUNTY, WEST VIRGINIA

IN RE: **Bessie M. Burns**, Deceased

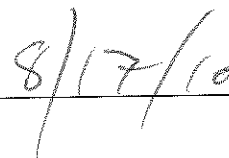
Your undersigned Fiduciary Commissioner respectfully reports unto said Commission that she has received a Waiver of Final Settlement from Caleb F. Burns, Jr., Administrator for the estate of **Bessie M. Burns**, deceased. Said Waiver of Final Settlement contains an affidavit by Administrator Burns stating that the time for filing claims has expired, that no known and unpaid claims exist against the estate and that all beneficiaries have each been advised of the share or shares to which each is entitled from the estate. Administrator Burns has also laid before your undersigned Fiduciary Commissioner notarized waivers executed by each respective beneficiary of the estate which reflect that said beneficiary has been advised of the share or shares to which he/she is entitled and affirming that he/she waives the final settlement. Your Commissioner returns hereinafter the Waiver of Final Settlement and attached Waivers of the respective beneficiaries.

Your Commissioner further reports and does certify that he has included the name of said administrator in the list of fiduciaries whose accounts are before him for settlement which list was published for two successive weeks, December 31, 2009 and January 7, 2010 in the Spirit of Jefferson Advocate prior to the next regular term of this Commission.

I hereby certify that this report has remained in my office for ten (10) days since its completion for inspection and exceptions thereto and that no exceptions having been filed thereto, it is hereby filed for the record.

  
\_\_\_\_\_  
S. Andrew Arnold, Esquire  
Fiduciary Commissioner

Dated: \_\_\_\_\_



## Nichelle Hosby

---

**From:** Don Burgess [burgessdr@aol.com]  
**Sent:** Thursday, August 19, 2010 7:36 PM  
**To:** dstellato@jeffersoncountywv.org; webmaster@jeffersoncountywv.org;  
laura@jeffersoncountywv.org; sandy@jeffersoncountywv.org; nhosby@jeffersoncountywv.org  
**Subject:** HF Potomac St project

## Your submission:

---

**Your Name:** Don Burgess

**Your Email Address:** [burgessdr@aol.com](mailto:burgessdr@aol.com)

**Subject:** HF Potomac St project

**Message:** Jeff Co Commisioners,

Thanks for voting to contribute to the HF Potomac St project. Lower Town is in serious need of revitalization, and this project is a good start.

Bolivar resident.

Don Burgess



State of West Virginia  
Joe Manchin III  
Governor

Office of the Governor  
State Capitol  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

Telephone: (304) 558-2000  
Toll Free: 1-888-438-2731  
FAX: (304) 342-7025  
www.wv.gov.org

August 17, 2010

Patti Hamilton  
West Virginia Association of Counties  
2211 Washington Street, East  
Charleston, WV 25311

TO: ALL COUNTY  
COMMISSIONERS  
F. Y. I.

Dear Ms. Hamilton:

In February, 2009, President Barack Obama signed in to law the American Recovery and Reinvestment Act of 2009 (ARRA). The ARRA has sent millions of dollars into West Virginia to aid at a time of great recession. These monies were to be spent as quickly as possible, with transparency and accountability.

The ARRA has created unprecedented transparency. For the benefit of every citizen all ARRA monies can be tracked using recovery.gov. The ARRA mandated this website as an exercise in governmental accountability. The data that drives this website comes from the reports required in the ARRA.

It has come to my attention that some counties may have trouble implementing the newer, more stringent requirements of the ARRA. If any county in West Virginia has an issue with the new requirements outlined in the ARRA, they are welcome to contact me and use this office as a technical resource.

West Virginia has been and will continue to be among the leaders in how States have used and accounted for the money granted in the ARRA. There have been significant investments in infrastructure, programs, and education that may not have otherwise been afforded to West Virginia during a downturn in revenue. These investments, in one way or another, are touching the lives of each and everyone in our State.

Sincerely,

Danny F. Scalise, II  
ARRA Coordinator

Dr. James G. Gibson  
201 Needwood Farm Lane  
Harpers Ferry, WV 25425

August 16, 2010

County Commission of Jefferson County  
P.O. Box 250  
Charles Town, WV 25414

Dear Honorable Commissioners,

I noticed that you have scheduled several public meetings on the proposed development of the Old Standard Quarry. I have been following the media coverage and Planning Commission discussions of this proposal. As such, I would like to state my support for the economic development of the Allstadts Hill area including the redevelopment of the Old Standard Quarry.

First, I want to point out that this area is noted in the Economic Development section of the 2004 Jefferson County Comprehensive Plan which credits the native iron ore and transportation network with the early prosperity of the County prior to the Civil War. The Comprehensive Plan goes on to credit the lime and stone quarrying operations and their supporting manufacturing industries with continuing the prosperity of the County after the Civil War.

I would like to congratulate and thank the West Virginia Legislature and West Virginia Secretary of Commerce, Kelley Goes, for their efforts in trying to revitalize this area of the County with economic development. As the Comprehensive Plan points out, this area was an economic engine that drove the County before and after the Civil War. Because of the actions of the Legislature and the West Virginia Development Office, the Old Standard Quarry Brownfield and the area around it will now have the opportunity to continue that tradition of economic prosperity.

The 2004 Comprehensive Plan, specifically Recommendation 3.25, calls for a study of the 340 corridor "in order to create an effective strategy for the long term management of the important mixed-use corridor". However, between the time that the 2004 Comprehensive Plan was adopted and the time that Old Standard Quarry, LLC requested a rezoning of the property for commercial development in 2007, the County conducted no such study, yet the County used the lack of the study as one of the reasons to reject the rezoning. Similarly, in 2009, the Planning Commission recommended denial of another rezoning request (Shenandoah Management) in the same area, again citing the need for the study recommended in 2004 as one of the reasons for denial. The Comprehensive Plan has been in place for over six years which includes the last three years when the County has not been inundated with development proposals due to the economic downturn. Accordingly, the County has had ample opportunity to complete both the Transportation Plan and the Route 340 Corridor Study which are cited as "anticipated addenda" in the Comprehensive Plan, as opposed to using the lack of these studies to recommend against development proposals.

It is interesting to note that during the same time period that the two rezoning requests were being rejected, the United States Customs and Border Protection agency began to develop and continues to develop a very large training and office complex in the same 340 corridor. In addition to the Customs facility, Harpers Ferry National Park has expanded and Hollywood Casino has added table games (with the support of the voters). All of these additions have had an impact on the 340 corridor, yet none of these have warranted emergency special meetings of the County or letters to the West Virginia Department of Transportation, Division of Highways (WVDOH).

The second point that needs to be made is with regard to the Planning Commissions' letter to Paul Mattox, Jr., Secretary of Transportation/Commissioner of Highways. This letter essentially asks that the WVDOH not approve a signal at the Route 340 and Route 27 (Millville Road) intersection. It goes on to state that a signal would cause "traffic flow problems" and "create a hazardous situation". Additionally, the letter appears to support a grade separated intersection instead of a signal at this intersection.

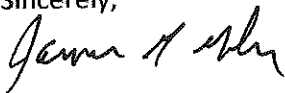
I have several observations with respect to this letter. Regarding the request that the WVDOH grant no approvals for a signal at this location, it appears that the WVDOH has the jurisdiction over those matters. In addition to the jurisdiction, the WVDOH has the personnel and resources to make those decisions. Regarding the statements in the letter that declare a signal would produce traffic flow problems and hazardous conditions, the County has two full time Professional Engineers on staff, yet there is no public record that reflects their participation in writing the letter. If they did participate in drafting the letter or conducted a study for the Commission, then they should be invited to the public meetings this week to comment on those findings. Finally, with regard to the request that the intersection should be a grade separated intersection with an under/over pass and cloverleaf type ramps, I find it hard to believe that the same groups who opposed a four lane bridge over the Shenandoah River for historic, scenic and cultural reasons would support a metropolitan type interchange at this intersection.

I am a lifelong resident of the area and I believe that a traffic signal with the proper turning lane design would be the best immediate solution. As a matter of fact, while my house is being renovated on Route 230, I have been residing on my property in this particular neighborhood for several months and have personally witnessed the need for a signal now as opposed to later. It is the last four (4) way intersection along this limited access four lane highway that doesn't have a signal. I would hope that the County Commission would support that signal now, as opposed to waiting until accidents, injuries and deaths happen to warrant a signal. Why does the inevitable signal at this intersection have to wait until deaths occur? The County continues to invite tourists and governmental agencies to visit and locate in our County. Accordingly, I think that we all could compromise a few minutes of inconvenience to wait for a 'light to change' in the name of safety.

In closing, I support the enhancement of the Route 340/Route 27 intersection to complement the development of the Allstadts Hill area and quarry. The United States Custom and Border Protection complex is a perfect example of good development that can be achieved in and around the 340 corridor. However, the development of the area around the Route 340/Route 27 intersection and the redevelopment of Old Standard Quarry makes even more sense, since it would pay commercial taxes that helps to pay for the infrastructure that tourists, commuters and residents use.

Please use these meetings as an opportunity to endorse the addition of a signal with appropriate turn lanes at this intersection. Once the meetings are concluded, I would greatly appreciate it if you would send a letter of that endorsement to the West Virginia Department of Transportation. Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "James G. Gibson". The signature is written in a cursive style with a large initial "J" and "G".

James G. Gibson

**JEFFERSON COUNTY, WEST VIRGINIA**

**Departments of Planning & Zoning**

116 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)

---

August 6, 2010

Paul Mattox, Jr., P.E., P.L.S.  
Secretary of Transportation/Commissioner of Highways  
Division of Highways  
Kanawha Boulevard East  
Building 5  
Charleston, West Virginia 25305

RE: Old Standard Quarry and Traffic Improvements

Mr. Mattox:

This letter is to request the assistance of your office in making certain that no approvals are given or permits issued for a signalized intersection at U.S. Route 340 and CR 27 (Millville Road) in Jefferson County, and that a grade separated intersection be required instead.

The West Virginia Department of Commerce has recently approved a Final Plat for a large commercial project which will use this intersection for access to U.S. 340. The 407 acre site is being promoted by a Department of Commerce real estate listing for development as "one 60,000sf office building, multiple R&D/Data Center/Office facilities 2,320,000sf, one 250 room resort hotel/convention center, one 200 dedicated hotel." With the potential to accommodate over 450 hotel rooms and nearly 2.4 million square feet of building space, the traffic impact to the area is readily apparent.

The developers of this project, Old Standard, LLC, have applied for a signal at the intersection referencing a Traffic Impact Study completed in 2006-2007 by Greenhorne and O'Mara Consulting Engineers. The Planning Commission believes that this study is dated and may not be accurate. A review of the study was conducted by Smart Mobility, Inc. in June 2007 under contract with the National Parks Conservation Association. The review, a copy of which is forwarded with this letter, found serious flaws in the original report.

The opinions expressed in the Smart Mobility study are supported by the Long Range Transportation Plan recently published by the Hagerstown Eastern Panhandle Metropolitan Planning Organization. HEPMPO forecasts that "US 340, between Charles Town and Harpers Ferry, in Jefferson County also account for a significant portion of forecast LOS E and F lane miles" (HEPMPO LRTP Pages 86). This section of U.S. 340 will be operating at a "deficient level" even without the additional car trips

projected to be generated by the Old Standard Development. The HEPMPO study further recommends that intersections on this section of Route 340 be grade separated.

The Jefferson County Planning Commission is currently undertaking a study of the U.S. Route 340 Economic Development Corridor. The planning project will bring local business interests, municipalities, and citizens as well as local, state and federal agencies with an interest in this critical corridor together in an effort to make certain that we can bring economic development to the area while maintaining traffic flows and protecting resources. There is a significant concern that the addition of a signal at the Route 340 and CR 27 (Millville Road) intersection will slow traffic down to the point that it will impact residential real estate values due to slower commute times. A signal at this intersection would also restrict tourist traffic to Hollywood Casino, Harpers Ferry National Park, and the many other recreational, historic and environmental tourism businesses located in Jefferson County.

We are particularly concerned that WVDOH has considered signalization requests individually, rather than collectively and cumulatively for this highway segment. In this case the logical highway segment that suggests itself is the Route 340 corridor from Blair Road on the west to Shenandoah Street on the east (see attached map). Looking at the intersections within this highway segment that are signalized, or are proposed for signalization, it is clear that a failure to consider the cumulative impacts of these decisions likely will result in degraded levels of service and traffic congestion with associated adverse impacts of air pollution from idling vehicles, as well as increased noise. It is our position that before WVDOH proceeds on any signalization request within this highway segment, it needs to consider alternatives to signalization such as grade separation and closing of cross-over interchanges to improve traffic flows and public safety.

The intersection in question, U.S. Route 340 and CR 27 (Millville Road), is highly impacted by the topography in which it is situated. Traveling from the east to the west on U.S. Route 340, drivers encounter a curve in the road and then a steep descent to the intersection. In light of the curve and descent, it would be very dangerous to install a signalized light at U.S. Route 340 and Millville Road. Drivers of large trucks would not be able to see the light until a short distance before the intersection and would have little time to attempt to slow and proceed to a stop all while descending down a steep grade. In addition to the traffic flow problems, a signal at this intersection would create a hazardous situation.

The Planning Commission is requesting that the West Virginia Department of Transportation Division of Highways review alternatives to a new signal at this intersection. Even if an at-grade lighted intersection were warranted by traffic counts, the topographical concerns outlined above make a signalized intersection at this location awkward and hazardous. By using the topography as an advantage and not a liability, a well designed over/under pass would overcome many of the obstacles at this location. Using this alternative, CR27 (Millville/Bakerton Road) should travel under U.S. 340 with on/off ramps. Such an intersection could be designed and engineered to complement the cultural and historic resources in the vicinity, would greatly improve the transportation corridor, enhance safety, and address environmental concerns.

The Planning Commission would greatly appreciate your review of the two transportation studies to obtain a fair, accurate and balanced account of the traffic impacts at this highly traveled area. Furthermore the Planning Commission would appreciate consideration of a more efficient and safer alternative to the at-grade signalized intersection.

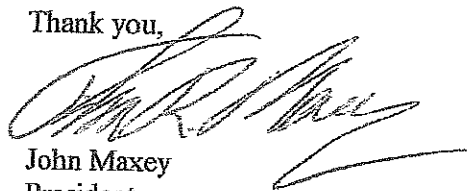
The Jefferson County Planning Commission looks forward to working with the developer of the Old Standard project, the Division of Highways, and all stakeholders, to make certain that the project is successful and benefits the citizens of Jefferson County and the State of West Virginia.

To facilitate this effort, we are requesting a meeting with members of the Planning Commission later this month. Our nine board members are all citizen volunteers, and it is difficult to take the time off from work for the long drive to Charleston – so a conference call would be preferred. However, we are committed to following through on this serious and important issue, so if your preference is to meet at your office we are willing to make the trip.

Your assistance is appreciated and we look forward to hearing from you.

If you have any questions, please feel free to contact our office.

Thank you,



John Maxey  
President

Jefferson County Planning Commission

cc: Senator John D. Unger II  
16<sup>th</sup> District  
Marvin G. Murphy, P.E, P.L.S  
State Highway Engineer  
Jefferson County Commission

# Ethics Reporter

## Since the Last Reporter

Since the June edition of the **REPORTER**, the West Virginia Ethics Commission published four Advisory Opinions interpreting provisions of the West Virginia Governmental Ethics Act and the laws governing Boards of Education.

At its July 8 meeting, the West Virginia Ethics Commission approved opinions relating to the permissibility of a member of a board of education participating in matters affecting his wife's employment with the board, the permissibility of a member of a board of education's restaurant having a business relationship with various elements within the school system, the permissibility of a member of a board of

education serving, with compensation, as a football official and, the permissibility of a member of a board of education also serving on a county board of health.

### ADVISORY OPINION REPORT

**Advisory Opinion 2010-13** concerned the permissibility of a member of a county board of education participating in matters affecting his wife's employment with the board.

In this case, the board member was elected in 2008, long after his wife first came into the employ of the board as an auditor. Auditors are classified as service employees and the conditions of their employment fall under the jurisdiction of the board of education.

In its review of the request, the Ethics Commission examined the provisions of 6B-2-5(d)(1) prohibiting an

elected official from having an interest in a contract over which they have authority or control, as well as the language found in Chapter 61-10-15 prohibiting a member of a board of education from having either direct or indirect pecuniary interests in a matter over which they exert voice, influence or control. The Commission also considered 6B-2-5(b) which prohibits the use of public office for private gain and 6B-2-5(j) concerning when public officials may and may not vote on matters affecting spousal employment.

In its opinion, the Ethics Commission ruled that the Chapter 61-10-15 standards specifically permit a board of education member's spouse to be employed by the board in a service capacity. Consequently, the board member would not be in violation as long as proper steps were taken to not become involved in

specific issues associated with his wife's employment, including her specific salary and benefits. The Commission stated that the board member could participate in budget and funding decisions that affected employees as a class but that any specific matters pertaining to funding for his wife's position would need to be publicly disclosed and he would have to physically recuse himself from the decision-making and voting processes associated with that specific matter.

**Advisory Opinion 2010-14** concerned the permissibility of a member of a board of education's restaurant doing business with the county school system in a variety of situations.

The board member was recently elected. His restaurant business had a variety of relationships with the county school system prior to his election involving purchases of food. In addition, the board member's restaurant also conducts

promotional activities that involve a school receiving a certain percentage of the sales made during specific times as a way for the restaurant to support school activities in the community.

In order to preserve the beneficial relationship the board member believes his restaurant has with the school system, he has proposed a number of disclosures and other efforts at transparency for the consideration of the Commission.

The Ethics Commission examined the language of 6B-2-5(d)(1) which prohibits an elected official from having an interest in a contract over which they have control or authority and the mechanisms available for addressing such potential conflicts, as well as the language of Chapter 61-10-15 prohibiting members of county boards of education from having either direct or indirect pecuniary interests in matters over which they exercise voice, influence or control.

The Ethics Commission ruled that as a general

proposition, the board member and his restaurant may not conduct business or engage in business relationships of any type with school organizations and groups that fall under the direct authority of the board of education. The Commission cited opinions of the West Virginia Supreme Court of Appeals in this connection.

However, the Ethics Commission did state that the board member's restaurants could conduct business with school booster clubs as long as school employees are not involved in the relationships and all matters involving the board member, including this Advisory Opinion, must be disclosed.

Finally, the Commission ruled that the board member's restaurant could have a business relationship with the county teacher credit union without restriction.

**Advisory Opinion 2010-15** addressed the permissibility of a member of a board of education serving, with

**July, 2010  
Page Three**

compensation, as a football official within the county school system.

The board member is newly elected and is a certified sports official who has experience in officiating games within the county school system. The compensation received for these officiating duties normally totals less than \$1,000 annually.

While the board of education has ceded its oversight of athletic events to a statewide organization, individual schools select and agree on officials for matches held within the county. Officials are paid by the home team.

The Ethics Commission again examined the language of 6B-2-5(d)(1) which prohibits an elected official from having an interest in a contract over which they have control or authority and the mechanisms available for addressing such potential conflicts, as well as the language of Chapter 61-10-15 prohibiting members of county boards of

education from having either direct or indirect pecuniary interests in matters over which they exercise voice, influence or control.

In its opinion, the Commission ruled that the proposed arrangement whereby a member of the board of education served as an athletic official with compensation for school athletic events would violate the 61-10-15 pecuniary interest prohibitions. However, the Commission further indicated that the board member could serve as an official without compensation, except for the nominal sum of \$1 in order to qualify for insurance protections offered to athletic officials.

**School Board  
Advisory Opinion**

**2010-01** concerned the permissibility of a newly elected member of a board of education also serving on a county board of health.

The new board of education member has served, without compensation, as a member of the county board of health for the seven years prior to

being elected. However, under the law governing the operations of county boards of health, 16-2-9(d), board of health members may receive compensation.

The Ethics Commission reviewed the provisions of 18-5-1a of the laws governing boards of education in this instance. Under these provisions, a board member may serve on another board in the public realm as long as no compensation is received and the board is not primarily related to public schools.

In its opinion, the Ethics Commission ruled that the board of education member may not permissibly serve on a county board of health, even without compensation, because the statute governing boards of health permits compensation to be paid to members. The Commission reasoned that the Legislature's clear language permitted compensation and that, in this instance, a board of education member could not mitigate the statute by simply refusing compensation.

July, 2010  
Page Four

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

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

**BOARDS AND  
COMMISSIONS**

NONE PUBLISHED

**BOARDS OF  
EDUCATION**

**2010-13:**

Permissibility of a  
member of a board of  
education participating  
in matters affecting his  
wife's employment with  
the board

**2010-14:**

Permissibility of a  
member of a board of  
education's restaurant  
conducting business  
with the school system  
in a variety of situations

**2010-15:**

Permissibility of a  
member of a board of  
education serving, with  
compensation, as a

football official within the  
school system

**School Board  
Advisory Opinion  
2010-01**

Permissibility of a newly  
elected member of a  
board of education also  
serving on a county  
board of health

**COUNTY  
GOVERNMENT**

NONE PUBLISHED

**LEGISLATURE**

NONE PUBLISHED

**MUNICIPAL  
GOVERNMENT**

NONE PUBLISHED

**STATE GOVERNMENT**

NONE PUBLISHED

**TRADE  
ASSOCIATIONS AND  
LOBBYISTS**

NONE PUBLISHED

**WEST VIRGINIA ETHICS  
REPORTER** is published by  
West Virginia Ethics Reporter,  
Inc., P.O. Box 1403,  
Charleston, WV 25325 and is  
in no way affiliated with the  
West Virginia Ethics  
Commission. For  
subscription information or  
subscriber services, call 1-  
304-545-8227. Copyright 2010  
by West Virginia Ethics  
Reporter, Inc. All rights  
reserved. No part of this  
newsletter may be reproduced  
in any form, by microfilm,  
xerography, or otherwise, or  
incorporated into any  
information-retrieval system,  
without written permission of  
West Virginia Ethics Reporter,  
Inc.

**WEST VIRGINIA ETHICS COMMISSION  
2010 ADVISORY OPINIONS  
INDEXED BY TOPICAL SECTOR  
(Includes opinions published through June 3, 2010)**

---

**BOARDS AND COMMISSIONS**

**2009-14:**

Permissibility of a board member of a multi-county agency participating in a decision on a contractual matter affecting the agency where the board member is employed

**2010-06:**

Permissibility of an attorney serving on the board of a public library when the attorney's firm does business with the library and with the county and city governments that also fund and govern the library

**2010-10:**

Permissibility of members of a county solid waste authority and their families bidding on the purchase of a building owned by the authority (See also COUNTY GOVERNMENT)

**BOARDS OF EDUCATION**

**2010-03:**

Permissibility of a candidate for a board of education having a spouse employed by the board in the event they are elected.

**2010-04:**

Permissibility of a board of education contracting with a non-profit charitable organization when a member of the board of education serves on the group's board of directors.

**2010-13:**

Permissibility of a member of a board of education voting on matters affecting his wife's employment with the board

**2010-14:**

Permissibility of a member of a board of education's restaurant selling food within the structure of the county school system in a variety of instances

**2010-15:**

Permissibility of a member of a board of education serving as a football official with compensation, within the county school system

**School Board Advisory Opinion 2010-01:**

Permissibility of a newly elected member of a board of education serving on a county board of health

**COUNTY GOVERNMENT**

**2010-10:**

Permissibility of members of a county solid waste authority and their families bidding on the purchase of a building owned by the authority (See also BOARDS AND COMMISSIONS)

**2010-09**

Applicability of the Ethics Act to a County Rescue Service

**LEGISLATURE**

**2010-11**

Permissibility of a legislator accepting a prize won at a public reception

**MUNICIPAL GOVERNMENT**

**2010-02:**

Permissibility of city employees being offered and accepting discounted wireless telephone service from the vendor supplying the city with these services

**2010-08:**

Permissibility of a city council voting to modify the city charter to extend council members' terms in office

**STATE GOVERNMENT**

**2009-12:**

Permissibility of a statewide elected official with payroll responsibilities authorizing employee deductions for the purpose of purchasing goods from a company with a state contract

**2009-13:**

Permissibility of an attorney for a state agency representing themselves before their employer on a matter affecting their personal interests

**2010-01:**

Permissibility of a statewide elected official soliciting funds to underwrite the costs of a national conference of similar state elected officials

**2010-05:**

Permissibility of a state institution of higher education spending more than \$25 to recognize employee achievements provided that annual total expenditures do not exceed \$25 multiplied by the total number of employees at the institution

Page Three

**TRADE ASSOCIATIONS AND LOBBYISTS**

**2010-07:**

Permissibility of a registered lobbyist not registering to lobby on behalf of a non-profit organization if services are provided without compensation

Issued On July 8, 2010 By The

WEST VIRGINIA ETHICS COMMISSION

2010 JUL 16 AM 9:57

SECRETARY OF STATE

OPINION SOUGHT

A **Member of a County Board of Education** (BOE) whose wife is employed by the BOE as one of four auditors in the Finance Department located in the Central Office asks for guidance as to when he may participate in the discussions and/or vote on matters affecting his wife's employment, including the BOE's annual budget.

FACTS RELIED UPON BY THE COMMISSION

The Requester was elected to the BOE in 2008. His wife had been, and continues to be, employed by the BOE as one of four auditors in the Finance Department located in the Central Office. Members of the BOE are expected to vote on, among other items, the annual budget which may include, from time to time, a raise for the BOE's auditors.

Auditors are classified as service, not professional, employees. Matters may come before the BOE which may affect the auditors' employment contracts or the terms of their employment.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(d)(1) provides in part that no elected official may be a party to or have an interest in a contract which such official or employee may have direct authority to enter into, or over which he or she may have control: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body....

W. Va. Code § 61-10-15(a) states, in pertinent part:

It is unlawful for ... any member of any ... county or district board or any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service ... if, as a member, ... he or she may have any voice, influence or control: *Provided*, That nothing in this section prevents or makes unlawful the employment of the spouse of a member ... as a principal or teacher or **auxiliary or service employee in the public schools of any county**....  
(emphasis supplied)

W. Va. Code § 6B-2-5(b) prohibits the knowing and intentional use of office for private gain.

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

- (1) Public officials, excluding members of the Legislature who are

governed by subsection (i) of this section, may not vote on a matter:

\*\*\*

(C) A personnel matter involving the public official's spouse or relative;

\*\*\*

(II) A public official may vote:

(A) If the public official, his or her spouse, immediate family members or relatives or business with which they are associated are affected as a member of, and to no greater extent than any other member of a profession, occupation, class of persons or class of businesses. A class shall consist of not fewer than five similarly situated persons or businesses...

\*\*\*

(3) For a public official's recusal to be effective, it is necessary to excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests, and recusing him or herself from voting on the issue.

### **ADVISORY OPINION**

The Ethics Commission notes that before it can answer the question presented, it must resolve the question of the Requester's wife's continued employment. Although the Ethics Act expressly prohibits certain public officials, including BOE members, from having an interest in a contract over which they exercise control, it expressly sanctions the employment of spouses. Yet, as a county elected official, the Requester is subject to the stricter provisions of W. Va. Code § 61-10-15, a criminal misdemeanor statute.

Thus, the continued employment of the Requester's wife is governed by W. Va. Code § 61-10-15. In Advisory Opinion 2010-03, a candidate for a county BOE asked the Commission whether W. Va. Code § 61-10-15 allows the continued employment of her spouse, employed by the BOE as a Chief Mechanic. The Commission analyzed W. Va. Code § 61-10-15 which authorizes the employment of BOE members spouses in the following positions: principals or teachers, or auxiliary or service employees in the public schools of any county. The Commission concluded that a Chief Mechanic is a service position, pursuant to W. Va. Code § 18-1-1 (a service position is a non-teaching employee who serves the school or schools as a whole). According to the job description provided, an auditor is one who, inter alia, "performs annual school audits and works with each school". Thus, the Commission concludes that an auditor is a service position.

Next, the Commission turns to the Ethics Act's prohibition against use of public position for private gain. Clearly, the Requester needs to exercise caution in his public position in order to avoid even the appearance of impropriety. While the Requester may **generally** advocate for better working conditions for all BOE employees—including increased compensation and benefits—he may not **specifically** do so on behalf of his wife and/or on behalf of the auditors as a group. He may not lobby his colleagues in an attempt to influence their votes on matters affecting the terms and conditions of his wife's employment and/or the terms and conditions of the auditors' employment. The Requester may not use his position as a member of the BOE to obtain, increase or promote the interests of his spouse as a BOE employee.

Finally, the Ethics Act sets forth specific rules regarding when elected public officials may vote. The overriding purpose of the rules on voting is to ensure that a public official does not vote on a matter in which he or she has a financial interest.

The Legislative findings in the Ethics Act state:

...

(c) The Legislature finds that the state government and its many public bodies and local governments have many part-time public officials and public employees serving in elected and appointed capacities; and that certain conflicts of interest are inherent in part-time service and do not, in every instance, disqualify a public official or public employee from the responsibility of voting or deciding a matter; however, when such conflict becomes personal to a particular public official or public employee, such person should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter.

...

W.Va. Code § 6B-1-2(c)

Generally, a public official may **not** vote on a personnel matter involving her or his spouse. The voting provision further provides, however, that a public official **may** vote on matters which involve the creation of laws, rules, regulations or policies which affect the public official's or family members' financial interests **as a member of a class of five or more**. There is no conflict of interest if the public official or family member is not pecuniarily affected to a greater extent than any other member of the profession, occupation, group or class.

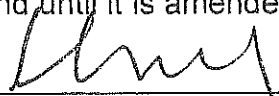
Thus, the Requester should not vote on any matter that may specifically and uniquely affect his spouse to a greater extent than other comparable school board employees. Specifically, the Requester must recuse himself from voting on the renewal, modification or enforcement of his spouse's employment contract.

Finally, as it relates to voting on the overall budget, the Commission looks to its ruling in AO 2006-06 where it discussed potential conflicts of members of the Legislature voting on funding for organizations with which they are associated:

The Commission elects to take this opportunity to provide guidance on voting in these circumstances to public officials who are either elected or appointed members of a governing body and are also employed by a nonprofit which may receive funding from the governing body on which they serve. The Commission finds that if the governing body is considering a budget for which there is a line item appropriation to a nonprofit corporation by which an elected or appointed member of a governing body is employed, then the elected or appointed member should not be precluded from voting on the entire budget. However, before casting a vote the elected or appointed member should first disclose his or her employment by the nonprofit organization in order that the general public is aware of the interest. If the governing body is specifically addressing whether an appropriation should be included for the nonprofit corporation, then the public official should physically remove him or herself from the room during that portion of the discussion. The Commission finds that disclosure of the employment by a nonprofit organization promotes transparency in government to which the public is entitled while at the same time allowing the public official to fulfill his or her responsibility of voting on whether a budget should be accepted or rejected.

Although the foregoing comments relate specifically to members of non-profit organizations, the Commission finds the guidance equally applicable to the situation presented here. Thus, the Commission hereby finds that the Requester may continue to participate in the discussion and vote on the overall budget. In the event that there is a line item in the budget concerning his spouse's compensation and/or the compensation of the auditors **and** if the BOE specifically addresses any such line item, then he must recuse himself from participating in the discussion and decision-making process by fully disclosing his disqualifying interest, physically removing himself from the room during the period, and recusing himself from voting on the issue. W. Va. Code § 6B-2-5(j)(3). See also AO 2009-08. Once the BOE concludes its discussion and deliberation (including voting, if required) on any such line item, then the Requester may return to the room and participate in the discussion, deliberation and vote on the budget in its entirety.

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.

  
\_\_\_\_\_  
Jonathan E. Turak, Acting Chairperson

**BOARDS OF EDUCATION**

**ADVISORY OPINION NO. 2010-14**

**Issued On July 8, 2010 By The**

**WEST VIRGINIA ETHICS COMMISSION**

2010 JUL 16 AM 9:57

SECRETARY OF STATE

**OPINION SOUGHT**

An **Elected Member of a Board of Education** who is the owner of a fast-food restaurant asks whether:

- (1) The Board of Education may purchase meals from his restaurant for special events such as math field day;
- (2) Sports teams from the schools may purchase meals from his restaurant for team travel;
- (3) Schools in the county school system may hold spirit nights at his restaurant if a percentage of the proceeds from the sales go to the schools;
- (4) His restaurant may sell sandwiches and related food items to booster groups for resale through concession stands; and/or,
- (5) The teachers' credit union may purchase meals from his restaurant.

**FACTS RELIED UPON BY THE COMMISSION**

The Requester is a recently elected County Board of Education Member. He owns a fast food restaurant. Historically, this restaurant has done business with the County Board of Education (BOE), school athletic teams, schools, booster clubs in the school system and the teachers' credit union.

In regard to the BOE office, at times, the office has purchased meals for special events, such as math field day. In regard to athletic teams, at times, when they are travelling, the schools will use public funds to purchase meals from his restaurants for the players and staff.

His restaurant also has team spirit nights. For these events, his restaurant has an agreement that if a school holds a spirit event at his restaurant, then the school receives a percentage of the sales from the event. He states that the group may be a school team or club, or the school itself. At the end of the night, his restaurant makes a donation which ranges from 10 to 15% of the proceeds. He states that if the schools or school groups are unable to have these events, then it may leave them short of funds.

Booster clubs also conduct business with his restaurant. For example, for sporting events, they may purchase food items from his restaurant at a discounted rate for resale at concession stands at school events.

The booster club funds are designated as quasi-public money. See July 15, 2005 Superintendent's Interpretation which cites W.Va. Code § 18-5-13. These funds are to be spent for the benefit of the students. The booster clubs finances are subject to review by the BOE Office. On an annual basis, they submit a statement of their finances to the BOE Office.

The involvement of school officials in booster clubs may vary from school to school. At some schools, coaches may actively participate while at other schools, parents may be more active.

In regard to the teachers' credit union, the BOE allows it free use of space in the BOE office building. The credit union is a federal credit union which is organized as a non-profit. Public, private and school employees are eligible for membership.

The Requester states that he would take steps to address the potential for conflict. He offers to:

- Write a letter to all schools setting forth that his restaurant has done business with the schools in the past and he understands that they may want to continue to conduct business with his restaurant. In the letter he would identify the pricing so all parties related to the school system who conduct business with his restaurant would receive the same deals.
- If a specific school makes purchases from his restaurant, he would have them sign a form acknowledging that they understand his relationship with the Board and that they agree that they were not pressured to do business with [his restaurant].
- Ensure that all business is transacted through one of his representatives rather than himself.

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

W. Va. Code § 6B-2-5(d)(1) provides in part that ... no elected or appointed public official ... or business with which he or she is associated may be a party to or have an interest in ... a contract which such official or employee may have direct authority to enter into, or over which he or she may have control... Provided, However, that nothing herein shall ... prohibit a part-time appointed public official from entering into a contract which the part-time public official may have direct authority to enter into or over which he or she may have control when the official has not participated in the review or evaluation thereof, has been recused from deciding or evaluating and has been excused from voting on the contract and has fully disclosed the extent of his or her

interest in the contract.

W. Va. Code § 6B-2-5(d)(3) provides that where the provision of subdivision (1) of this subsection would result ... in excessive cost, undue hardship, or other substantial interference with the operation of a ... municipality... the affected government body ... may make written application to the ethics commission for an exemption from subdivision (1) ... of this subsection.

W. Va. Code § 61-10-15(a) states in part that ... It shall be unlawful for ... any supervisor or superintendent principal or teacher of public schools... to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract ... [over] which as such ... supervisor, superintendent, principal or teacher ... he may have any voice, influence, or control.

W. Va. Code § 61-10-15(h) further provides:

Where the provisions of subsection (a) of this section would result in the loss of quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a governmental body or agency, the affected governmental body or agency may make a written application to the West Virginia Ethics Commission pursuant to subsection (d), section five, article two, chapter six-B of the Code, for an exemption from subsection (a) of this section.

### **ADVISORY OPINION**

Both the Ethics Act, W. Va. Code § 6B-2-5(d)(1), and a separate criminal misdemeanor statute, W. Va. Code § 61-10-15, prohibit school officials and employees from having an interest in public contracts. These prohibitions were designed by the Legislature to steer public servants away from inherently questionable situations. These prohibitions are intended to prevent not only actual impropriety, but also situations which give the appearance of impropriety.

### **The Ethics Act**

Pursuant to W.Va. Code § 6B-2-5(d)(1) a public official may not have more than a limited interest in the profits or benefits of a public contract over which he or she has direct authority or control. There is a \$1,000.00 exception to this provision; provided, that the affected public official does not participate in the review or evaluation of the contract and recuses him or herself from voting on the contract.

Based upon the facts presented, it appears that for purposes of the Ethics Act, the Requester exercises direct authority or control over BOE contracts. This exercise of control would bar him from contracting with the BOE for special events such as math field day. Moreover, it may bar him from contracting with the schools for spirit nights

due to the extent of control he exercises over the principals and school personnel. However, due to the stricter provisions in 61-10-15, the Ethics Commission saves for another day the application of the Ethics Act to the agreement between the schools and the Requester's restaurant for school spirit nights.

For the other three categories of expenditures, it does not appear that he exercises "direct" control for purposes of the Ethics Act. As such, it would appear that in accordance with the Ethics Act he could contract with: (1) the sports teams; (2) booster clubs; and, (3) teachers' credit union. Still, the analysis under the Ethics Act is academic in light of the stricter provisions in W.Va. Code § 61-10-15.

### **West Virginia Code § 61-10-15**

W.Va. Code § 61-10-15, a separate criminal statute, contains a stricter standard than the Ethics Act, and imposes criminal penalties against any "member of a county commission, district school officer, secretary of a board of education, supervisor or superintendent, principal or teacher of public schools or any member of any other county or district board or any county or district officer" who are pecuniarily interested, either directly or indirectly, in the proceeds from a public contract over which the public official may exercise voice, influence or control. Any person who violates this provision is guilty of a misdemeanor and may be removed from public office. Further, this code provision does not contain an exception for employment by a governmental agency or a \$1,000.00 exception. See generally Alexander v. Ritchie, 53 S.E.2d 735 (W.Va. 1949),

The application of this code section, to each of the proposed transactions, follows:

#### **Contract with BOE for Special Events**

In Alexander v. Ritchie, 53 S.E.2d 735 (W.Va. 1949), the West Virginia Supreme Court considered the application of this statute in a proceeding to remove all BOE Members due to their involvement in approving payments to two businesses owned by Defendant BOE Member Ritchie. Defendant Ritchie had an ownership in a construction company which graded an athletic field at a local high school. Defendant Ritchie also owned a hardware store. Various BOE personnel, including a teacher, purchased items from the store. It appeared undisputed that the items were sold at or below the prevailing cost for similar items.

The Supreme Court held that the construction contract and the purchases of items from the hardware store violated W.Va. Code § 61-10-15. The Court stated in its opinion:

We are impressed with the evidence of good faith on Ritchie's part. But this action alone is not sufficient to excuse him for the violation of the statute prohibiting contracts with the board, in which he is indirectly and pecuniarily interested. Undoubtedly the sale of supplies to the board by the corporation and

payment therefor constituted a contract...[The] simple answer is that his conduct was unlawful because forbidden....

Id. at 740. The Court then found that he should be removed from office.

The Commission upholds its prior holdings and that of the Supreme Court in finding that the Requester may not contract with the BOE to provide food for special events such as math field day. See, e.g. 2001-17, 2007-03 and A.O. 2009-01. While the Requester has recommended steps which may be taken to avoid the potential for conflict, these steps do not alleviate the express prohibition in W.Va. Code § 61-10-15 against having a pecuniary interest in school board contracts.

### **Purchases by School Sports Teams**

The sports teams are overseen by the respective schools. Public monies are used by the County to fund the teams. Even if a sport generates revenue, still, the money it generates is public money.

The Commission finds that § 61-10-15 is intended to prohibit a BOE Member from contracting with the county school system where he or she serves. The BOE member's position on the Board gives him voice, influence and control over all school board contracts. See *Alexander*. See also A.O. 2004-10a wherein the Commission found that a BOE's power to appoint members to a regional vocational school constituted voice, influence or control so as to precluded him from being employed by the vocational school. Accordingly, the sports teams may not use **school funds** to make purchases from the Requester's restaurant.

### **Spirit Nights**

Upon request of a school or school team, the Requester's restaurant agrees to sponsor a spirit night as a fundraiser which they jointly promote. A percentage of the sales from the event are given to the school. Although the Requester states it is a donation, it is not considered a tax deductible donation in accordance with applicable I.R.S. guidelines.

The Commission finds that the agreement constitutes a contract for purposes of § 61-10-15. The school encourages parents and students to attend the event. As consideration for the business this generates, the restaurant remits a portion of the proceeds to the school.

The BOE has responsibility for overseeing personnel in the County including principals, teachers and coaches in the school system. The Commission finds that the agreement between the Requester's restaurant and the schools for spirit night constitutes a contract which is prohibited by § 61-10-15. It appears that the clear intent of this statute is to prevent school board members from contracting with schools in their county for any

purpose. If in fact the donation is deductible for purposes of the I.R.S., then it may not fall within this prohibition. However, the Commission would require additional information to evaluate this matter.

In regard to Spirit Nights held on behalf of booster clubs in the county school system, the Commission addresses whether these events are permissible in the next section.

### **Sales to Booster Groups**

Booster clubs have historically existed in this State to support such extracurricular activities as band or sports. It appears that some booster clubs are organized as non-profits, while others are not. County BOEs have the right to examine the financial statements of booster funds which are considered quasi-public in nature.

The Commission has previously considered the application of the Ethics Act to purchases by booster clubs from a BOE member. In A.O. 96-14 the Commission held that a booster club could purchase a shell building to store athletic equipment from a BOE member.<sup>1</sup> It reasoned:

Several factors persuade the Commission that the school board member does not have the voice, influence or control over this purchase contract contemplated by WV Code 61-10-15. First, the decision to make the purchase is solely within the discretion of the boosters organization. Second, there is no evidence of any attempt by the school board member to initiate the decision to purchase the building. Finally, the payment for the purchase will be made by the athletic boosters organization with its own funds which are not provided by, or subject to the control of, the board or any member of the central administrative office.

In the present case, while the BOE has the right to examine the finances of the booster clubs, the booster clubs are organized to support the school system. The BOE has no specific authority to direct how booster funds may be spent; provided, that, as required by law, the funds are expended for the benefit of the students.

The Commission finds that the Requester does not have sufficient voice, influence or control so as to trigger the limitations in § 61-10-15 in regard to contracting with boosters. However, limitations apply. **First**, to the extent that any teachers, coaches or other school personnel are involved with the booster clubs, they may not be involved in directing the booster clubs to make purchases from the BOE Member; instead, all such

---

<sup>1</sup> In contrast, in A.O. 2006-17 the Commission held that a County Music Teacher could not sell his original song to the boosters club for use by the show choir. The Commission held that it would not be prohibited by the limitations against having an interested in a public contract for purposes of the Ethics Act or § 61-10-15; however, it found that due to his involvement with the choir it would constitute use of office for private gain.

decision-making power should be delegated to parent members; **Second**, the Requester's business must disclose this requirement to all booster clubs with which he does business and provide them a copy of this opinion; **Third**, to the extent possible, all business between the Requester's restaurant and the boosters should be conducted by a representative from the Requester's business; and, **Fourth**, the Requester must recuse himself from discussing or voting upon matters, if any, which come before the BOE in regard to any booster club's financial statements. For recusal to be proper under the Ethics Act, he must disclose his interest and excuse himself from participating in the discussion and decision-making process by physically removing himself from the room during the discussion and vote on the matter.

Further, the Commission finds that the Requester's restaurant may host Spirit Nights on behalf of booster clubs. The same limitations set forth above apply. Additionally, the booster club hosting the event and the restaurant shall make it clear that the event is being held for the booster club's benefit, not a school or the BOE Office. For example, a banner at the event may read, "Sponsored by the Booster Club." Any advertising or other form of promotion for the event shall also contain this information.

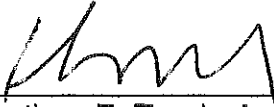
### **Credit Union**

The credit union is a non-profit which has public, private and parochial school teachers as members. The BOE allows it free use of office space.

The Commission held in A.O. 99-34 that a County Commissioner could be employed by a community service organization to which the County Commission provided financial support. The Commission found that this type of financial support was not the type of transaction governed by § 61-10-15. The Commission held that he could work there.

Similarly, here, the Commission finds that the fact the BOE provides financial support through the donation of free office space does not constitute the requisite voice, influence or control so as to trigger the restrictions in § 61-10-15. Hence, the requester may continue to sell food and related items to the credit union.

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.

  
\_\_\_\_\_  
Jonathan E. Turak, Acting Chairperson

ADVISORY OPINION NO. 2010-15

Issued On July 8, 2010 By The

WEST VIRGINIA ETHICS COMMISSION

2010 JUL 16 AM 9:57

SECRETARY OF STATE

OPINION SOUGHT

An Elected Board of Education Member asks whether he may serve as a football official, for compensation, in the county school system.

FACTS RELIED UPON BY THE COMMISSION

The Requester is a newly elected Board of Education (BOE) Member. He is also a certified football official.<sup>1</sup> The Requester acts as a sports official, for compensation, in games in the public school system in the County where he serves as an elected BOE Member. He also officiates games outside the county. His total compensation for this activity is normally less than one thousand dollars per year.

The West Virginia Code provides that county boards of education "[s]hall exercise the control, supervision and regulation of all interscholastic athletic events...." W.Va. Code § 18-2-25. However, this code section further provides that the county boards may delegate this authority to the West Virginia Secondary Schools Activity Commission (SSAC). One power delegated to the SSAC is the responsibility of certifying sports officials.

When a sporting event is held in a county, according to the SSAC Officials' Handbook, both schools must mutually agree upon the official.<sup>2</sup> The Handbook requires that all officials working athletic events have written contracts with the host school. (SSAC Handbook, Article VI, page 9). The host school normally pays the officials' fees from money collected at the gates of the sporting event. The gate revenue is deposited by the school into a designated school account. The official then receives his or her check from the host school.

The Handbook states that it recommends that officials and school administrators work together to establish a fee structure. (Handbook, Article VII). The fees for coaching vary from county to county. For smaller events, an official may receive \$30.00 per game. For larger sporting events, such as a Friday Night Football Game, the official may receive \$50.00. Travel expenses are not paid. The officials are independent contractors.

---

<sup>1</sup> Only certified individuals may serve as a sports official for secondary school sporting events. These individuals are required to join a local officials' board which is a board comprised of local school and sports officials. To retain their certification, they must attend a rules clinic each year. They are not compensated for attending these clinics. According to the SSAC, there is a shortage of sports officials in the State and it is a challenge to keep and recruit them.

<sup>2</sup> The SSAC's Secondary Schools Activity Handbook states that "Coaches or other persons connected with competing schools shall not officiate at the contest unless the consent of the competing school is given." (Handbook, page 9, 9.2).

It appears that the method for selecting sports officials varies from county to county. In some counties, the local coach, subject to approval by the opposing team, selects the official. In other counties, or for larger sporting events, the local conference will select the official. Coaches rate the officials. A school may refuse to use an official.

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

W. Va. Code § 6B-2-5(d)(1) provides in part that ... no elected or appointed public official ... or business with which he or she is associated may be a party to or have an interest in ... a contract which such official or employee may have direct authority to enter into, or over which he or she may have control: Provided, That nothing herein shall be construed to make unlawful the employment of any person with any governmental body...

W. Va. Code § 6B-2-5(d)(3) provides that where the provision of subdivision (1) of this subsection would result ... in excessive cost, undue hardship, or other substantial interference with the operation of a ...county... the affected government body ... may make written application to the ethics commission for an exemption from subdivision (1) ... of this subsection.

W. Va. Code § 61-10-15(a) states in part that ... It shall be unlawful for ... any district school officer... to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract ... [over] which as such ... member, officer... he may have any voice, influence, or control.

### **ADVISORY OPINION**

Both the Ethics Act, W. Va. Code § 6B-2-5(d)(1), and a separate criminal misdemeanor statute, W. Va. Code § 61-10-15, prohibit school officials and employees from having an interest in public contracts. These prohibitions were designed by the Legislature to steer public servants away from inherently questionable situations. These prohibitions are intended to prevent not only actual impropriety, but also situations which give the appearance of impropriety.

#### **The Ethics Act**

Pursuant to W.Va. Code § 6B-2-5(d)(1) a public official may not have more than a limited interest in the profits or benefits of a public contract over which he or she has direct authority or control. There is a \$1,000.00 exception to this provision; provided, that the affected public official does not participate in the review or evaluation of the contract and recuses him or herself from voting on the contract.

Based upon the facts presented, it appears that the Ethics Act would not bar the Requester from serving as a referee in the County where he serves as an elected BOE Member; particularly as his annual compensation for this work is less than \$1,000.00. However,

analysis under the Ethics Act is academic in light of the stricter provisions in W.Va. Code § 61-10-15.

### **West Virginia Code § 61-10-15**

W.Va. Code § 61-10-15, a separate criminal statute, contains a stricter standard than the Ethics Act, and imposes criminal penalties against any "member of a county commission, district school officer, secretary of a board of education, supervisor or superintendent, principal or teacher of public schools or any member of any other county or district board or any county or district officer" who are pecuniarily interested, either directly or indirectly, in the proceeds from a public contract over which the public official may exercise voice, influence or control. Any person who violates this provision is guilty of a misdemeanor and may be removed from public office. Further, this code provision does not contain an exception for employment by a governmental agency or a \$1,000.00 exception. See generally Alexander v. Ritchie, 53 S.E.2d 735 (W.Va. 1949).

In this matter, the Commission finds that a contract between a school and a sports official constitutes a public contract. As such, the Commission must determine whether an elected BOE Member exercises voice, influence or control over this contract.

Each county school district is under the supervision and control of the County BOE. W.Va. Code § 18-5-1 *et. seq.* The BOE exercises control over school personnel, including coaches and the principals to whom they report. The Commission finds that an elected BOE Member may not contract with the County school system where he serves to be a sports official as his position as a BOE Member gives him voice, influence and control over all contracts in the County School System.<sup>3</sup> However, he may officiate games in other counties, even if it involves a team from his or her county.

In making this finding, the Commission overrules its holding in A.O. 96-12. In that case, the Commission held that an elected BOE member could receive payments for officiating games. Its holding was based, in relevant part, upon the fact that the referees were paid from local funds raised by the athletic boosters through raffles or the operation of concession stands. However, in contrast, the current rules require the officials to contract directly with the school. Moreover, the sports officials are paid with public funds generated by the schools through ticket sales and related activities.

The Commission recognizes that the Requester and similarly situated individuals may serve as sports officials due to their passion for sports, not necessarily for the money. Further, the Commission recognizes that some BOE Members who serve as sports officials may decline to continue to do so if they are not compensated due to the time and expenses involved. Still, as the Supreme Court has stated:

---

<sup>3</sup> He may volunteer as a sports official in his county and be paid a nominal sum of \$1.00 if such payment is required to trigger liability insurance coverage. See A.O. 2005-03 wherein the Commission held that an elected BOE Member could volunteer as a coach.

West Virginia Code, 61-10-15, implements the public policy of this State, and its provisions are clear and unambiguous. **Although harsh, its objects and purposes are salutary.** The purpose of the statute is to protect public funds, and give official recognition to the fact that a person can not properly represent the public in transacting business with himself. To permit such conduct would open the door to fraud. The statute is designed to remove from public officers any and all temptation for personal advantage.

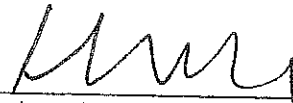
Alexander v. Ritchie, 53 S.E.2d 735, 739 (1949). (emphasis added). In Fisher v. Jackson, 147 S.E. 541 (W.Va. 1929) the Court held that "to remit a member of a district school board, by reason of nonaction on his part in regard to a particular matter...would defeat the very purpose of the statute." Id. at 542. In Alexander the Court further stated:

If statutes protecting public funds are to have any effect and force, they should not be emasculated by **judicial interpretation and relaxation of their provisions** (emphasis supplied). Common prudence dictates that men holding official positions must not deal with themselves in a private capacity, directly or indirectly.

Id. At 740-741. Based upon the strict language in the statute, the Commission finds that, based upon the facts presented, "relaxation" of the provisions through administrative interpretation would not be consistent with the plain language or intent of the statute.<sup>4</sup>

In closing, when a BOE Member officiates a game within his County School System, he is contracting with his County School System. As such, the Commission finds that an elected BOE Member may **not** serve as a compensated sports official in the County where he serves as a BOE Member. He may volunteer as a referee and receive the nominal sum of \$1.00 if required for insurance coverage.

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.



Jonathan E. Turak, Acting Chairperson

<sup>4</sup> To the extent, if any, that a referee is considered an employee of the school system, this finding is also consistent with the strict provisions in § 61-10-15 which prohibit county officials, school board members and their spouses from being employed by the county or school district in which they serve. See A.O. 2004-10A.

**SCHOOL BOARD ADVISORY OPINION NO. 2010-01**

Issued On June 3, 2010 By The

**WEST VIRGINIA ETHICS COMMISSION**

2010 JUL 16 AM 9:57

SECRETARY OF STATE

**OPINION SOUGHT**

A newly-elected **Board Member** asks whether she may serve on the County Board of Health.

**FACTS RELIED UPON BY THE COMMISSION**

The Requester is a newly elected Board of Education Member. She will assume office on July 1, 2010, and will serve for a four (4) year term.

Additionally, the Requester is an appointed County Board of Health Member. She has served on the Board of Health for the past seven years, but receives no compensation for her service.

W.Va. Code § 16-2-9(d) states that board of health members "may receive compensation", and leaves the determination up to each County health board whether to provide such compensation for service. According to the Requester, the County Board of Health on which she serves does not provide compensation to any of its members.

**CODE PROVISIONS RELIED UPON BY THE COMMISSION**

W. Va. Code § 18-5-1a reads in relevant part:

(a) A person who is . . . a member or member-elect of a county board:

\* \* \*

(3) May not engage in the following political activities:

(A) Become a candidate for or hold any other public office, other than to succeed him or herself as a member of a county board subject to the following:

\* \* \*

(ii) The term "public office" as used in this section does not include service on any other board, elected or appointed, profit or nonprofit, under the following conditions:

- (I) The person does not receive compensation; and
- (II) The primary scope of the board is not related to public schools.

\* \* \*

(b) A member or member-elect of a county board, . . . may make a written request to the West Virginia Ethics Commission for an advisory opinion to determine if another elected or appointed position held or sought by the person is an office or public office which would bar service on a county board pursuant to subsection (a) of this section.

### ADVISORY OPINION

In 2003 the West Virginia Legislature amended the law (W.Va. Code § 18-5-1a) regarding the eligibility standards of county board of education members. The amendment, effective July 1, 2003, authorized the Ethics Commission to render advisory opinions on whether a particular elected or appointed position held or sought would bar a person's service on a county board of education.

Since then, the Commission has consistently upheld the statutory prohibition that members of county boards of education are not permitted to hold another public office, unless: (1) they do not receive compensation for serving in that office; and (2) the primary scope of the other office does not relate to the public schools. W.Va. Code § 18-5-1a(a)(3)(ii)(2010) See SBAO 2003-01 (prohibiting board membership on Soil Conservation District); SBAO 2003-02 (prohibiting board membership on County Emergency Ambulance Authority); and SBAO 2004-03 (prohibiting board membership on Public Service District).

The Commission finds that membership on a Board of Health constitutes holding a public office. Hence, it must determine whether it is a permissible public office based upon the two criteria established by W.Va. Code § 18-5-1a(a)(3)(ii).

### **Compensation**

The first inquiry is whether the individual receives compensation. The Requester maintains that she and other Board members do not receive compensation.

While the fact that the Requester does not receive compensation is relevant, the analysis does not end there. With respect to compensation established by statute, the Commission has previously held that a "requester may not avoid the prohibition by declining to accept such compensation." S.B.A.O. 2003-01; See also S.B.A.O. 2003-02 ("Had that been its intent, the proviso would have said that the prohibition does not apply to service for which the Board of Education member **accepts** no compensation.")

Additionally, in S.B.A.O. 2003-02, the Commission concluded:

The Commission believes the proviso does not exempt service in any office for which the law prescribes or requires compensation. Where compensation is

prescribed or required, the proviso offers no relief, even if the office holder declines to accept compensation.

W.Va. Code § 16-2-9(d) states that board of health members "may receive compensation", and leaves the determination up to each county health board whether to provide such compensation to its members. The Requester maintains that her County Board of Health has historically chosen not to provide compensation to its members. Hence, the lack of Requester's compensation is the product of an agency decision, and not due to her voluntary declination of compensation to which she is otherwise entitled in accordance with a law, policy or ordinance.

While the Commission is mindful of the permissive nature of the enabling statute, the statute nonetheless provides for compensation. The decision of the Requester's board not to offer compensation to its members is analogous to an individual board member refusing compensation, which the Commission has held to be insufficient to avoid the prohibition. See S.B.A.O. 2003-01; S.B.A.O 2003-02.

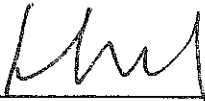
Further, the Commission is concerned that unequal treatment would result by creating a distinction for a permissive compensation. In some counties, a BOE member could serve on an uncompensated Board of Health; whereas in other counties, the BOE member would be prevented from serving because their board accepts compensation. This also prevents the confusion and political gamesmanship of temporarily allowing the dual service due to a lack of compensation, only to be reversed by a Board later choosing to compensate its members.

Accordingly, the Commission hereby finds that when a governing body is authorized by law to provide its members compensation, but elects not to provide compensation, then the position is "compensated" for purposes of W.Va. Code § 18-5-1a(a)(3)(ii).

In light of this determination, the Commission does not need to fully evaluate whether the primary scope of the Health Board is related to public schools. The Commission would simply note that based upon the express purpose and statutory duties of a County Board of Health, that the primary scope of a County Board of Health is generally not related to public schools. W.Va. Code § W.Va. Code § 16-2-1.

### **CONCLUSION**

Accordingly, the Commission hereby finds that because the Board of Health is a compensated public office, the Requester may not remain a Board Member of the County Board of Health pursuant to W.Va. Code § 18-5-1a.

  
\_\_\_\_\_  
Jonathan E. Turak, Acting Chairperson

# Ethics Reporter

## Since the Last Reporter

Since the July edition of the **REPORTER**, the West Virginia Ethics Commission published one Advisory Opinion interpreting provisions of the West Virginia Governmental Ethics Act and the laws governing Boards of Education.

At its August 5 meeting, the West Virginia Ethics Commission approved opinions relating to the permissibility of a member of a board of education contracting with the state Department of Education.

### ADVISORY OPINION REPORT

**Advisory Opinion 2010-16** concerned the permissibility of a member of a county board of education

contracting with the state Department of Education.

In this case, the board member is newly elected. As a private citizen, the member has been contracting with the West Virginia Department of Education to develop and facilitate on-line learning courses for secondary school teachers.

Teachers are not charged for using the board member's product, but if they choose to use their completion of this on-line training to advance their teaching accreditation, they may seek reimbursement for the costs of these credits from either the state or from the county board in different scenarios. However, the county board's director of curriculum must approve the teacher's application for reimbursement in either case.

No county funds would be involved in these reimbursements and the matter would not come before the board of education in any form. The decisions are handled purely as administrative actions and occur at the sole discretion of the director of curriculum.

In its review of the request, the Ethics Commission examined the provisions of 6B-2-5(d)(1) and (d)(3) prohibiting an elected official from having an interest in a contract over which they have authority or control and providing remedies to address these conflicts, as well as the language found in Chapter 61-10-15 prohibiting a member of a board of education from having either direct or indirect pecuniary interests in a matter over which they exert voice, influence or control.

August, 2010  
Page Two

In its opinion, the Ethics Commission ruled that the proposed arrangement whereby the newly elected member of a county board of education contracts with the West Virginia Department of Education may continue without any violations of the Ethics Act or the 61-10-15 standards occurring.

The Commission determined that the board member exercises no voice, influence or control over the state Department of Education and that since the matters in question do not rise to the level of the county board, there is no issue of conflict at stake.

TOPICAL INDEX  
UPDATE

**WEST VIRGINIA  
ETHICS  
COMMISSION  
ADVISORY  
OPINIONS**

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

**BOARDS AND  
COMMISSIONS**

NONE PUBLISHED

**BOARDS OF  
EDUCATION**

**2010-16:**

Permissibility of a member of a board of education contracting with the state Department of Education

**COUNTY  
GOVERNMENT**

NONE PUBLISHED

**LEGISLATURE**

NONE PUBLISHED

**MUNICIPAL  
GOVERNMENT**

NONE PUBLISHED

**STATE GOVERNMENT**

NONE PUBLISHED

**TRADE  
ASSOCIATIONS AND  
LOBBYISTS**

NONE PUBLISHED

WEST VIRGINIA ETHICS REPORTER is published by West Virginia Ethics Reporter, Inc., P.O. Box 1403, Charleston, WV 25325 and is in no way affiliated with the West Virginia Ethics Commission. For subscription information or subscriber services, call 1-304-545-8227. Copyright 2010 by West Virginia Ethics Reporter, Inc. All rights reserved. No part of this newsletter may be reproduced in any form, by microfilm, xerography, or otherwise, or incorporated into any information-retrieval system, without written permission of West Virginia Ethics Reporter, Inc.

**WEST VIRGINIA ETHICS COMMISSION  
2010 ADVISORY OPINIONS  
INDEXED BY TOPICAL SECTOR  
(Includes opinions published through August 5, 2010)**

---

**BOARDS AND COMMISSIONS**

**2009-14:**

Permissibility of a board member of a multi-county agency participating in a decision on a contractual matter affecting the agency where the board member is employed

**2010-06:**

Permissibility of an attorney serving on the board of a public library when the attorney's firm does business with the library and with the county and city governments that also fund and govern the library

**2010-10:**

Permissibility of members of a county solid waste authority and their families bidding on the purchase of a building owned by the authority (See also COUNTY GOVERNMENT)

**BOARDS OF EDUCATION**

**2010-03:**

Permissibility of a candidate for a board of education having a spouse employed by the board in the event they are elected.

**2010-04:**

Permissibility of a board of education contracting with a non-profit charitable organization when a member of the board of education serves on the group's board of directors.

**2010-13:**

Permissibility of a member of a board of education voting on matters affecting his wife's employment with the board

**2010-14:**

Permissibility of a member of a board of education's restaurant selling food within the structure of the county school system in a variety of instances

**2010-15:**

Permissibility of a member of a board of education serving as a football official with compensation, within the county school system

**2010-16:**

Permissibility of a member of a board of education contracting with the state Department of Education

**School Board Advisory Opinion 2010-01:**

Permissibility of a newly elected member of a board of education serving on a county board of health

**COUNTY GOVERNMENT**

**2010-10:**

Permissibility of members of a county solid waste authority and their families bidding on the purchase of a building owned by the authority (See also BOARDS AND COMMISSIONS)

**2010-09**

Applicability of the Ethics Act to a County Rescue Service

**LEGISLATURE**

**2010-11**

Permissibility of a legislator accepting a prize won at a public reception

**MUNICIPAL GOVERNMENT**

**2010-02:**

Permissibility of city employees being offered and accepting discounted wireless telephone service from the vendor supplying the city with these services

**2010-08:**

Permissibility of a city council voting to modify the city charter to extend council members' terms in office

**STATE GOVERNMENT**

**2009-12:**

Permissibility of a statewide elected official with payroll responsibilities authorizing employee deductions for the purpose of purchasing goods from a company with a state contract

**2009-13:**

Permissibility of an attorney for a state agency representing themselves before their employer on a matter affecting their personal interests

**2010-01:**

Permissibility of a statewide elected official soliciting funds to underwrite the costs of a national conference of similar state elected officials

**2010-05:**

Permissibility of a state institution of higher education spending more than \$25 to recognize employee achievements provided that annual total expenditures do not exceed \$25 multiplied by the total number of employees at the institution

Page Three

**TRADE ASSOCIATIONS AND LOBBYISTS**

**2010-07:**

Permissibility of a registered lobbyist not registering to lobby on behalf of a non-profit organization if services are provided without compensation

ADVISORY OPINION NO. 2010-16

Issued On August 5, 2010 By The

2010 AUG -9 AM 10:08

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

An **Elected Board of Education Member** asks whether she may contract with the West Virginia Department of Education to facilitate on-line learning courses.

FACTS RELIED UPON BY THE COMMISSION

The Requester is a newly elected Board of Education (BOE) Member. In the past, she has contracted with the West Virginia Department of Education to develop and facilitate on-line learning courses for secondary school teachers.

There is no enrollment fee for participating in the courses; however, there is a fee if the teachers seek certification credits from an institution of higher education. Teachers may seek these credits to upgrade or renew their teacher's certification license. The teachers must pay these fees directly to the accrediting institution of higher education.

If teachers pay for the credits, they may seek reimbursement. They submit their request for reimbursement to the County BOE's Director of Curriculum, Instructions and Federal Programs. The County BOE then forwards the request to the State Department of Education which, funding permitting, reimburses the teacher. If the State Department of Education has insufficient funds, then the County BOE may reimburse the teacher. The Director of Curriculum is responsible for making this decision. The reimbursement is paid from Title II (federal) funds. The Director does not seek Board approval for the reimbursements nor is she required to do so. The Director has sole discretion, exercised only after the Requester has taught the class.

The State Department of Education is responsible for enrollment. The Requester is paid a flat rate per course. Her rate of reimbursement is not tied to the number of participants in a class or whether they receive certification credits.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(d)(1) provides in part that ... no elected or appointed public official ... or business with which he or she is associated may be a party to or have an interest in ... a contract which such official or employee may have direct authority to enter into, or over which he or she may have control: Provided, That nothing herein shall be construed to make unlawful the employment of any person with any governmental body...

W. Va. Code § 6B-2-5(d)(3) provides that where the provision of subdivision (1) of this subsection would result ... in excessive cost, undue hardship, or other substantial

interference with the operation of a ...county... the affected government body ... may make written application to the ethics commission for an exemption from subdivision (1) ... of this subsection.

W. Va. Code § 61-10-15(a) states in part that ... It shall be unlawful for ... any district school officer... to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract ... [over] which as such ... member, officer... he may have any voice, influence, or control.

### **ADVISORY OPINION**

Both the Ethics Act, W. Va. Code § 6B-2-5(d)(1), and a separate criminal misdemeanor statute, W. Va. Code § 61-10-15, prohibit school officials and employees from having an interest in public contracts. These prohibitions were designed by the Legislature to steer public servants away from inherently questionable situations. These prohibitions are intended to prevent not only actual impropriety, but also situations which give the appearance of impropriety.

#### **The Ethics Act**

Pursuant to W.Va. Code § 6B-2-5(d)(1) a public official may not have more than a limited interest in the profits or benefits of a public contract over which he or she has direct authority or control. A limited interest is less than one thousand dollars per year.<sup>1</sup>

In this case, the Requester's contract is with the State Department of Education not the County BOE or one of the accrediting institutions. Teachers enroll in the program through the State Department of Education, not the county school system.

Her compensation for facilitating the courses is not tied to the number of participants or any decision by the County BOE's Director of Curriculum to reimburse teachers for the cost of obtaining credits from institutions of higher education. She does not profit or benefit by the decision of the County BOE's Director of Curriculum to authorize reimbursement to teachers for fees they have paid to an accrediting institutions for certification credits. Hence, it does not violate the Ethics Act for her to contract with the State BOE to facilitate on-line learning classes.

#### **West Virginia Code § 61-10-15**

W.Va. Code § 61-10-15, a separate criminal statute, contains a stricter standard than the Ethics Act, and imposes criminal penalties against any "member of a county commission, district school officer, secretary of a board of education, supervisor or superintendent, principal or teacher of public schools or any member of any other county or district board or

---

<sup>1</sup> The Requester receives more than one thousand per year from the State Department of Education. Hence, the \$1,000.00 exception in the Ethics Act is inapplicable. Even if it applied, it is academic since no similar exception exists in W.Va. Code § 61-10-15.

any county or district officer" who are pecuniarily interested, either directly or indirectly, in the proceeds from a public contract over which the public official may exercise voice, influence or control. Any person who violates this provision is guilty of a misdemeanor and may be removed from public office.

The test under § 61-10-15 is whether the public official exercises voice, influence or control over the subject contract. The Commission finds that under the circumstances described, the Requester does not exercise voice, influence or control over a contract in which she has a financial interest. Her financial interest is in her contract with the Department of Education. The Commission finds it is too attenuated, even for purposes of § 61-10-15, to find that she exercises voice, influence or control over her contract with the State Department of Education because her County BOE's Director of Curriculum **may** elect to reimburse teachers for fees the teachers pay to institutions of higher education for certification credits.

The Commission finds that this holding is consistent with its ruling in A.O. 2004-02. In that case, a candidate for a county board of education asked whether she could continue her employment as the Director of a private daycare facility. The county school system employed a pre-kindergarten teacher who was placed in the requester's facility. The Commission stated in its opinion:

The Ethics Commission finds, however, that the collaborative effort to provide educational services to eligible children does not involve the type of transaction governed by WV Code § 61-10-15 or the Ethics Act's prohibition against private interests in public contracts.

Similarly, here, the Commission finds that the contract in question is not prohibited.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et seq.* and W.Va. Code § 61-10-15, 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.

  
Jonathan Turak, Acting Chairperson

P.O. Box 2067  
Charleston, WV 25327



Phone: (304) 558-0500  
Fax: (304) 558-3321  
www.wvlottery.com

John C. Musgrave  
Director

To: Controller  
Location: Jefferson County Commission  
Fax #: (304) 725-7916  
Phone #: (304) 728-3284  
From: Stacy Acree ext. 352

**Comments:**

VIDEO LOTTERY WEEKLY SETTLEMENT REPORT

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

| Week Ending Date                                         | Week Ending<br>August 14, 2010 |
|----------------------------------------------------------|--------------------------------|
| <b>To be Deposited on:</b>                               | <b>August 20, 2010</b>         |
| <b>Amount Played</b>                                     | <b>81,950,111.90</b>           |
| <b>Amount Won</b>                                        | <b>73,488,761.28</b>           |
| <b>Amount Promo</b>                                      | <b>252,839.00</b>              |
| <b>MWAP Contribution</b>                                 | <b><u>44,173.79</u></b>        |
| <b>Adjusted Gross Terminal Revenue</b>                   | <b><u>8,164,237.82</u></b>     |
| <b>Administrative Costs @ 4%</b>                         | <b>326,569.62</b>              |
| <b>Excess Lottery Fund @ 4%</b>                          | <b><u>0.00</u></b>             |
| <b>Net Terminal Revenue</b>                              | <b><u>7,837,668.30</u></b>     |
| <b>Surcharge @ 10%</b>                                   | <b>0.00</b>                    |
| <b>State Share Excess @ 58%</b>                          | <b>0.00</b>                    |
| <b>Track Share of Capital Reinvestment @ 42%</b>         | <b>0.00</b>                    |
| Track Share of Capital Reinvestment @ 42% - 95%          | \$ -                           |
| Track Share of Capital Reinvestment @ 42% - 4%           | \$ -                           |
| <b>Adjusted Net Terminal Revenue</b>                     | <b><u>7,837,668.30</u></b>     |
| <b>Racetrack @ 46.50% / 42%</b>                          | <b>3,644,515.76</b>            |
| <b>Lottery Fund @ 30% / 0%</b>                           | <b>2,351,300.61</b>            |
| <b>Excess Lottery Fund @ 0% / 41%</b>                    | <b>0.00</b>                    |
| <b>Race Track Purses @ 7% / 14% / 8%</b>                 | <b>548,636.78</b>              |
| <b>Workers' Compensation Debt Reduction @ 7%</b>         | <b>548,636.78</b>              |
| <b>Employee Pension Fund @ 1% / .5%</b>                  | <b>78,376.68</b>               |
| <b>Greyhound Development @ .75%</b>                      | <b>58,782.61</b>               |
| <b>Thoroughbred Development @ .75%</b>                   | <b>58,782.61</b>               |
| <b>Racing Commission @ 1%</b>                            | <b>78,376.68</b>               |
| <b>County/Municipality @ 2%</b>                          | <b>156,753.36</b>              |
| <b>3% Funds:</b>                                         |                                |
| <b>Tourism Promotion Fund @ 1.375%</b>                   | <b>107,767.94</b>              |
| <b>Development Office Promotion Fund @ .375%</b>         | <b>29,391.26</b>               |
| <b>Research Challenge Fund @ .5%</b>                     | <b>39,188.34</b>               |
| <b>Capitol Renovation and Improvement Fund @ .6675%</b>  | <b>63,863.97</b>               |
| <b>2004 Capitol Complex Parking Garage Fund @ .0625%</b> | <b>4,898.54</b>                |
| <b>1% Funds:</b>                                         |                                |
| <b>State Capitol Complex Parking Garage @ 1%</b>         | <b>0.00</b>                    |
| <b>Cultural Facilities and Capitol Resources @ .5%</b>   | <b>39,188.34</b>               |
| <b>Capitol Dome and Capitol Improvements @ .5% / 1%</b>  | <b>39,188.34</b>               |
|                                                          | <b><u>7,837,668.30</u></b>     |

WEST VIRGINIA LOTTERY  
 First Benchmark  
 Charles Town  
 County / City Split  
 Fiscal Year 2011

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% |
|-----------------------------------|------------------------|------------------------|----------------------|---------------------|---------------------|---------------------|---------------------|-----------------------|
| 3 days ending:<br>7/1/10 - 7/3/10 | \$ 115,402.58          | \$ 115,402.58          | \$ -                 | \$ -                | \$ -                | \$ -                | \$ -                | \$ -                  |
| Week ending:                      |                        |                        |                      |                     |                     |                     |                     |                       |
| 07/10/10                          | \$ 205,731.64          | \$ 205,731.64          | \$ -                 | \$ -                | \$ -                | \$ -                | \$ -                | \$ -                  |
| 07/17/10                          | \$ 161,388.76          | \$ 161,388.76          | \$ -                 | \$ -                | \$ -                | \$ -                | \$ -                | \$ -                  |
| 07/24/10                          | \$ 160,368.28          | \$ 160,368.28          | \$ -                 | \$ -                | \$ -                | \$ -                | \$ -                | \$ -                  |
| 07/31/10                          | \$ 157,802.08          | \$ 157,802.08          | \$ -                 | \$ -                | \$ -                | \$ -                | \$ -                | \$ -                  |
| 08/07/10                          | \$ 161,617.62          | \$ 136,494.88          | \$ 25,122.84         | \$ 3,120.27         | \$ 8,682.46         | \$ 918.98           | \$ 8,813.09         | \$ 3,590.05           |
| 08/14/10                          | \$ 156,733.36          | \$ 76,376.60           | \$ 78,376.66         | \$ 8,734.98         | \$ 27,088.98        | \$ 2,660.75         | \$ 27,484.54        | \$ 11,200.09          |
| 08/21/10                          | \$ 152,388.04          | \$ 76,199.02           | \$ 76,199.02         | \$ 8,463.92         | \$ 28,334.36        | \$ 2,781.26         | \$ 26,730.62        | \$ 10,888.64          |
| <b>Subtotal</b>                   | <b>\$ 1,271,460.56</b> | <b>\$ 1,091,782.02</b> | <b>\$ 178,698.64</b> | <b>\$ 22,318.67</b> | <b>\$ 62,103.81</b> | <b>\$ 6,558.69</b>  | <b>\$ 83,038.25</b> | <b>\$ 25,878.92</b>   |

Benchmark Goal @ 2% \$ 912,063.48

Remainder until 1% / 1% Split \$ -

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

| Week Ending Date                                  | Week Ending<br>August 21, 2010 |
|---------------------------------------------------|--------------------------------|
| <b>To be Deposited on:</b>                        | August 27, 2010                |
| Amount Played                                     | 77,446,145.81                  |
| Amount Won                                        | 69,238,110.04                  |
| Amount Promo                                      | 226,561.00                     |
| MWAP Contribution                                 | <u>44,076.56</u>               |
| <b>Adjusted Gross Terminal Revenue</b>            | <u>7,937,397.81</u>            |
| Administrative Costs @ 4%                         | 317,496.91                     |
| Excess Lottery Fund @ 4%                          | <u>0.00</u>                    |
| <b>Net Terminal Revenue</b>                       | <u>7,619,901.90</u>            |
| Surcharge @ 10%                                   | 0.00                           |
| State Share Excess @ 58%                          | 0.00                           |
| Track Share of Capital Reinvestment @ 42%         | 0.00                           |
| Track Share of Capital Reinvestment @ 42% - 96%   | \$ -                           |
| Track Share of Capital Reinvestment @ 42% - 4%    | \$ -                           |
| <b>Adjusted Net Terminal Revenue</b>              | <u>7,619,901.90</u>            |
| Racetrack @ 46.50% / 42%                          | 3,543,264.39                   |
| Lottery Fund @ 30% / 0%                           | 2,285,970.58                   |
| Excess Lottery Fund @ 0% / 41%                    | 0.00                           |
| Race Track Purses @ 7% / 14% / 8%                 | 533,393.13                     |
| Workers' Compensation Debt Reduction @ 7%         | 533,393.13                     |
| Employee Pension Fund @ 1% / .5%                  | 76,199.02                      |
| Greyhound Development @ .75%                      | 57,149.26                      |
| Thoroughbred Development @ .75%                   | 57,149.26                      |
| Racing Commission @ 1%                            | 76,199.02                      |
| County/Municipality @ 2%                          | 152,398.04                     |
| <b>3% Funds:</b>                                  |                                |
| Tourism Promotion Fund @ 1.376%                   | 104,773.65                     |
| Development Office Promotion Fund @ .375%         | 28,574.63                      |
| Research Challenge Fund @ .5%                     | 38,099.51                      |
| Capitol Renovation and Improvement Fund @ .6875%  | 52,386.83                      |
| 2004 Capitol Complex Parking Garage Fund @ .0625% | 4,762.44                       |
| <b>1% Funds:</b>                                  |                                |
| State Capitol Complex Parking Garage @ 1%         | 0.00                           |
| Cultural Facilities and Capitol Resources @ .5%   | 38,099.51                      |
| Capitol Dome and Capitol Improvements @ .5% / 1%  | 38,099.51                      |
|                                                   | <u>7,619,901.90</u>            |

P.O. Box 2067  
Charleston, WV 25327



Phone: (304) 558-0500  
Fax: (304) 558-3321  
www.wvlottery.com

John C. Musgrave  
Director

To: Controller

Location: Jefferson County Commission

Fax #: (304) 725-7916

Phone #: (304) 728-3284

From: Stacy Acree ext. 352

Comments:

VIDEO LOTTERY WEEKLY SETTLEMENT REPORT

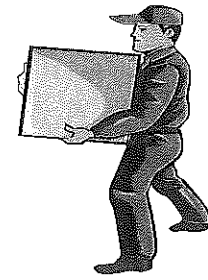
WEST VIRGINIA LOTTERY  
 First Benchmark  
 Charles Town  
 County / City Split  
 Fiscal Year 2011

Charles Town  
 1999 Net Terminal Revenue \$ 45,803,174  
 Benchmark Goal @ 2% \$ 912,063.48

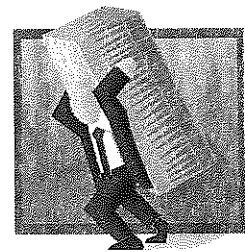
| DATE                             | 2% OF<br>ADJ. NET<br>REVENUE | TO<br>JEFFERSON<br>COUNTY | TO<br>FIVE<br>CITIES | BOLIVAR<br>12.42%   | CHARLES<br>TOWN<br>34.56% | HARPERS<br>FERRY<br>3.65% | RANSON<br>35.08%    | SHEPHERDS<br>TOWN<br>14.29% |
|----------------------------------|------------------------------|---------------------------|----------------------|---------------------|---------------------------|---------------------------|---------------------|-----------------------------|
| 3 days ending:<br>7/1/10- 7/3/10 | \$ 115,402.58                | \$ 115,402.58             | \$ -                 | \$ -                | \$ -                      | \$ -                      | \$ -                | \$ -                        |
| Week ending:<br>07/10/10         | \$ 205,731.64                | \$ 205,731.64             | \$ -                 | \$ -                | \$ -                      | \$ -                      | \$ -                | \$ -                        |
| 07/17/10                         | \$ 161,388.76                | \$ 161,388.76             | \$ -                 | \$ -                | \$ -                      | \$ -                      | \$ -                | \$ -                        |
| 07/24/10                         | \$ 160,368.28                | \$ 160,368.28             | \$ -                 | \$ -                | \$ -                      | \$ -                      | \$ -                | \$ -                        |
| 07/31/10                         | \$ 167,802.08                | \$ 157,802.08             | \$ -                 | \$ -                | \$ -                      | \$ -                      | \$ -                | \$ -                        |
| 08/07/10                         | \$ 161,617.82                | \$ 138,494.88             | \$ 26,122.84         | \$ 3,120.27         | \$ 6,882.45               | \$ 816.88                 | \$ 8,813.09         | \$ 3,580.05                 |
| 08/14/10                         | \$ 168,763.38                | \$ 78,376.68              | \$ 78,376.88         | \$ 8,734.38         | \$ 27,086.98              | \$ 2,660.75               | \$ 27,484.54        | \$ 11,200.09                |
| <b>Subtotal</b>                  | <b>\$ 1,119,082.52</b>       | <b>\$ 1,015,563.00</b>    | <b>\$ 103,489.52</b> | <b>\$ 12,854.65</b> | <b>\$ 35,769.43</b>       | <b>\$ 3,777.73</b>        | <b>\$ 36,307.63</b> | <b>\$ 14,790.08</b>         |

Benchmark Goal @ 2% \$ 912,063.48

Remainder until 1% / 1% Split \$ -



**The County Commission  
will be closed on  
Monday, September 6, 2010  
in observance of  
Labor Day.**



Jefferson County Commission

together with

Berkeley/Jefferson Day Report  
Center

invite you to share with them in a continental Breakfast Meeting

"Keeping our Jail cost down and turning lives around -  
it all makes CENTS"

**TUESDAY, THE SEVENTH DAY OF SEPTEMBER**

Two Thousand and Ten

**AT NINE THIRTY IN THE MORNING**

**RANSON CIVIC CENTER**

431 W. 2nd Avenue . Ranson . West Virginia

**NOTICE OF SPECIAL SESSION  
COUNTY COMMISSION OF JEFFERSON COUNTY**

**The County Commission of Jefferson County will meet on Tuesday, September 7, 2010, at 1:00 p.m. in the Old Charles Town Library Meeting Room, 200 E. Washington Street, Charles Town, West Virginia 25414.**

**The purpose of the Special Session is to hold a hearing on the First Accounting and Exceptions Thereto and Petition to Resign of James Packard-Gomez, Executor, of the Estate of John J. Warfield, deceased.**

**By Order of the County Commission of Jefferson County  
Lyn Widmyer  
President**